

Board Meeting Agenda Book



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

November 13, 2015

Full Board Meeting, 8:00 a. m.



**AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM
AUSTIN, TEXAS 78731
FRIDAY, NOVEMBER 13, 2015
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. Public Comment

C. Comments and Announcements from Chair, Board Members, and Executive Director

PAGE

1. Chair Reports - Laura Ryan

a. Recognition of Service - Board Members Rodriguez and Slovacek

b. Committee Member Appointments

c. [Proposed 2016 Board Meeting Schedule](#)

5

2. Executive Director Reports - Whitney Brewster

a. Awards/Announcements

b. Household Goods Rules Advisory Committee Update

c. [Quarterly Performance Measures](#)

d. Operational Plan

6

2. 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.

1. Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.

2. Executive Director compensation, in accordance with Article VII, General Appropriations Act, HB 1, 84th Legislature, Regular Session, 2015.

C. Section 551.076 - Deliberation regarding security devices or security audits.

PAGE

3. ACTION ITEMS - CONTESTED CASES

8

A. Dealer’s Protest Against Manufacturer’s Modification of the Franchise Agreement with Regard to the Dealer’s Area of Responsibility under Occupations Code, Sections 2301.454 and 2301.455 - Daniel Avitia and Michelle Lingo

14-0004 LIC - SOAH Docket No. 608-14-1068 LIC, [Sweeten Truck Center, L.C. v. Volvo Trucks North America, a Division of Volvo Group North America, LLC](#)

15

B. Transfer of Ownership by Dealer Under Occupations Code, Section 2301.359 - Daniel Avitia and LaDonna Castanuela

13-0008 LIC - SOAH Docket No. 608-13-4599 LIC, Budget Leasing, Inc. d/b/a [Audi North Austin](#) and Audi South Austin and Ricardo M. Weitz, Hi Tech Imports North, LLC, Hi Tech Imports South, LLC, Hi Tech Imports, LLC v. Volkswagen Group of Am., Inc. and Porsche Cars North America

4. ACTION ITEMS FROM EXECUTIVE SESSION

A. Settlement Authority

B. Executive Director Compensation

5. REPORTS

34

A. Finance & Audit

1. [Quarterly Financial Report](#) - Linda M. Flores and Renita Bankhead

43

2. Internal Audit Division Status - Sandra Vice and Arby Gonzales

a. [Internal Audit Division Status Report - November 2015](#)

44

b. [Audit of TxDMV's Administration of Statutes and Rules through Tax Assessor-Collectors, TxDMV 15-4](#)

82

c. [Annual Internal Audit Report for FY 2015, TxDMV 16-1](#)

B. Legislative Implementation - Caroline Love

110

C. Enterprise Projects Quarterly Report - Judy Sandberg

116

6. BRIEFINGS, DISCUSSION, CONSIDERATION AND POSSIBLE ACTION

A. Vice-Chair Election

B. Contracts

122

1. [Commercial Vehicle Information Systems and Networks \(CVISN\) Annual Maintenance Renewal](#) - Jimmy Archer

123

2. [Single Sticker Phase II Programming for Texas International Registration Plan \(TxIRP\)](#) - Judy Sandberg and Jimmy Archer

124

3. [TxDMV -TxDOT Technology Separation](#) - Eric Obermier and Judy Sandberg

PAGE

- 126 4. [Revised Resolution from August 14, 2015 Meeting; Contracts Reflected in the 2016 Operating Budget](#) - David D. Duncan
- C. Continuation of Motor Vehicle License Advisory Committee - Daniel Avitia**
- 127 **D. [Specialty Plate Design](#) - Jeremiah Kuntz**
1. Southern Miss (Vendor Plate)
2. Classic Black (Vendor Plate)
- 132 **E. [ACTION ITEMS - RULES](#)**
1. **Adoption of Rules under Title 43, Texas Administrative Code**
- 134 a. **Chapter 206, Management - David D. Duncan**
[Section 206.41, Petition](#)
- 139 b. **Chapter 208, Employment Practices - Sharon Brewer**
[Section 208.12, General Standards \(concerning tuition reimbursement\)](#)
- 146 c. **Chapter 215, Motor Vehicle Distribution - David D. Duncan, Daniel Avitia, and Bill Harbeson**
[Rule Review, Government Code, §2001.039](#)
[Repeals/Amendments](#)
- 210 d. **New Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders - Bill Harbeson**
[New Subchapters A - F, Sections 221.1 - 221.115](#)
[Repeal Chapter 217, Subchapter I, Salvage Vehicle Dealers](#)
- 285 e. **Chapter 219, Oversize and Overweight Vehicles and Loads - Jimmy Archer and Bill Harbeson**
[Subchapters A - E, G and H](#)
- 305 f. **Chapter 217, Vehicle Titles and Registration - Jimmy Archer**
[Section 217.56, Registration Reciprocity Agreements](#)
2. **Proposal of Rules under Title 43, Texas Administrative Code**
- 323 a. **Chapter 206, Management - David D. Duncan**
[Section 206.93, Advisory Committee Operations](#)
[New Section 206.94, Household Goods Rules Advisory Committee](#)
[New Section 206.95, Motor Vehicle License Advisory Committee](#)
- 331 b. **Chapter 210, Contract Management - Linda M. Flores and David Chambers**
[New Section 210.3, Enhanced Contract Monitoring Program](#)
- 337 c. **Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz**
[Section 217.3, Motor Vehicle Titles](#)

7. 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 Section 30.06, Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law), may not enter this property with a concealed handgun.

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.



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Board Meeting Schedule (pending if there will be a board meeting in the month and schedule is subject to change according to work load)

1st Thursday (8:00 a.m.) of the month except January and October

2016

January

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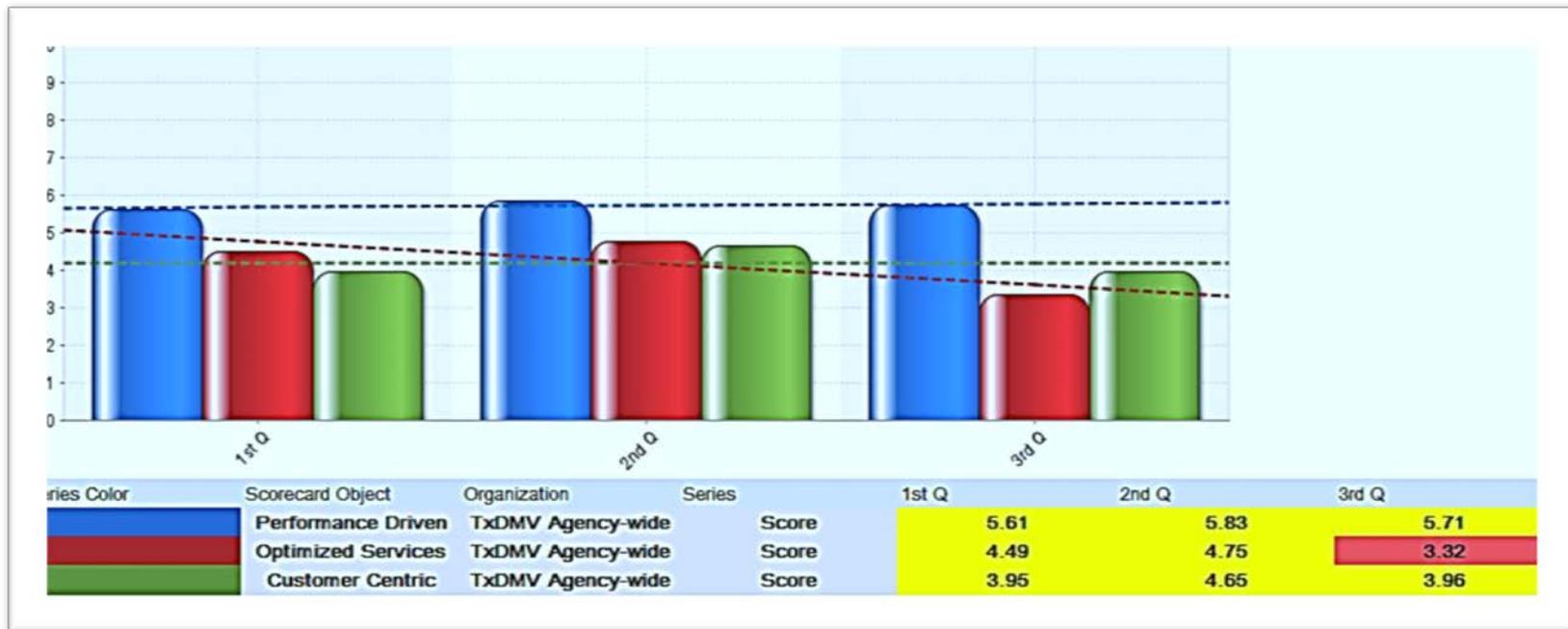
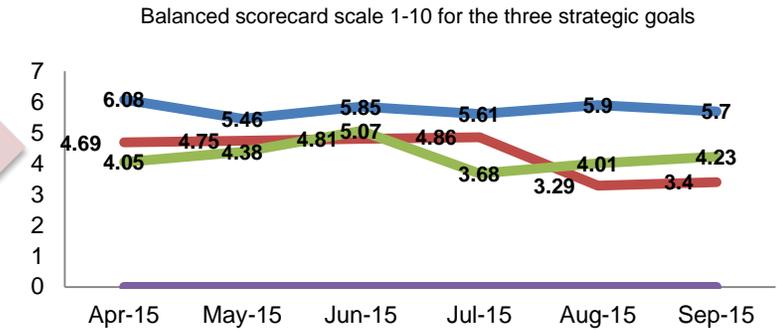
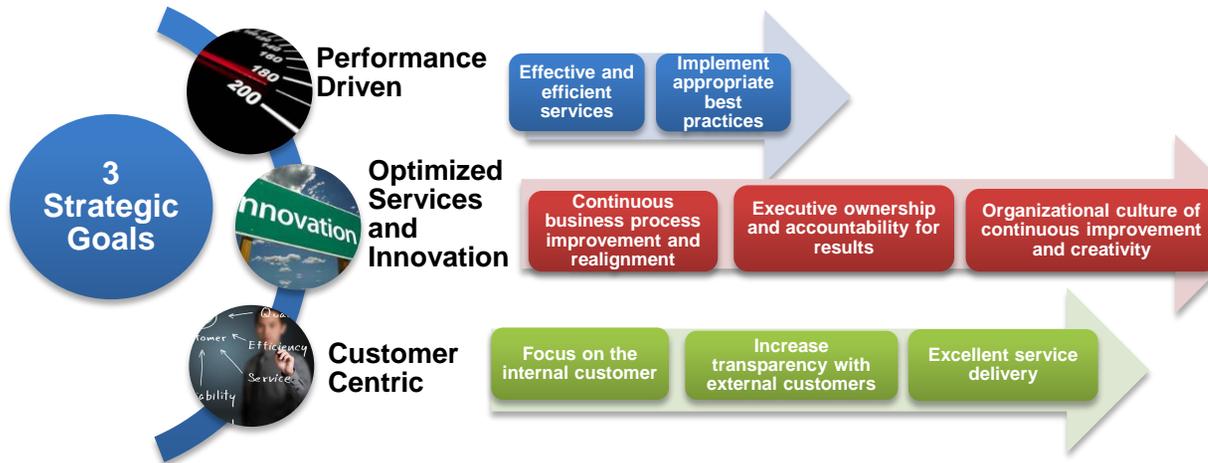
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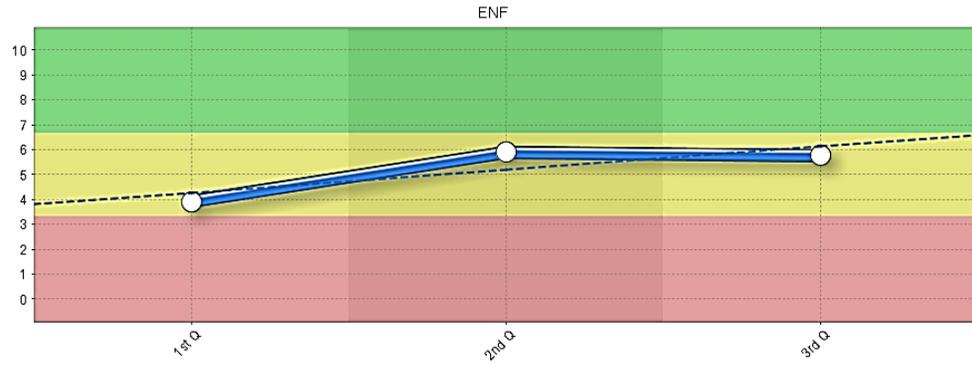
Texas Department of Motor Vehicles Key Performance Indicator Dashboard – July-September 2015 (3rd Q)



Balanced scorecard scale 1-10 for the three strategic goals

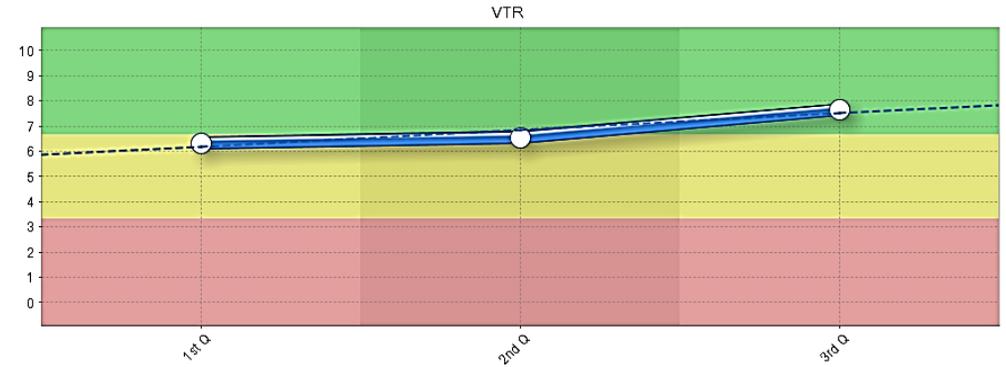
KPI Data by Division 1st - 3rd Quarter 2015

Enforcement



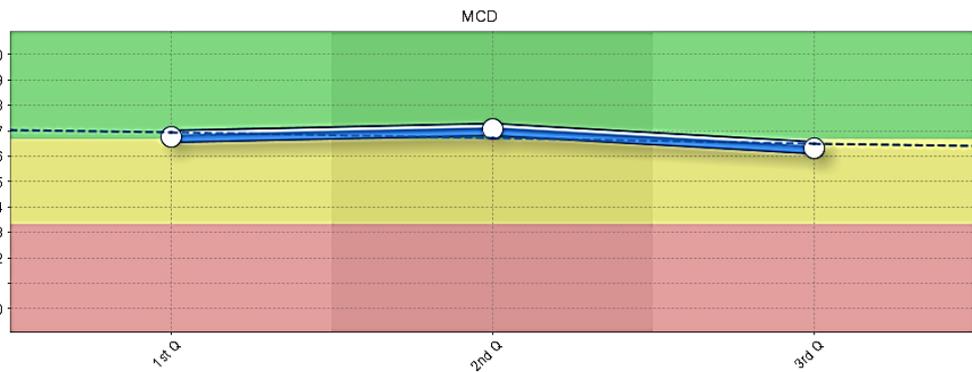
Trendline Over Time

Vehicle Titles and Registration



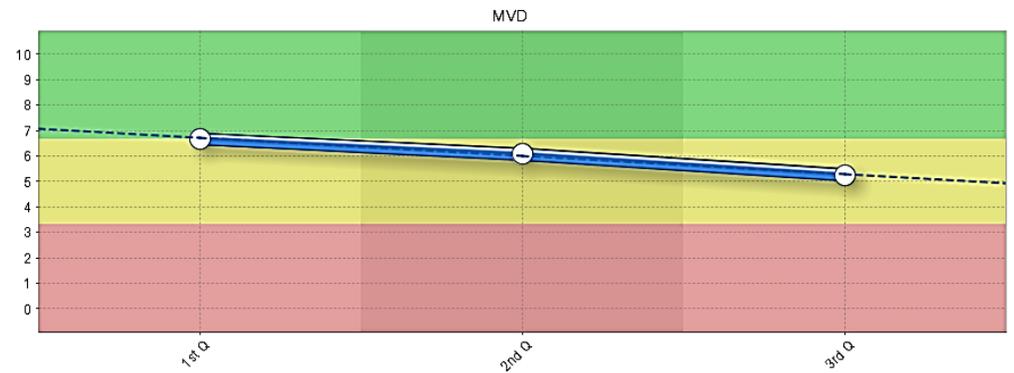
Trendline Over Time

Motor Carrier



Trendline Over Time

Motor Vehicle



Trendline Over Time

SWEETEN TRUCK CENTER, L.C., Complainant v. VOLVO TRUCKS NORTH AMERICA, A DIVISION OF VOLVO GROUP NORTH AMERICA, LLC, Respondent;
SOAH DOCKET NO. 608-14-1068.LIC; MVD DOCKET NO. 14-0004 LIC

EXECUTIVE SUMMARY

1. Background

On September 23, 2013, Volvo Trucks North America, a Division of Volvo Group North America, LLC (Volvo Trucks) notified Sweeten Truck Center, L.C. (Sweeten) of Volvo Trucks' intention to modify Sweeten's franchise by reducing the number of counties in Sweeten's primary area of responsibility (AOR) from 24 counties to 13 counties. On November 12, 2013, Sweeten protested. The Motor Vehicle Division (MVD) referred the contested case matter to the State Office of Administrative Hearings (SOAH).

On July 10, 2014, Volvo Trucks amended its notice letter and notified Sweeten of Volvo Trucks' intention to modify Sweeten's franchise by reducing the number of counties in Sweeten's primary AOR from 24 counties to 14 counties. The amended notice moved Washington County from the list of Removed Counties to the list of counties that are to remain in Sweeten's AOR. On July 21, 2014, Sweeten protested the amended notice letter. The parties participated in in-person mediation. Volvo Trucks' amended notice letter and Sweeten's protest was forwarded to SOAH for inclusion in the contested case already in existence.

The ALJ conducted the Hearing on the Merits on September 8-15, 2014; closed the administrative record on December 10, 2014; and issued the PFD on February 5, 2015, favoring the Respondent (Volvo Trucks) and finding that the Respondent had established by a preponderance of the evidence¹ that good cause exists for the proposed modification of Sweeten's franchise.

Sweeten appeared at the Hearing and was represented by attorneys William Crocker, Travis Clardy, and Jerry Baker. Volvo Trucks appeared at the Hearing and was represented by attorneys Keith Russell and Cory Curtis.

On February 20, 2015, Sweeten's counsel, Texas State Representative Travis Clardy, filed a Motion for Legislative Continuance with SOAH. As required by Texas Civil Practice and Remedies Code §30.003, the SOAH case was stayed until thirty days after the end of the Regular Session of the 84th Texas Legislature, which adjourned sine die on June 1, 2015.

On July 1, 2015, Complainant (Sweeten) filed Exceptions to the ALJ's PFD. On July 14, 2015, Respondent (Volvo Trucks) filed Replies to Complainant's Exceptions to the PFD.

On August 17, 2015, the ALJ issued a letter providing that, after having reviewed the exceptions and reply arguments, the ALJ was making no changes to the PFD the ALJ issued on February 5, 2015. SOAH returned this contested case matter to the TxDMV on August 17, 2015. The Board has jurisdiction to consider the contested case and to enter a final Order.

¹ Black's Law Dictionary defines "preponderance of the evidence" to mean the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. Also termed preponderance of proof or balance of probability.

The issue presented in this case is whether Volvo Trucks has established by a preponderance of the evidence that there is good cause for the proposed franchise modification² (i.e., to reduce the number of counties in Sweeten's primary area of responsibility).

The Board is required to include a separate finding of fact for each of the specific seven issues identified in Occupations Code §2301.455.³ In determining whether Volvo Trucks established good cause, the Board shall consider all existing circumstances, including:

1. the dealer's sales in relation to the sales in the market;
2. the dealer's investment and obligations;
3. injury or benefit to the public;
4. the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
5. whether warranties are being honored by the dealer;
6. the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
7. the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.

The desire of a manufacturer, distributor, or representative for market penetration does not by itself constitute good cause.⁴

2. Board Authority

- Occupations Code §2301.454(a) establishes that the burden of proof is on the manufacturer (Volvo Trucks) to establish by a preponderance of the evidence that there is good cause for the proposed franchise modification. Occupations Code §2301.455(a) provides seven factors the Board must consider when determining whether Volvo Trucks established good cause for the proposed modification to Sweeten's franchise.
- Occupations Code §2301.711 requires an order of the Board to include a separate finding of fact for each of the specific seven issues identified in Occupations Code §2301.455(a).
- Government Code §2001.058(e) allows an agency to vacate or modify an order proposed by the ALJ only if the ALJ:
 - (1) misapplied or misinterpreted applicable law, agency rules, or prior agency decisions;
 - (2) relied on a prior agency decision that is incorrect or should be changed; or
 - (3) made a technical error in a finding of fact.

The agency must state in writing the specific reason and legal basis for a change made to a finding or fact or conclusion of law.

² Occupations Code §2301.454(d).

³ Occupations Code §2301.711.

⁴ Occupations Code §2301.455.

3. SOAH ALJ's Recommendations on the Seven Statutory Factors

(a) Factor 1: Dealer's Sales in Relation to the Sales in the Market

The ALJ decided this factor in favor of Volvo Trucks.⁵ The ALJ found that Sweeten's sales in relation to the market have been below what should be expected, supporting good cause for the proposed modification of the dealer agreement. The ALJ concluded that when considering Sweeten's "sales in relation to the sales in the market," particularly with regard to the Removed Counties, Sweeten's sales have been poor.

(b) Factor 2: Dealer's Investment and Obligations

The ALJ decided this factor in favor of Volvo Trucks.⁶ The ALJ found the proposed modification has no impact relating to Sweeten's investment and obligations. The ALJ found that Sweeten's lack of investment in the Removed Counties is a factor slightly favoring good cause for the modification.

(c) Factor 3: Injury or Benefit to the Public

The ALJs decided this factor in favor of Sweeten.⁷ The ALJ found no credible persuasive evidence that the proposed modification will either harm or benefit the public.

(c) Factor 4: Adequacy of the Dealer's Service Facilities, Equipment, Parts, and Personnel in Relation to those of Other Dealers of New Motor Vehicles of the Same Line-Make

The ALJ decided this factor in favor of Volvo Trucks.⁸ The ALJ found that Sweeten's service facilities, equipment, parts, and personnel have been less than those of other dealers of new motor vehicles of the same line-make, and this supports good cause for the proposed modification to Sweeten's AOR.

(e) Factor 5: Whether Warranties Are Being Honored by the Dealer

The ALJ decided that consideration of this factor does not impact the good cause analysis.⁹ Occupations Code §2301.455(a) requires the Board to consider all existing circumstances, including whether warranties are being honored by the dealer. Occupations Code §2301.711 requires an order of the Board to include a separate finding of fact for each of the specific seven issues. Based on the ALJ's discussion at page 26 of the PFD, findings are presented in the draft final Order for Board consideration.

(f) Factor 6: Parties' Compliance with the Franchise, Except to the Extent that the Franchise Conflicts with Occupations Code Chapter 2301

The ALJ decided that this is a neutral factor and does not impact the good cause analysis.¹⁰ Occupations Code §2301.455(a) requires the Board to consider all existing circumstances, including the parties' compliance with the franchise. Occupations Code §2301.711 requires an order of the Board to include a separate finding of fact for each of the specific seven issues. Based on the ALJ's discussion at page 26-30 of the PFD, findings are presented in the draft final Order for Board consideration.

⁵ PFD pp. 12-17.

⁶ PFD pp. 17-19.

⁷ PFD pp. 20-21.

⁸ PFD pp. 22-26.

⁹ PFD pp. 26.

¹⁰ PFD pp. 26-30.

(g) Factor 7: Enforceability of the Franchise from a Public Policy Standpoint, Including Issues of the Reasonableness of the Franchise's Terms, Oppression, Adhesion, and the Parties' Relative Bargaining Power

The ALJ decided that consideration of this factor does not impact the good cause analysis.¹¹ Occupations Code §2301.455(a) requires the Board to consider all existing circumstances, including enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power. Occupations Code §2301.711 requires an order of the Board to include a separate finding of fact for each of the specific seven issues. Based on the ALJ's discussion at page 30 of the PFD, findings are presented in the draft final Order for Board consideration.

4. Staff Concerns

Staff is concerned that the SOAH ALJ did not provide all required findings and conclusions. For the Board's consideration, the draft final Order adds findings of fact and a conclusion of law, including the specific reason and legal basis following the requirements of Texas Government Code §2001.058(e).

5. Staff's Recommendation

Staff recommends the Board adopt the ALJ's findings of fact and conclusions of law, as modified. The draft final Order is attached to this Executive Summary for the Board's consideration.

6. Documents

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

- | | |
|---|------------------|
| 1. Proposed Draft Final Order | |
| 2. SOAH ALJ's PFD | February 5, 2015 |
| 3. Complainant's (Sweeten) Exceptions to the PFD | July 1, 2015 |
| 4. Respondent's (Volvo Trucks) Replies to Complainant's Exceptions to the PFD | July 14, 2015 |
| 5. SOAH ALJ's letter making no modification to the PFD in response to the parties' exceptions and reply pleadings | August 17, 2015 |

¹¹ PFD pp. 30.

SWEETEN TRUCK CENTER, L.C., Complainant

v.

*VOLVO TRUCKS NORTH AMERICA, A
DIVISION OF VOLVO GROUP NORTH
AMERICA, LLC,
Respondent*

SOAH DOCKET NO. 608-14-1068.LIC
MVD DOCKET NO. 14-0004 LIC

PROPOSED DRAFT FINAL ORDER

**TEXAS DEPARTMENT OF MOTOR VEHICLES
MOTOR VEHICLE DIVISION**

<p>SWEETEN TRUCK CENTER, L.C., Complainant</p>	<p>§ § § § § § § §</p>	<p>MVD DOCKET NO. 14-0004 LIC SOAH DOCKET NO. 608-14-1068 LIC</p>
<p>v.</p>		
<p>VOLVO GROUP NORTH AMERICA, LLC, Respondent</p>		

FINAL ORDER

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (TxDMV) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves the protest by a franchised dealership, Sweeten Truck Center, L.C. (Sweeten), of the franchise modification proposed by the manufacturer, Volvo Group North America, LLC (Volvo Trucks).

The specific reasons and legal basis for the Board’s changes to the administrative law judge’s (ALJ) Findings of Fact and Conclusions of Law follow:

Findings of Fact 90-96 are added in accordance with Texas Government Code §2001.058(e)(1) because the ALJ did not properly apply or interpret applicable law. Occupations Code §2301.711(b)(1) requires that an order under Texas Occupations Code Chapter 2301 must include a separate finding of fact with respect to each specific issue required by law to be considered in reaching a decision.

- 90: Good cause exists for modification of the franchise agreement when considering the statutory factor of the dealer’s sales in relation to the sales in the market.
- 91: Good cause exists for modification of the franchise agreement when considering the dealer’s investment and obligations.
- 92: There is no credible persuasive evidence that the modification of the franchise agreement would either injure or harm the public and thus, this neutral factor is not an existing circumstance that impacts the good cause analysis.
- 93: Good cause exists for modification of the franchise agreement when considering the statutory factor of the adequacy of the dealer’s service facilities, equipment, parts and personnel in relation to those of other dealers of new motor vehicles of the same line-make.
- 94: There is no evidence or argument that warranties were not being honored by the dealer and thus, this neutral factor is not an existing circumstance that impacts the good cause analysis.
- 95: There is no evidence or argument that either party was not complying with the franchise agreement and thus, this neutral factor is not an existing circumstance that impacts the good cause analysis.
- 96: There is no evidence or argument that the franchise is unenforceable from a public policy standpoint and thus, this neutral factor is not an existing circumstance that impacts the good cause analysis.

Conclusion of Law 10A is added in accordance with Texas Government Code §2001.058(e)(1) because the ALJ did not properly apply applicable law. Texas Occupations Code §2301.455 requires the Board to consider all existing circumstances including seven express factors in determining whether good cause is established for the franchise modification proposed by the manufacturer. Conclusion of Law 10A follows:

- In determining whether Volvo Trucks established by a preponderance of the evidence that there is good cause for the proposed modification to the franchise, the Board is required to consider all existing circumstances, including seven statutory factors. Tex. Occ. Code §2301.455(a).

The Board enters this Final Order, having considered the evidence, arguments, Findings of Fact and Conclusions of Law presented in the ALJ's PFD, Sweeten's Exceptions to the ALJ's PFD, Volvo Trucks' Replies to Sweeten's Exceptions to the PFD, and the ALJ's August 17, 2015, letter that makes no changes to the ALJ's February 5, 2015, PFD.

The Board adopts the Findings of Fact 1-89 and Conclusions of Law 1-13, as presented in the ALJ's February 5, 2015, proposal for decision (PFD). For the specific reasons and legal basis stated above, the Board adds Findings of Fact 90-96 and Conclusion of Law 10A.

ACCORDINGLY, IT IS ORDERED:

1. That the Findings of Fact and Conclusions of Law as set out in this Order are hereby adopted;
2. That Volvo Trucks' proposed modification to the franchise with Sweeten is approved;
3. That Sweeten's primary area of responsibility under its franchise agreement with Volvo Trucks is comprised of the following fourteen counties in Texas:

Brazoria;	Harris;	Roberson;
Brazos;	Leon;	San Jacinto;
Chambers;	Liberty;	Walker; and
Galveston;	Madison;	Washington.
Grime;	Montgomery;	

4. That Findings of Fact and Conclusions of Law proposed by the parties that were not adopted in this Order are hereby rejected; and
5. That remaining motions, if any, are hereby denied.

Date: _____

 Laura Ryan, Chair
 Board of the Texas Department of Motor Vehicles

ATTESTED:

 Daniel Avitia, Director
 Motor Vehicle Division
 Texas Department of Motor Vehicles

BUDGET LEASING, INC., D/B/A AUDI NORTH AUSTIN AND AUDI SOUTH AUSTIN, Protestant; RICARDO M. WEITZ; HI TECH IMPORTS NORTH, LLC; HI TECH IMPORTS SOUTH, LLC; AND HI TECH IMPORTS LLC, Intervenors v. VOLKSWAGEN GROUP OF AMERICA, INC. AND PORSCHE CARS NORTH AMERICA, INC., Respondents;
MVD Docket No. 13-0008.LIC; SOAH Docket No. 608-13-4599.LIC

EXECUTIVE SUMMARY

Background

On December 14, 2012, Budget Leasing, Inc. d/b/a Audi North Austin and Audi South Austin (Budget or Protestant) entered into a Dealer Purchase Contract with Ricardo M. Weitz and his co-buyers (collectively referred to as Intervenors) to purchase the assets of two Audi dealerships, a Porsche dealership, and a Maserati dealership.

On April 16, 2013, Volkswagen Group of America, which includes Audi of America, Inc. (Audi) rejected the proposed transfer. Budget filed a protest to Audi's rejection. Mr. Weitz and the other rejected buyers joined the protest as Intervenors.

The original hearing on the merits before the State Office of Administrative Hearings (SOAH) convened on February 26, 2014, and lasted nine days. The Administrative Law Judges (ALJs) closed the administrative record on May 28, 2014.

The ALJs issued the proposal for decision on July 16, 2014 (original PFD). The ALJs' findings of fact and conclusions of law determined that Intervenors were not qualified and that Audi had valid reasons for rejecting the buy-sell agreement. The ALJs' recommendation further states that Intervenors *would be qualified* if they meet four conditions.¹

After all parties filed exceptions to the PFD and replies to the Exceptions,² the ALJs filed letter responses to the parties' exceptions (exceptions letters) on August 29, 2014, and September 3, 2014.³

September 12, 2014, Board Consideration

On September 12, 2014, the Board voted to dismiss the case for want of jurisdiction because the applicant dealer failed to invoke the statutory protections of Occ. Code §§2301.359-360. Specifically, the Board found that its jurisdiction had not been invoked because Protestant failed

¹ See Attachment A, SOAH's July 16, 2014, Proposal for Decision. Specifically, see Finding of Fact Nos. 154-158.

² See Attachment B, all parties' exceptions and replies to exceptions to the original PFD.

³ See Attachment C, the SOAH ALJ's exception letters to the parties' exceptions and replies to exceptions to the original PFD.

to provide a "... written agreement to comply with the franchise..." as required by §2301.359(c)(3).

In response to the Board's order, Protestant and Intervenors filed a motion for rehearing. After due consideration of the motion for rehearing and related documents, the Board issued an order granting the motion for rehearing on December 10, 2014.⁴

February 13, 2015, Board Consideration

On February 13, 2015, the Board remanded the case back to SOAH for supplemental proceedings. The following excerpts from the Board's order exclude the original footnotes:

The Board remands this matter ...for supplemental proceedings limited to the following:

Did Audi receive the letter dated April 30, 2013, from Ricardo Weitz to Sally Grimes, and should this letter be added to the record? If so, what effect, if any, does the letter have on the issue of compliance with Tex. Occ. Code §2301.359 in light of the agency's prior decision in *Gordon Rountree Motors, Ltd. v. Mazda Motors of America*, MVD Docket No. 07-0038 LIC?

...

SOAH is also directed to review the qualifying conditions set forth in Findings of Fact Nos. 154-158, Intervenors Motion to Find the Prospective Transferees Qualified, and Volkswagen Group of America, Inc. and Audi of America Inc.'s Response to Intervenors' Motion to Find the Prospective Transferees Qualified....SOAH is directed to provide a specific finding that prospective transferees are or are not qualified.⁵

SOAH conducted the remand hearing on April 16 and 17, 2015, and issued the Remand Proposal for Decision (remand PFD)⁶ on August 13, 2015.

- ALJs admitted the April 30, 2013, Ricardo Weitz letter to Audi into evidence; determined that Intervenors substantially complied with the notice provisions of Occ. Code §2301.359(c)(3); and determined that the *Rountree* decision and other case law do not require strict compliance with Occ. Code §2301.359 notice requirements.

⁴ See Attachment D, the Board's December 10, 2014, Decision and Order Granting Rehearing.

⁵ See Attachment E, the Board's Interim Order Remanding the Case to the State Office of Administrative Hearings for Further Proceedings, dated February 13, 2015.

⁶ See Attachment F, the Remand Proposal for Decision, dated August 13, 2015.

- The ALJs determined in the remand PFD that Intervenors have met the conditions of Findings of Fact 154-157 (of the original PFD).
- Regarding Finding of Fact No. 158, the ALJs recommended that Intervenors will have met the condition of Finding of Fact No. 158 (of the original PFD) “Once the dealership guaranty of other dealerships provision has been removed.”

All parties filed exceptions and replies to exceptions. Respondents also filed a Motion to Strike the Rowe Affidavit, and Protestant and Intervenors filed a response to the motion.

Protestant and Intervenors argued among other things that the direction to delete the cross guaranty from the transaction amounted to an additional condition to those included in the original PFD and, therefore, is outside of the scope of the remand order. Protestant and Intervenors also argued with the ALJs’ findings that the April 30, 2013, letter did not constitute strict compliance with the notice requirements of Occ. Code §2301.359. Regardless of the exception against the ALJs’ direction to remove the cross guaranty agreement from the transaction, Protestant and Intervenors also included with their exceptions an affidavit entitled “Declaration of David Rowe,” that states that if the Board requires Intervenors to remove the guaranty agreement from the loan documents, “[t]he Guaranty Agreement will be eliminated from the transaction.”⁷

Respondents’ exceptions included arguments stating that the April 30, 2013, letter did not meet the requirements of Occ. Code §2301.359(c)(3); that the letter was too late; that the ALJs erred by proposing to find Intervenors qualified *before* the Intervenors take actions to meet the conditions; and that it is improper for the ALJs to give Intervenors an opportunity to present additional evidence after the hearing record was closed and the remand PFD was issued.

The ALJs’ September 22, 2015, response to the exceptions recommends the Board overrule all parties’ exceptions and states that, after reviewing the Declaration of David Rowe on behalf of Ally Bank, the ALJs are satisfied that Finding of Fact 158 of the original PFD is satisfied.⁸ Finally, the ALJs recommend revisions to Findings of Fact 90 and 114 of the remand PFD to reflect their recommendations.

⁷ See Declaration of David Rowe, an attachment to Protestant and Intervenors’ Exceptions to the Administrative Law Judges’ Remand Proposal for Decision within Attachment G.

⁸ See Attachment H, the SOAH ALJs’ exceptions letter responding to the parties’ exceptions and replies to exceptions to the remand PFD.

Board's Review of a Proposal for Decision

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

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) *that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;*

(2) *that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed;*
or

(3) *that a technical error in a finding of fact should be changed.*

The agency shall state in writing the specific reason and legal basis for a change made under this subsection. (*emphasis added*)

Staff Recommendation⁹

Staff has reviewed both PFDs, all parties' exceptions and replies, and the ALJs' responses to the exceptions and replies.

The PFDs and the parties' briefing is extensive and numerous contested issues were considered in detail by the SOAH ALJs. Staff believes the ALJs' analyses to be thorough and thoughtful and their recommendations to be reasonable in light of the evidence presented and the applicable law.

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

Staff recommends the Board issue an order that incorporates the original PFD and the remand PFD, including the Findings of Fact and Conclusions of Law and the associated exceptions letters, and finds the Intervenors qualified.¹⁰

⁹ This Executive Summary and the recommended Final Order were shared with all parties on October 20, 2015. The parties were invited to file written responses, and all parties' responses are provided in Attachment I.

¹⁰ The Staff's recommended Final Order immediately follows this Executive Summary.

Documents

The following documents are attached to this executive summary for consideration by the Board:

- Attachment A: The original Proposal for Decision, dated July 16, 2014
- Attachment B: All parties exceptions and replies to exceptions to the Original PFD
- Attachment C: The SOAH ALJ's exception letters to the parties' exceptions and replies to exceptions to the Original PFD
- Attachment D: The TxDMV Board's Decision and Order Granting Rehearing, dated December 10, 2014
- Attachment E: The TxDMV Board's Interim Order Remanding the Case to the State Office of Administrative Hearings for Further Proceedings, dated February 13, 2015
- Attachment F: The Remand Proposal for Decision, dated August 13, 2015
- Attachment G: All parties exceptions and replies to exceptions to the remand PFD, including Respondents' Motion to Strike and Protestant's and Intervenors' Response to Respondents' Motion to Strike
- Attachment H: The SOAH ALJ's exception letter to the parties exceptions and replies to exceptions to the remand PFD
- Attachment I: All parties' responses to the Staff's Executive Summary and recommended Final Order



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November 3, 2015

Mr. David Duncan
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Av.
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Sent via Email: david.duncan@txdmv.gov

Re: SOAH Docket No. 608-13-4599.LIC
MVD Docket No. 13-0008-LIC
Budget Leasing, Inc., Protestant; Ricardo M. Weitz, et al., Intervenors v. Volkswagen Group of America, Inc., et al., Respondents

Dear Mr. Duncan:

It has come to my attention that the agency is drafting a proposed Final Order for the Board in the above-referenced case in preparation for the Board's meeting on November 13, 2015.

The July 16, 2015, Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) raises an issue that is a concern for franchised Texas dealers. The concern is in regards to how the criteria developed by a manufacturer or distributor is made available by a manufacturer or distributor to a prospective transferee, as provided for in TEXAS OCCUPATIONS CODE § 2301.359(g)(3). The provision states:

§ 2301.359. Transfer of Ownership by Dealer

(a) A dealer must notify the manufacturer or distributor of a vehicle the dealer is franchised to sell of the dealer's decision to assign, sell, or otherwise transfer a franchise or a controlling interest in the dealership to another person. The notice is the application by the dealer for approval by the manufacturer or distributor of the transfer.

...

- (g) In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:
- (1) the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer;
 - (2) the prospective transferee's moral character; or
 - (3) the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.
- (h) A manufacturer or distributor may consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.
- (i) It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfies the criteria developed under Subsection (g)(3).¹

Proposal for Decision (PFD)

The Administrative Law Judges (ALJs) ruled in Order No. 3 and again in the July 16, 2014, PFD that “because the statute does not require the manufacturer to ‘supply’ or ‘deliver’ the written standards, Audi complied by allowing Intervenors the opportunity to request and review its policies. The ALJs’ view on this issue has not changed. If the legislature had intended to require delivery of the manufacturer’s policies, it simply could have used the word ‘deliver’ or a similar word, such as ‘supply’ or ‘provide.’ Furthermore, Intervenors and Protestant knew that Audi rejected the buy-sell agreement based on Audi’s standard policies. Had Intervenors or Protestant wanted a copy of those policies, it would not have required much effort to request those policies.”²

The ALJs continue by stating that Audi would have provided its policies if either the Intervenor or the Protestant had so requested.³

The ALJs included **Findings of Fact** No. 47. and No. 48. in the PFD:

47. Audi has written policies that it uses in analyzing proposed transfers (Audi policies). Audi made its policies available by allowing Intervenors the opportunity to request and review its policies.

¹TEXAS OCCUPATIONS CODE § 2301.359 (Vernon 2012).

²Proposal for Decision, July 16, 2014, page 16.

³*Id.*

48. Audi's written policies would have been provided if Intervenors had requested the policies.

The PFD's **Conclusions of Law** on this same issue are found in Nos. 24 and 25:

24. Texas Occupations Code § 2301.359(g) requires that a manufacturer's written criteria must be "made available" to the prospective transferees.

25. Audi made available to the prospective transferees the criteria and policies that Audi developed, considered, and applied to determine the business experience and financial qualifications of Intervenors and Headwater Hi Tech, as required by Texas Occupations Code § 2301.359(g).

The argument that Audi complied with § 2301.359(g) "by allowing" Intervenors the opportunity to request and review its policies is a misinterpretation of the statute. Interpreting "made available" to mean "by allowing" a prospective transferee "the opportunity to request and review" does not follow.

As the manufacturer or distributor may have provided its criteria if requested, the prospective transferee never denied or prevented the manufacturer or distributor the opportunity to make known or make available or provide, supply, or distribute its criteria.

The ALJs argue that because there is no statutory requirement on a manufacturer or distributor to supply or deliver the manufacturer's or distributor's standards that the burden is thus placed upon the prospective transferee to make a request for a copy. The ALJs insert a burden upon the prospective transferee into the statute that does not exist.

The legislature placed no burden upon the prospective transferee to request a copy of the manufacturer's or distributor's standards. If the legislature intended that a prospective transferee has the burden to make the request, the legislature could have placed that burden upon the prospective transferee—it did not.

A Final Order should not inject a requirement that is not so stated in the law. Finding a requirement that does not exist is a misapplication and a misinterpretation of the law.

Historical Background

The 62nd Legislature determined in 1971 that it is unlawful for any manufacturer, distributor, or representative to fail to give effect to or attempt to prevent any sale or transfer of a dealership unless it can be shown that the result of the sale or transfer will be detrimental to the public or the manufacturer's or distributor's representation, notwithstanding the terms of any franchise

agreement.⁴

In 1989, some minor changes were made to the transfer provision requiring a complaint or protest to demonstrate that the sale will be detrimental to the public or the representation of the manufacturer or distributor.⁵

A new transfer provision was added in 1997 to Article 4413(36), specifically, Section 5.01B. This provision stated that a manufacturer or distributor may not unreasonably withhold approval of a transfer, assignment, or sale of a franchise agreement or of any controlling interest in a dealership. The legislature determined it was unreasonable to reject a transferee who is of good moral character and who otherwise meets the manufacturer's or distributor's written, reasonable, and uniformly applied standards or qualifications, if any, relating to the prospective transferee's business experience and financial qualifications.⁶

Codification to the Texas Occupations Code occurred in 2001, and the transfer section is now Section 2301.359.⁷ The pertinent provision in Subsection (e) stated that "a manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a). It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who meets the written, reasonable, and uniformly applied standards or qualifications, if any of the manufacturer or distributor relating to the prospective transferee's business experience and financial qualifications."

In 2011, the 82nd Legislature amended the transfer provision by amending Subsection (e) and adding the current Subsections (g), (h), and (i).⁸

⁴Act of April 7, 1971, 62nd Leg., R.S., ch. 51, 1971 Tex. Gen. Laws 89 (Vernon's Ann. Civ. St. Art. 4413(36), § 5.02(6)).

⁵Act of June 16, 1989, 71st Leg., R.S., ch. 1130, 1989 Tex. Gen. Laws 4653 (Vernon's Ann. Texas Civil Statutes Art 4413(36), § 5.02(8)).

⁶Act of June 11, 1997, 75th Leg., R.S., ch. 639, 1997 Tex. Gen. Laws 2185 (Vernon's Ann. Texas Civil Statutes Article 4413(36), Section 5.01B. Section 5.02(8) was also amended as follows: "Notwithstanding the terms of any franchise agreement, fail to give effect to or attempt to prevent any sale or transfer of a dealer, dealership, or franchise or interest therein or management thereof *except as provided by Section 5.01B* [~~unless, after complaint or protest, it is demonstrated to the Commission after hearing that the result of any such sale or transfer will be detrimental to the public or the representation of the manufacturer or distributor~~]."

⁷Act of June 1, 2001, 77th Leg., R.S., ch. 1421, § 5, 2001 Tex. Sess. Law Serv. 4642.

⁸Acts of Sept. 1, 2011, 82nd Leg., R.S., ch. 137, 2011 Tex. Gen. Laws 644. Section 2301.359 is amended as follows:

The Author's/Sponsor's Statement of Intent on file with the Senate Research Center for S.B. 529 by Huffman states that S.B. 529 "allows the manufacturer or distributor to consider a prospective new owner's prior dealership performance when evaluating the prospective owner's qualifications to purchase an existing dealership and provides that any standards used to evaluate a prospective owner must be in writing, uniformly applied, and reasonable."

No stated requirement is included by the author of the bill to require the prospective owner to ask for the manufacturer's or distributor's standards. The only requirement is that the criteria be "made available" if any criteria exists and that the criteria be in writing, uniformly applied, and reasonable.

After 1997, it was unreasonable for a manufacturer or distributor to not approve a prospective transferee if of good moral character and who met the written, reasonable, and uniformly applied standards, if any, of the manufacturer or distributor relating to business experience and financial qualifications. There was no requirement to make those standards "available."

In 2011, legislature again stated what a manufacturer or distributor may consider regarding a prospective transferee; however, the "made available" requirement is now incorporated. Prior to 2011, the criteria had to be in writing, reasonable, and uniformly applied but not "made available."

To be "made available" does not place a requirement upon the entity that did not develop the criteria—it places the burden to be "made available" on the entity that developed and applied the

(e) A manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a). [~~It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer or distributor relating to the prospective transferee's business experience and financial qualifications.~~]

(g) *In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:*

- (1) *the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer;*
- (2) *the prospective transferee's moral character; or*
- (3) *the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.*

(h) *A manufacturer or distributor may consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.*

(i) *It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfies the criteria developed under Subsection (g)(3).*

criteria.

If asked for, it would be provided, according to Audi; however, there is no affirmative request requirement placed upon the prospective transferee by the legislature.

Government Code § 2001.058(e)

The Texas Department of Motor Vehicles may change a finding of fact or a conclusion of law made by an ALJ employed by SOAH if it finds that the ALJ did not properly apply or interpret applicable law.⁹

TADA submits that the ALJs improperly applied or interpreted § 2301.359(g)(3) by finding that the manufacturer's or distributor's business and financial qualification "made available" criteria requirement, as developed by the manufacturer or distributor, places the burden upon the prospective transferee to request and review, as stated in Finding of Fact Nos. 47 and 48 and Conclusion of Law No. 25.

As a result of the ALJs incorrectly applying or interpreting the applicable law, TADA requests that Finding of Fact Nos. 47 and 48 and Conclusion of Law No. 25 be amended to read as follows:

47. Audi has written policies that it uses in analyzing proposed transfers (Audi policies). Audi did not make its written policies available to Intervenors. [~~Audi made its policies available by allowing Intervenors the opportunity to request and review its policies.~~]

48. Audi's written policies would have been provided if Intervenors had requested the policies; however, there is no requirement for Intervenors to request the policies.

25. Audi did not make [~~made~~] available to the prospective transferees the criteria and policies that Audi developed, considered, and applied to determine the business experience and financial qualifications of Intervenors and Headwater Hi Tech, as required by Texas Occupations Code § 2301.359(g).

There is no burden placed by the legislature on a prospective transferee to determine if a manufacturer or distributor has any criteria that it has developed regarding business experience and financial qualifications.

Only the manufacturer or distributor knows if it has developed criteria—not a prospective transferee. Since only the manufacturer or distributor can develop criteria and because only the

⁹TEX. GOVERNMENT CODE § 2001.058(e)(1) (Vernon 2008).

manufacturer or distributor knows if such criteria exists, it is incumbent upon the entity that develops its criteria to produce or provide the criteria if it considers those standards when reviewing an application for transfer.

There is no statutory mandate placed upon a manufacturer or distributor to have any criteria to determine the business experience and financial qualifications of a prospective transferee. The requirement is that the manufacturer or distributor may consider its criteria if they are in writing; are reasonable; and, uniformly applied.

Since the manufacturer or distributor either approves or disapproves an application for a transfer of a dealership and because the manufacturer or distributor “may” consider criteria that it has developed, it is incumbent upon the manufacturer or distributor to disclose its standards for a transfer application.

If a manufacturer or distributor does not proffer its criteria, it has not made its criteria available. Only the entity that develops criteria can make them “available to the prospective transferee.”

Conclusion

The Board’s Final Order should not allow a misapplication or a misinterpretation of § 2301.359(g)(3) to stand.

The SOAH ALJs did not properly apply or interpret applicable law and the PFD’s Finding of Fact Nos. 47 and 48 and Conclusion of Law No. 25 should be amended so that there is no burden placed upon a prospective transferee to request or ask for the manufacturer’s or distributor’s written criteria. To place an affirmative request burden on a prospective transferee is not suggested by the statute, especially since a prospective owner cannot know if any criteria exist.

Finally, if a manufacturer or distributor considers any criteria that it has developed regarding a prospective transferee’s business experience and financial qualifications, the criteria must be in writing, reasonable, and uniformly applied. The burden to prove that the criteria are made available, in writing, reasonable, and uniformly applied is on the developer of the criteria—the manufacturer or distributor.

If you have any question or if I can provide any information, please do not hesitate to contact me.

Sincerely,



Karen Phillips
General Counsel/EVP

Attached: Bill Analysis, Senate Research Center
S.B. 529 by Huffman, Van de Putte

Via Email:

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BILL ANALYSIS

Senate Research Center
82R4187 MAW-F

S.B. 529
By: Huffman
Transportation & Homeland Security
3/23/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The relationship between motor vehicle manufacturers/distributors and their franchised dealers is governed by the franchise agreement between the parties and state law. Given the economic and financial conditions the retail automobile industry has experienced in the past two years, including the bankruptcy of major automobile manufacturers and the loss of over 100 franchised dealerships in the state, the law needs to be updated to address certain practices which continue to threaten the viability of Texas's franchised dealerships and the industry.

S.B. 529 protects customer information at the dealership by prohibiting the forced disclosure of the information to a manufacturer or distributor. The bill also preserves dealer property rights by prohibiting a motor vehicle manufacturer or distributor from forcing a franchised dealer to sign a property use agreement that gives the manufacturer exclusive control over dealership facilities and terminates any property use agreement when the franchise terminates.

The bill ensures that a manufacturer or distributor cannot constantly mandate facility changes at a dealership, at a dealer's expense, to meet new facility image programs by providing that a dealership is not required to comply with a program within 15 years of completing compliance with a previous program. The bill also allows a dealer to recover facility investments when a manufacturer or distributor eliminates a vehicle line-make within two years of construction or upgrade of a dealership facility.

S.B. 529 clarifies current law to ensure that the manufacturer or distributor treats all its franchised dealers in the state consistently with respect to the products and services it offers and the methods by which they are offered. It also allows the manufacturer or distributor to consider a prospective new owner's prior dealership performance when evaluating the prospective owner's qualifications to purchase an existing dealership and provides that any standards used to evaluate a prospective owner must be in writing, uniformly applied, and reasonable.

Additionally, S.B. 529 protects Texas law by preserving the manufacturer/distributor/franchised dealer relationship unless specifically addressed by the United States Bankruptcy Court when a manufacturer or distributor is in bankruptcy.

As proposed, S.B. 529 amends current law relating to the regulation of motor vehicle dealers, manufacturers, and distributors.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2301.002, Occupations Code, by adding Subdivision (27-a) to define "property use agreement."

SECTION 2. Amends Subchapter A, Chapter 2301, Occupations Code, by adding Section 2301.008, as follows:

Sec. 2301.008. **APPLICABILITY OF CHAPTER TO BANKRUPTCY OF MANUFACTURER, DISTRIBUTOR, OR REPRESENTATIVE.** Provides that, except as expressly provided by an order of a court with jurisdiction over a filing in bankruptcy by a manufacturer, distributor, or representative, the terms of this chapter apply to the manufacturer, distributor, or representative during the pendency of the bankruptcy.

SECTION 3. Amends Section 2301.359, Occupations Code, by amending Subsection (e) and by adding Subsections (g), (h), and (i), as follows:

(e) Deletes existing text providing that it is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer or distributor relating to the prospective transferee's business experience and financial qualifications.

(g) Authorizes a manufacturer or distributor, in determining whether to approve an application filed under Subsection (a) to consider whether a prospective transferee is or has been a franchised dealer in this state, the moral character of the prospective transferee, or the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.

(h) Authorizes a manufacturer or distributor to consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.

(i) Provides that it is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfied the criteria developed under Subsection (g)(3).

SECTION 4. Amends Section 2301.465(b), Occupations Code, as follows:

(b) Requires a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, after the termination of a franchise, to pay to a franchised dealer or any lienholder, in accordance with the interest of each, the fair market value of all special tools, data processing equipment, computer software, and automotive service equipment owned by the dealer that were recommended in writing and designated as special tools, computer software, or equipment

SECTION 5. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Section 2301.4651, as follows:

Sec. 2301.4651. **ADDITIONAL PAYMENT TO FRANCHISED DEALER IN CERTAIN SITUATIONS.** (a) Provides that this section applies to a manufacturer, distributor, or representative that:

(1) terminates or discontinues a franchise by any means without complying with Section 2301.453 (Termination or Discontinuance of Franchise); or

(2) regardless of whether the manufacturer, distributor, or representative complies with Section 2301.453, terminates or discontinues a franchise by discontinuing a line-make, ceasing to do business in this state, or changing the distributor or method of distribution of its products in this state.

(b) Requires a manufacturer, distributor, or representative to whom this section applies, in addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, to pay the franchised dealer the following amounts as applicable:

(1) either:

(A) the dealer's construction costs for a new dealership constructed in the two years preceding the date of the termination or discontinuance described by Subsection (a); or

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of the first anniversary of the termination or discontinuance date, or the date on which the dealer no longer owns the dealership.

(2) the dealer's costs for upgrading, substantially altering, or furnishing a dealership in the two years preceding the date of the termination or discontinuance described by Subsection (a); and

(3) an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of the date of the termination or discontinuance described by Subsection (a), or the date on which the intention of the manufacturer, distributor, or representative to terminate or discontinue the franchise in a manner described by Subsection (a) became publicly known in the area in which the dealership is located.

(c) Requires a franchised dealer receiving money under Subsection (b)(1)(B) to make a reasonable effort to earn income from a dealership after a termination or discontinuance described by Subsection (a), and inform the manufacturer, distributor, or representative of the dealer's efforts under Subdivision (1) and of any income earned from the dealership.

(d) Authorizes a manufacturer, distributor, or representative to reduce the amount of a payment made to a franchised dealer under Subsection (b)(1)(B) by the amount of any income earned by the dealer from the dealership during the month preceding the payment.

(e) Requires the manufacturer, distributor, or representative, as appropriate, to pay any amount described by Subsection (b)(1)(A), (2), or (3) not later than the 30th day after the date of the termination or discontinuance described by Subsection (a).

(f) Provides that an amount payable under Subsection (b)(1)(A) or (2) does not include any amount previously paid to the franchised dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing the activities described by Subsection (b)(1)(A) or (2).

SECTION 6. Amends Section 2301.467, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, from unreasonably requiring a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Provides that, except as provided by Subsection (b-1), an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Provides that it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to

substantially change, alter or remodel an existing dealership before the 15th anniversary of the date the dealership at that location was constructed or substantially changed, altered, or remodeled if the construction, change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative, or through a subsidiary or agent of the manufacturer, distributor, or representative.

(c) Provides that this section applies, rather than the prohibitions under this section apply, to the relationship between a manufacturer, distributor, or representative and a current franchisee of the manufacturer, distributor, or representative, a successor of a current franchisee of the manufacturer, distributor, or representative, or a franchised dealer who is seeking to become a franchisee of the manufacturer, distributor, or representative.

SECTION 7. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Section 2301.4671, as follows:

Sec. 2301.4671. RESTRICTION ON DEALER'S USE OF DEALERSHIP PROPERTY.

(a) Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of any franchise, from:

(1) unreasonably limiting or impairing the ability of a franchised dealer to use the dealership property as the dealer considers appropriate;

(2) controlling the use of the dealership property after the franchise is terminated or discontinued; or

(3) at any time, exercising exclusive control over the use of the dealership property.

(b) Provides that to the extent of any conflict between this section and another section of this chapter, the other section controls over this section.

SECTION 8. Amends Section 2301.468, Occupations Code, as follows:

Sec. 2301.468. New heading: INEQUITABLE TREATMENT OF DEALERS OR FRANCHISEES. Prohibits a manufacturer, distributor, or representative, notwithstanding the terms of a franchise, from treating franchised dealers differently as a result of the application of a formula or other computation or process intended to gauge the performance of a dealership or otherwise enforce standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the franchised dealers are unreasonably treated differently in the sale of a motor vehicle owned by the manufacturer or distributor, rather than, prohibiting a manufacturer, distributor or representative, notwithstanding the terms of any franchise directly or indirectly, from discriminating against a franchised dealer or otherwise treating franchised dealers differently as a result of a formula or other computation or process intended to gauge the performance of a dealership in the sale of a motor vehicle owned by the manufacturer or distributor. Makes a nonsubstantive change.

SECTION 9. Amends Section 2301.475(a), Occupations Code, as follows:

(a) Prohibits a manufacturer or distributor, except as provided by Subsection (b), from taking certain actions after the first anniversary of the date a franchised dealer submits a claim under a manufacturer or distributor incentive program, rather than after the first anniversary of the ending date of a manufacturer or distributor incentive program.

SECTION 10. Amends Subchapter J, Chapter 2301, Occupations Code, by adding Sections 2301.480 and 2301.481, as follows:

Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. Prohibits a manufacturer, distributor, or representative from requiring that a franchised dealer provide to the manufacturer, distributor, or representative information regarding a customer, except to the extent that a specific item of information is necessary:

- (1) for the sale or delivery of a new motor vehicle to a customer;
- (2) to validate a claim and make payment under an incentive program;
- (3) to support a dealer's claim for reimbursement for repairs performed under a manufacturer's warranty; or
- (4) to satisfy a product recall or safety obligation.

Sec. 2301.481. PROPERTY USE AGREEMENT. (a) Provides that a provision in a property use agreement that unreasonable limits or impairs the ability of a franchised dealer to use the dealership as the dealer considered appropriate is void and unenforceable.

(b) Prohibits a manufacturer, distributor, or representative from requiring that a dealer enter into a property use agreement as a condition of the manufacturer, distributor, or representative:

- (1) entering into a franchise;
- (2) approving a franchised dealer's application to add a line-make;
- (3) approving a franchised dealer's application to relocate a franchise; or
- (4) approving a sale or transfer of a dealer, dealership, or franchise.

(c) Provides that the following provisions in a property use agreement are void and unenforceable:

- (1) a limitation on the franchised dealer's ability to add a line-make; or
- (2) a provision that binds a franchised dealer's successor.

(d) Provides that a property use agreement expires on the earlier of the date provided by the property use agreement, or the termination of the franchise between the parties to the property use agreement.

(e) Provides that this section applies to a subsidiary of, a person owned or controlled by, or a person whose business decisions are substantially influenced by a manufacturer, distributor, or representative.

SECTION 11. Amends Section 2301.522(a), Occupations Code, as follows:

(a) Requires the board of the Texas Department of Motor Vehicles, in an action brought against a manufacturer or distributor under Subchapter J (Manufactures, Distributors, and Representatives) by a franchised dealer whose franchise provides for arbitration in compliance with this chapter, to order the parties to submit the dispute to mediation in the manner provided by this subchapter.

SECTION 12. Amends Section 2301.805(a), Occupations Code, to make a conforming change.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: September 1, 2011.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

FY 2015 Financial Summary for the 4th Quarter ending August 31, 2015

By: Finance and Administrative Services Division

November 13, 2015

FY 2015 Financial Status Highlights

Revenues:

TxDMV's single sticker program was implemented in March of 2015, halfway through FY 2015. In FY 2015, overall registration revenue deposited to the state highway fund was 2.5% higher than FY 2014. Since single sticker implementation in March of 2015, registration deposits to the state highway fund have been roughly flat when compared to the same period of the previous year. Once the state population of registered vehicles has been synchronized with a matching inspection period, it is anticipated that growth within state highway fund registration revenue will return to levels that mimic natural population growth. Staff will continue to monitor registration deposits to the state highway fund and provide updates as necessary.

Year-to-date revenue collections have increased 2.2% or \$37.4 million over the same period last year.

- The majority of the increase (2.1%) is due to additional registration revenue. The state has experienced a 0.2% increase in the number of vehicles registered compared to the same period last year.
- The remainder of the increase (0.1%) is composed of title revenue, oversize/overweight revenue commercial transportation revenue, business dealer license revenue and miscellaneous revenue.

Expenditures:

Year-to-date expenditures through August 31, 2015 total \$132,442,291. Approximately 77% of the approved budget has been expended as of August 31, 2015. The majority of the expenditures are in the follow categories:

Salaries and Other Personnel Costs (\$38.6 million) – As of August 31, 2015, there were 722 filled positions and 41 vacancies.

Purchased Contract Services (\$32.0 million) – The expenditures represent year to date payments for MyPlates Rider 3 (\$5.5 million), registration renewal and specialty plate mailing (\$4.3 million), and the ongoing production of license plates (Huntsville, \$22.0 million).

Professional Fees and Services (\$17.3 million) – This line item reflects year to date expenditures for Data Center Services (\$5.4 million) and RTS Refactoring (\$6.3 million).

Grants (\$10.0 million) – Automobile Burglary and Theft Prevention Authority (ABTPA) grant expenditures.

Postage (\$9.3 million) – This is associated with registration renewal mailings.

Reproduction & Printing (\$6.1 million) – These expenditures are primarily for the printing of titles (\$2.8 million), and for title paper, envelopes, and registration renewal inserts (\$2.8 million).

Projected Expenditures:

As of August 31, 2015 staff projects expenditures in the amount of \$13.1 million, which includes adjusted encumbrances and anticipated obligations for the remainder of the year. Approximately \$11 million of the projected expenditures are related to ABTPA grants (\$4.5 million), production of registration stickers in Purchased Contract Services category (\$1.5 million), and capital equipment including security system equipment for regional offices in the Other Capital category (\$1.4 million).

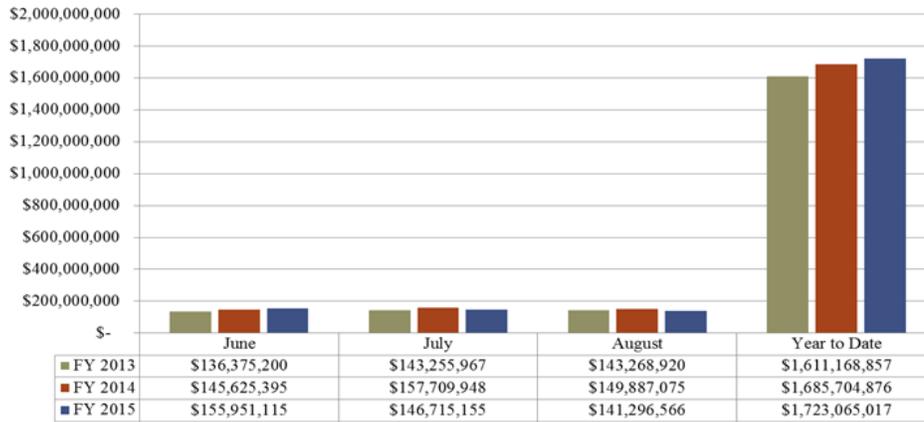
TxDMV Lapse/Carry-Forward to 2016:

As of August 31, 2015, there was a balance of \$44.5 million in unexpended funds (encumbrances plus available budget). Of that, it is projected that \$13.1 million as outlined above will be expended/obligated in AY 2015; \$29.8 million will be carried-forward into FY 2016 leaving a projected year end lapse of \$1.6 million. This lapse represents less than 1% of the FY 2015 approved budget, and it is also less than the 2014 lapse of \$3.6 million, or 1.8% of the FY 2014 approved budget.

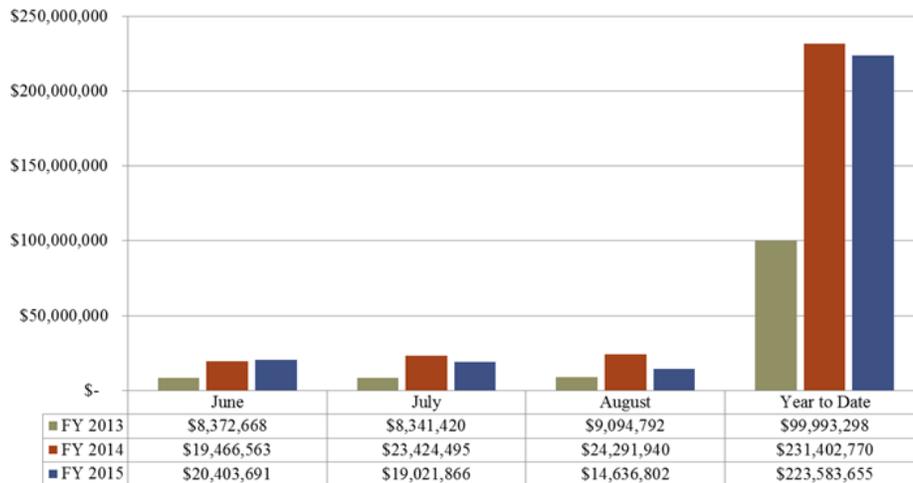
FY 2015 Financial Status Highlights

TxDMV Deposits to Fund 1 & Fund 6

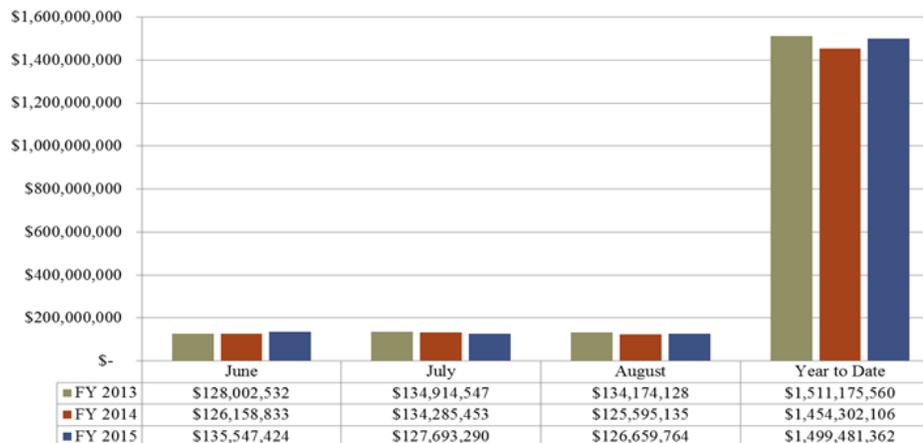
TxDMV Total Deposits



TxDMV Deposits to Fund 1

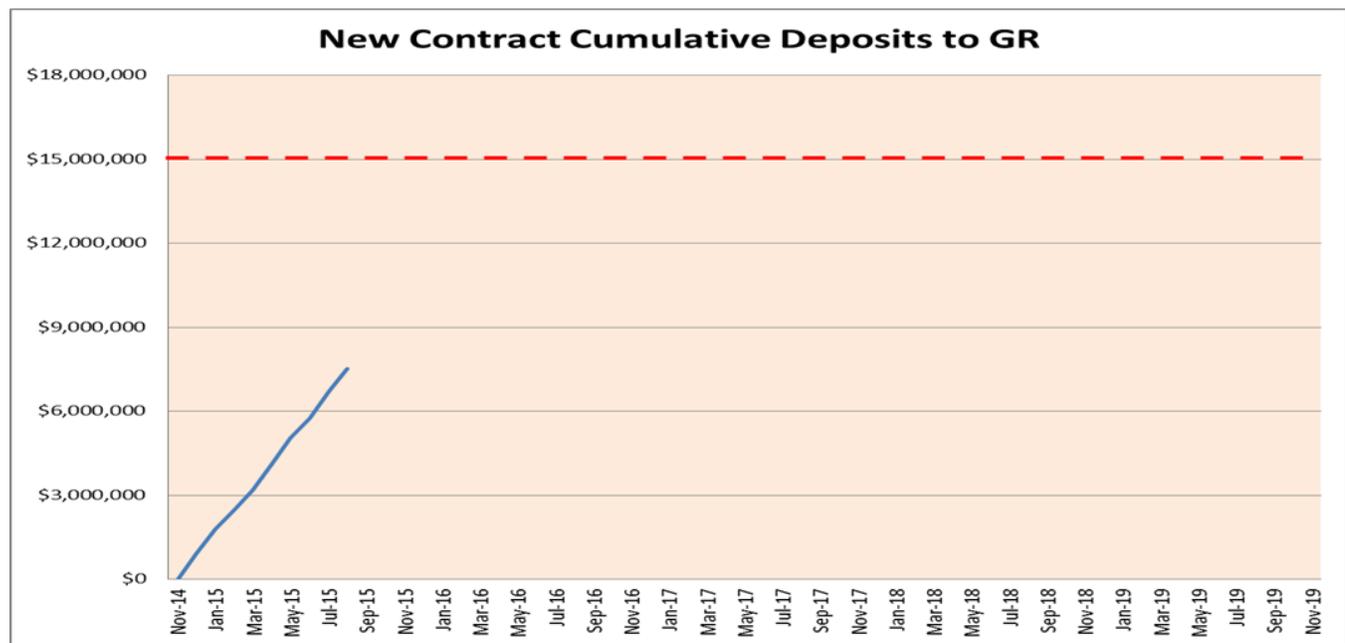
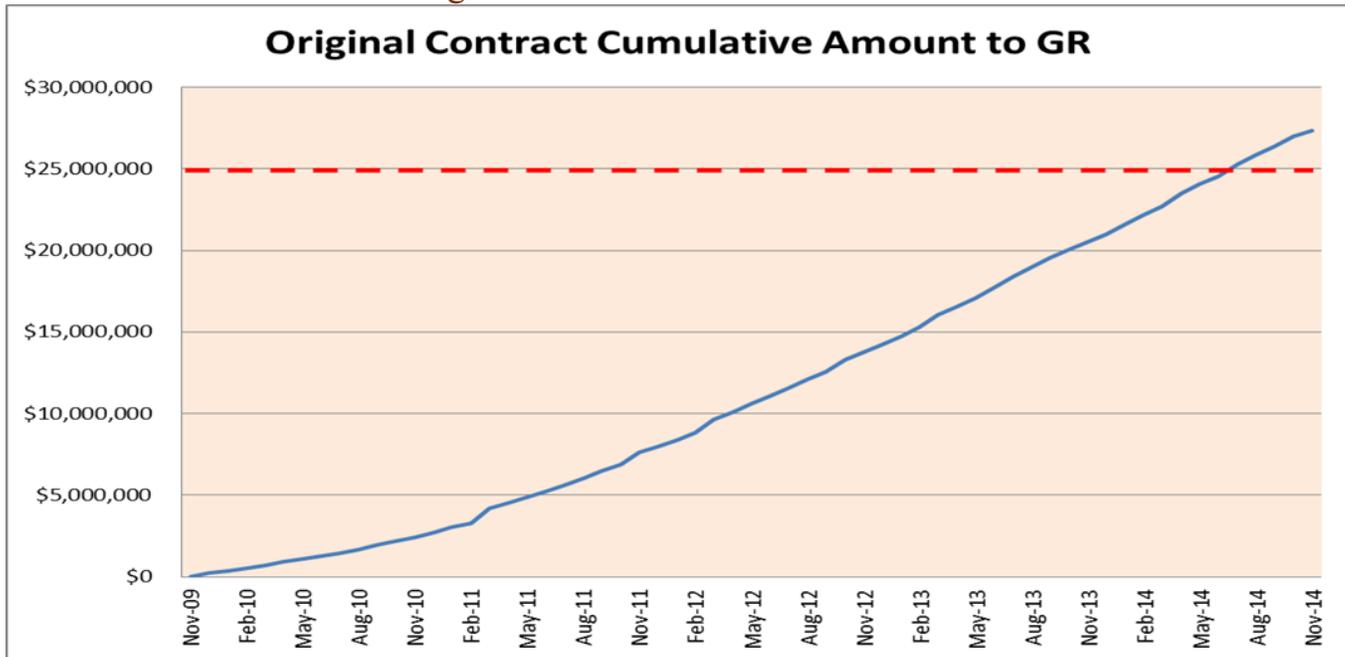


TxDMV Deposits to Fund 6



FY 2015 Financial Status Highlights

MyPlates Analysis Original Contract vs. New Contract

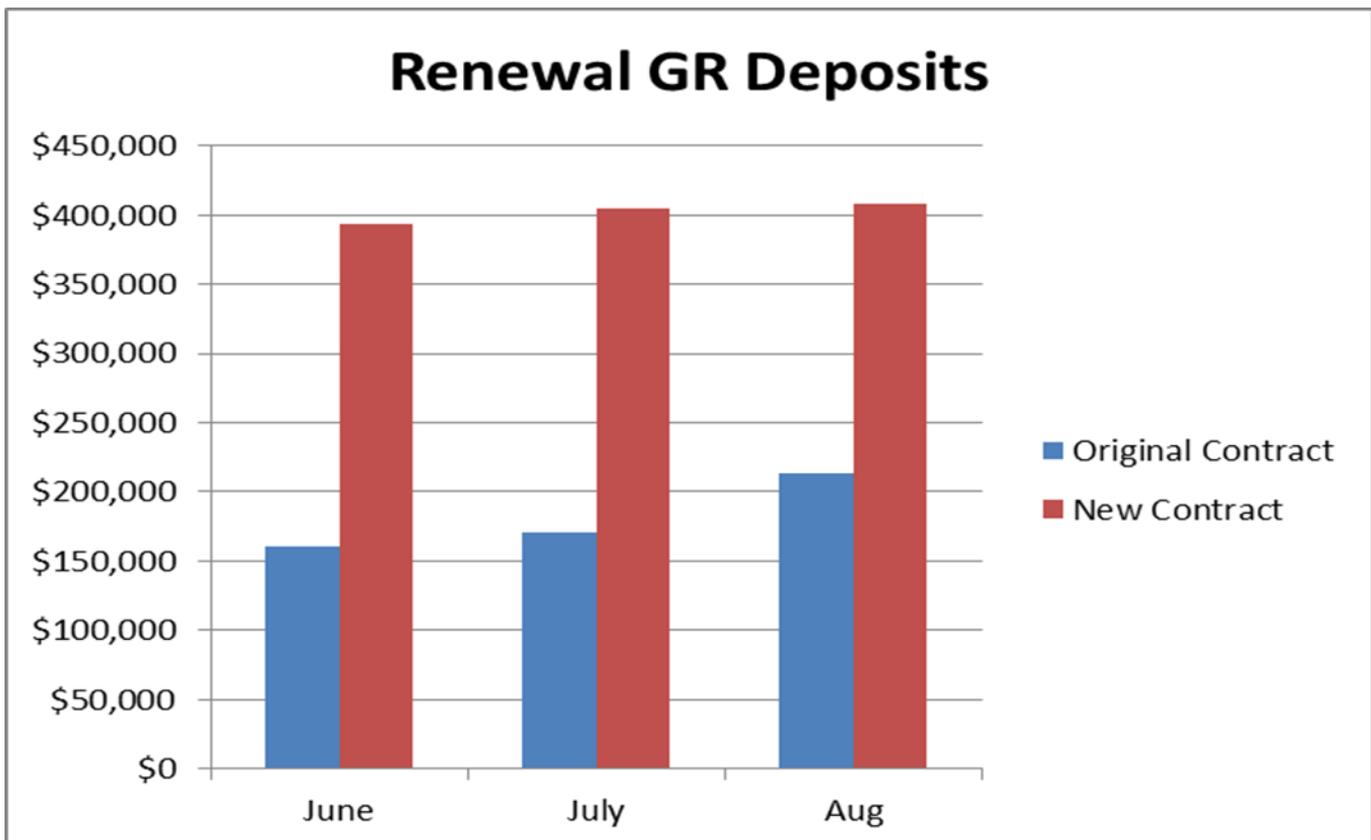
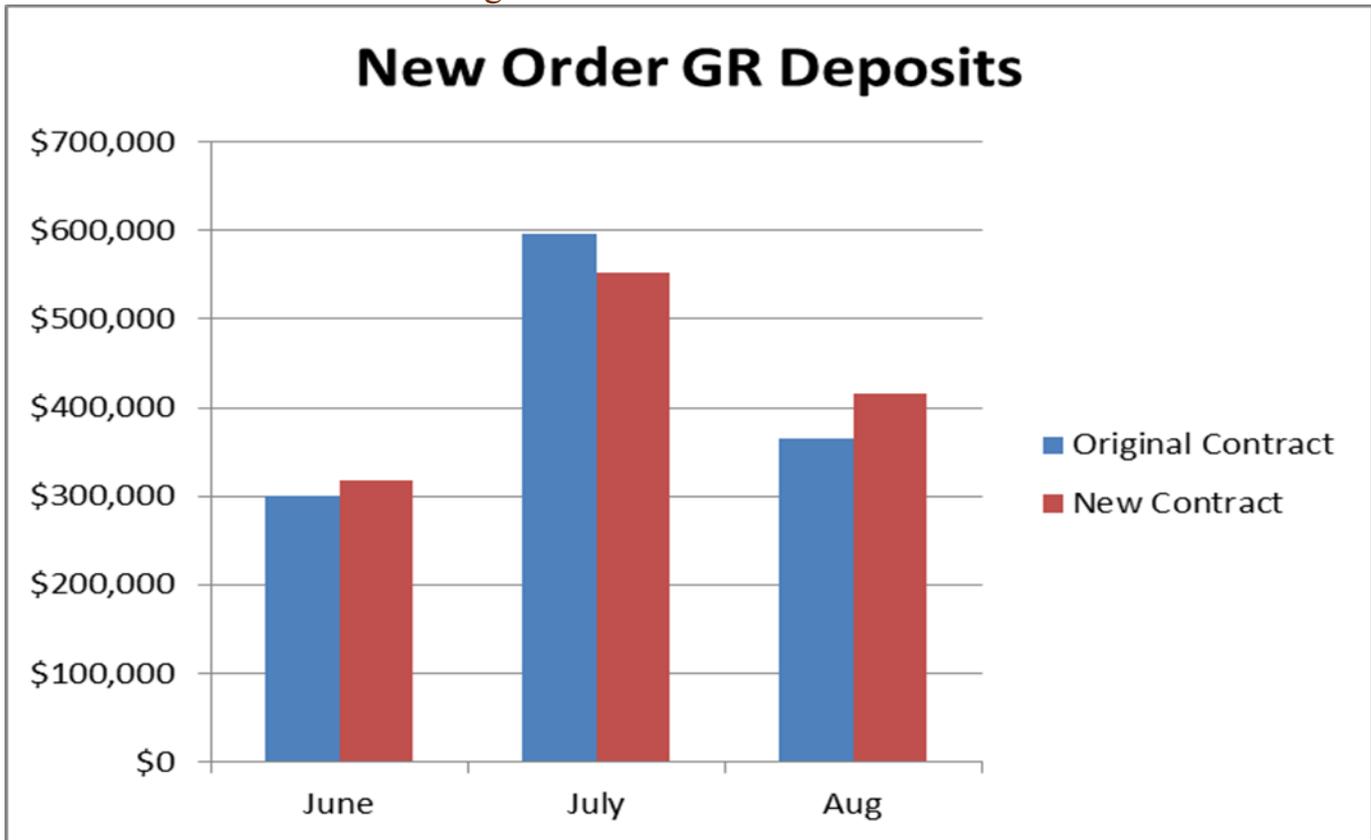


	Total
Cumulative Deposits Original Contract (through November 2014)	\$27,334,769
New Contract Cumulative Deposits to GR through 8/30/15*	\$7,538,735
New Order Deposits to GR	\$3,837,962
Renewal Deposits to GR	\$3,700,773

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

FY 2015 Financial Status Highlights

MyPlates Analysis
Original Contract vs. New Contract



FY 2015 Financial Status Highlights

Statement of Revenues and Expenditures through August 31, 2015

Revenues:	FY 2015 YTD Projected Revenue	FY 2015 YTD Actual Revenue
Motor Vehicle Certificates	\$ 73,884,000	\$ 78,422,836
Motor Vehicle Registration Fees	\$ 1,427,512,900	\$ 1,439,698,203
Motor Carrier - Oversize / Overweight	\$ 180,643,000	\$ 184,429,618
Commercial Transportation Fees	\$ 6,887,000	\$ 6,035,566
Motor Vehicle Business Licenses	\$ 6,599,000	\$ 7,535,698
Miscellaneous Revenue	\$ 6,277,200	\$ 6,943,096
Total DMV Revenue	\$ 1,701,803,100	\$ 1,723,065,017

Expenditures:	2015 Approved Adjusted Budget	FY 2015 YTD Expenditures	2015 Available Budget	2015 Projected Expenditures (includes Encumbrances)	FY 2015 Available Budget
Salaries and Wages	\$ 37,053,922	\$ 36,628,614	\$ 425,308	\$ 39,275	\$ 386,033
Other Personnel Costs	\$ 2,098,573	\$ 2,041,262	\$ 57,311	\$ -	\$ 57,311
Professional Fees and Services	\$ 39,888,172	\$ 17,282,092	\$ 22,606,080	\$ 3,819,751	\$ 18,786,329
Fuels & Lubricants	\$ 76,846	\$ 60,615	\$ 16,231	\$ 2,500	\$ 13,731
Consumable Supplies	\$ 1,202,944	\$ 1,123,262	\$ 79,682	\$ 7,481	\$ 72,201
Utilities	\$ 4,617,295	\$ 4,106,999	\$ 510,296	\$ 323,241	\$ 187,055
Travel In-State	\$ 431,896	\$ 364,208	\$ 67,689	\$ 7,805	\$ 59,884
Travel Out-of-State	\$ 56,747	\$ 33,296	\$ 23,451	\$ -	\$ 23,451
Rent - Building	\$ 737,096	\$ 637,790	\$ 99,306	\$ 36,266	\$ 63,040
Rent - Machine and Other	\$ 351,807	\$ 305,884	\$ 45,923	\$ 10,942	\$ 34,982
Advertising & Promotion	\$ 605,112	\$ 511,706	\$ 93,407	\$ 6,522	\$ 86,885
Purchased Contract Services	\$ 33,591,110	\$ 31,955,740	\$ 1,635,370	\$ 1,500,256	\$ 135,114
Computer Equipment Software	\$ 3,718,635	\$ 2,487,770	\$ 1,230,865	\$ 669,327	\$ 561,538
Fees & Other Charges	\$ 1,373,183	\$ 1,283,920	\$ 89,264	\$ 53,151	\$ 36,113
Freight	\$ 842,319	\$ 775,474	\$ 66,845	\$ 5,410	\$ 61,435
Maintenance & Repair	\$ 9,636,539	\$ 3,483,454	\$ 6,153,085	\$ 252,950	\$ 5,900,135
Memberships & Training	\$ 185,736	\$ 139,764	\$ 45,972	\$ 1,333	\$ 44,639
Other Expenses	\$ 5,076,390	\$ 290,673	\$ 4,785,717	\$ 360,951	\$ 4,424,766
Postage	\$ 9,346,731	\$ 9,302,074	\$ 44,657	\$ 36,955	\$ 7,702
Reproduction & Printing	\$ 6,228,108	\$ 6,050,440	\$ 177,668	\$ 3,523	\$ 174,145
Services (Electronic Subscriptions/Cleaning/Janitorial)	\$ 878,351	\$ 732,395	\$ 145,956	\$ 66,218	\$ 79,738
Grants	\$ 14,450,000	\$ 9,968,621	\$ 4,481,379	\$ 4,481,379	\$ -
Other Capital	\$ 4,465,116	\$ 2,876,240	\$ 1,588,876	\$ 1,399,155	\$ 189,721
Total	\$ 176,912,626	\$ 132,442,291	\$ 44,470,336	\$ 13,084,390	\$ 31,385,945
				Less UB of Capital 2015 to 2016	\$ (29,809,157)
				Estimated Year-End Lapse	\$ 1,576,788

YTD August Net Surplus (Deficit) \$ 1,590,622,726

Budget Adjustments	Amount	Description
CVIS N Capital UB	\$ 1,426,918	(1)
2% Salary Adjustment	\$ 704,377	(2)
Regional Office Security Capital UB	\$ 573,000	(1)
Regional Office Remodeling Capital UB	\$ 39,780	(1)
County RTS Capital UB	\$ 2,281,539	(1)
Automation Adjustment	\$ (302,371)	(3)
Growth and Enhancement Adjustment	\$ (91,729)	(4)
Unallocated Automation (to be allocated in 2016)	\$ 4,569,172	(1)
Total adjustment to original budget of \$167.7 million	\$ 9,200,686	

- 1) Authorized by S.B. 1, GAA, Article IX, Section 14.03(i) – Limitations on Expenditures – Capital Budgets
- 2) Authorized by S.B. 1, GAA, Article IX, Section 17.06(a) – Appropriation for a Salary Increase for General State Employees
- 3) Automation adjustment after 2014-15 project true-up
- 4) Growth and Enhancement adjustment after 2014-15 project true up

PRIOR YEAR:	FY 2014 Approved Budget	FY 2014 YTD Actual Expenditures	FY 2014 Available Budget	FY 2014 Total Projected Expenditures	FY 2014 Available Budget
Salaries and Wages	\$ 36,243,882	\$ 32,442,235	\$ 3,801,647	\$ 35,611,240	\$ 632,642
Other Personnel Costs	\$ 1,905,878	\$ 1,710,221	\$ 195,657	\$ 1,845,225	\$ 60,653
Professional Fees and Services	\$ 63,696,836	\$ 25,384,827	\$ 38,312,009	\$ 33,391,479	\$ 30,305,357
Fuels and Lubricants	\$ 110,016	\$ 76,128	\$ 33,888	\$ 85,128	\$ 24,888
Consumable Supplies	\$ 1,161,688	\$ 664,080	\$ 497,608	\$ 716,588	\$ 445,100
Utilities	\$ 4,772,579	\$ 3,888,272	\$ 884,307	\$ 4,210,544	\$ 562,035
Travel, In-State	\$ 509,038	\$ 293,213	\$ 215,825	\$ 335,452	\$ 173,586
Travel, Out of State	\$ 48,878	\$ 26,573	\$ 22,305	\$ 26,716	\$ 22,162
Rent - Building	\$ 628,272	\$ 466,718	\$ 161,554	\$ 511,849	\$ 116,423
Rent - Machine and Other	\$ 372,915	\$ 304,241	\$ 68,674	\$ 326,698	\$ 46,217
Other Operating Expenses	\$ 65,212,151	\$ 57,878,702	\$ 7,333,449	\$ 63,423,025	\$ 1,789,126
Grants	\$ 13,795,383	\$ 9,851,415	\$ 3,943,968	\$ 13,795,383	\$ -
Other Capital	\$ 9,604,143	\$ 4,791,637	\$ 4,812,506	\$ 7,967,458	\$ 1,636,685
Total	\$ 198,061,659	\$ 137,778,262	\$ 60,283,398	\$ 162,246,785	\$ 35,814,874

* Please note when comparing FY 2014 to FY 2015 that with the implementation of CAPPs, the encumbrance process is being used in place of manual projections.

FY 2015 Financial Status Highlights

Capital Project Status

Regional Office Remodeling

This project funded interior remodeling and exterior building signs. The projected expenses are for additional furniture replacement with approximately \$2,000 estimated to be lapsed at year end.

Technology Replacements and Upgrades - County Support

This appropriation provides funding to deploy and maintain printers, computers, monitors, laptops, cash drawers, etc. utilized at county Tax Assessor/Collector offices throughout the state. Approximately \$4.8 million remains in this item. This balance will be transferred to the Automation project to be carried forward to 2016. The majority of the projected expenses relate to funding for the Regional Office Communication Infrastructure Project, which is in the process of completing cabling and communication upgrades for regional offices.

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 project expenses are for the RTS Refactoring project, which are estimated to be \$7.0 million for the fiscal year ending in August 2015.

RTS system testing continues in Workstream 2, which addresses the development of the refactored RTS to a Java web-based program. Workstream 3, which covers enterprise reporting and the development of reporting tools, is in the construction phase and will continue into the first quarter of FY 2015; the COGNOS reporting application has also begun deployment. Roll out of the new RTS Point of Sale (POS) application began in the third quarter of FY 2015 and will conclude in October 2015 with deployment at Bexar, Dallas, and Harris counties. The overall schedule for Deloitte is currently being updated and additional Deloitte services are being considered. Other projects in the TxDMV Automation System include the LACE Replacement project; purchase orders were issued in August 2015 for software and IV & V services. The Web Dealer project expenditures year-to-date through August 2015 totals \$769,965 and that project is continuing with dealer implementation and enhancement testing.

The available balance estimated for year end is \$24 million which includes \$4.7 million in unallocated funds. The entire balance will be carried forward to FY2016 to fund costs for RTS Refactoring, LACE Replacement, and Web Dealer. Requirements gathering for Single Sticker Phase II has also begun, with substantial work being completed in FY 2016.

Growth and Enhancement – Agency Operations Support

This budget provides funds to acquire hardware/software to support agency operations. Year to date expenditures for this project through the end of August totaled \$854,781. Projected expenses included the purchase of mission-critical software that will be deployed in multiple agency applications including RTS and LACE. A portion of the available balance (\$57,968); was transferred to Data Center Services (DCS) for final data center service charges.

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. As of August 31st, approximately \$789,000 (\$273,000 in FY 2014; \$516,000 in FY 2015) of the \$1.97 million grant award has been spent. The projected expenses reflect two outstanding invoices totaling \$102,000 that will be paid with FY 2015 funds. Unspent funds will be carried forward to 2016 to complete the grant.

Regional Office Security

This capital appropriation includes the purchase and installation security features such as cameras, badge entry, emergency door release, courier service, credit/debit card equipment, security monitoring, and security alert systems to notify law enforcement. A contract award was approved in August 2015 for the installation of new security equipment and security systems for each regional service center. Work is anticipated to begin

Data Center Services

The Data Center Services (DCS) program enables state agencies to access data center computing as a managed service. Year to date expenditure reflect payments for September through July invoices for services based on usage. The final FY 2015 invoice for DCS services provided in August updated the year-end total for DCS charges to \$6.7 million. This was in excess of the estimate at mid-year necessitating a transfer of operating lapses from MCD and Agency Growth and Enhancement. These payments do not include the \$1.5 million projected for TxDOT DCS charges, which is being paid from Agency-wide and IT operating budgets.

Centralized Accounting and Payroll Personnel System (CAPPS)

CAPPS provides a single software solution for financial and Human Resources (HR)/Payroll administration for Texas state agencies. The financial module of CAPPS went live on September 2, 2014 and the HR module went live in May 2015. The projected expenditure of \$100,000 consists of the remaining contract balance earmarked for HR customized reports.

FY 2015 Financial Status Highlights

Statement of Capital Project Expenditures through August 31, 2015

Capital Projects	2015 Approved Adjusted Budget	FY 2015 YTD Expenditures	FY 2015 Available Budget	2015 Projected Expenditures (includes Encumbrances)	FY 2015 Available Budget
Centralized Accounting & Payroll Personnel System (CAPPS)	\$ 3,043,752	\$ 2,943,752	\$ 100,000	\$ 100,000	\$ -
Commerical Vehicle Information Systems & Network (CVISN)	\$ 1,649,185	\$ 567,344	\$ 1,081,841	\$ 102,000	\$ 979,842 ⁽¹⁾
Data Center Consolidations	\$ 6,037,810	\$ 5,365,427	\$ 672,383	\$ 671,414	\$ 968
Growth & Enhancements - Agency Operations Support	\$ 1,623,327	\$ 854,781	\$ 768,546	\$ 749,353	\$ 19,193
Regional Office Security	\$ 813,000	\$ -	\$ 813,000	\$ 813,000	\$ -
Technology Replacement & Upgrades - County Support	\$ 9,670,012	\$ 3,876,296	\$ 5,793,716	\$ 954,000	\$ 4,839,716 ⁽¹⁾
TXDMV Automation System Project	\$ 35,030,568	\$ 8,646,568	\$ 26,383,999	\$ 2,394,401	\$ 23,989,598 ⁽¹⁾
Regional Office Remodeling	\$ 39,780	\$ 25,767	\$ 14,013	\$ 11,799	\$ 2,214
Total	\$ 57,907,433	\$ 22,279,935	\$ 35,627,499	\$ 5,795,967	\$ 29,831,532
				Less UB of Capital 2015 to 2016	\$ (29,809,157)
				Estimated Year-End Lapse	\$ 22,375

PRIOR YEAR:

Capital Projects	FY 2014 Adjusted Budget	FY 2014 YTD Actual Expenditures	FY 2014 Available Balance	FY 2014 Total Projected Expenditures	FY 2014 Projected Year End Balance
Centralized Accounting & Payroll Personnel System (CAPPS)	\$ 4,317,884	\$ 2,014,132	\$ 2,303,752	\$ 2,014,132	\$ 2,303,752
Commercial Vehicle Information Systems & Network (CVISN)	\$ 1,700,000	\$ 191,843	\$ 1,508,157	\$ 273,083	\$ 1,426,917
Data Center Consolidations	\$ 5,093,075	\$ 4,660,839	\$ 432,237	\$ 5,092,839	\$ 236
Growth & Enhancements - Agency Operations Support	\$ 949,498	\$ 690,529	\$ 258,969	\$ 802,770	\$ 146,728
Regional Office Security	\$ 573,000	\$ -	\$ 573,000	\$ 573,000	\$ -
Technology Replacements & Upgrades - County Support	\$ 5,500,000	\$ 1,257,522	\$ 4,242,478	\$ 3,979,581	\$ 1,520,419
TxDmv Automation System Project	\$ 57,038,743	\$ 23,443,022	\$ 33,595,721	\$ 30,241,559	\$ 26,797,185
Regional Office Remodeling	\$ 141,000	\$ -	\$ 141,000	\$ 141,000	\$ -
Total	\$ 75,313,200	\$ 32,257,886	\$ 43,055,314	\$ 43,117,962	\$ 32,195,238

*Please note when comparing FY 2014 to FY 2015 that with the implementation of CAPPS, the encumbrance process is being used in place of manual projections.

⁽¹⁾ Includes amounts available for UB to 2016; estimated UB to 2016 is not the sum of the indicated numbers.

FY 2015 Financial Status Highlights

Statement of TxDMV Enterprise Project Expenditures through August 31, 2015

TxDMV Automation Project Appropriations	FY 2015
Unexpended Balance Carry Forward from FY 2014	\$ 33,656,044
Transfer for Single Sticker	\$ 1,220,699
Transfer for Increase in Web Dealer/software	<u>\$ 153,825</u>
Total Automation Budget (includes \$4.6 million unallocated)	<u><u>\$ 35,030,568</u></u>

TXDMV Automation	2015 Approved Adjusted Budget	FY 2015 YTD Expenditures	FY 2015 Available Budget	FY 2015 Projected Expenditures (includes Encumbrances)	FY 2015 Available Budget
813003 HQ Communication Infrastructure (Automation)	\$ 552,975	\$ 21,904	\$ 531,071	\$ -	\$ 531,071
813006 Active Directory	\$ 154,000	\$ 34,859	\$ 119,141	\$ -	\$ 119,141
813009 AMSIT	\$ -	\$ -	\$ -	\$ -	\$ -
813010 RTS Refactoring	\$ 19,718,404	\$ 5,884,431	\$ 13,833,973	\$ 1,136,692	\$ 12,697,281 ⁽¹⁾
813013 RTS Data Purification/Name Address	\$ 912,766	\$ 77,553	\$ 835,213	\$ 4,675	\$ 830,538
813014 RTS Data Purification/Data Only	\$ 293,984	\$ 9,830	\$ 284,154	\$ 1,275	\$ 282,879
813015 WebDealer E-Titles	\$ 2,766,554	\$ 769,965	\$ 1,996,589	\$ 24,332	\$ 1,972,257 ⁽²⁾
813020 LACE	\$ 4,790,206	\$ 722,559	\$ 4,067,646	\$ 1,177,911	\$ 2,889,735 ⁽³⁾
814025 Temporary Permits	\$ 51,808	\$ 19,694	\$ 32,114	\$ -	\$ 32,114
814025 Single Sticker	\$ 1,220,699	\$ 1,105,773	\$ 114,926	\$ 49,515	\$ 65,411 ⁽⁴⁾
Unallocated (to be allocated in 2016)	\$ 4,569,172	\$ -	\$ 4,569,172	\$ -	\$ 4,569,172
TXDMV Automation Budget Total	\$ 35,030,568	\$ 8,646,568	\$ 26,383,999	\$ 2,394,401	\$ 23,989,598

TXDMV Other Projects

813001 RO Communications (County)	\$ 1,662,315	\$ 932,972	\$ 729,343	\$ 26,952	\$ 702,391
813003 HQ Communication Infrastructure (County)	\$ 884,346	\$ 550,762	\$ 333,584	\$ 51,250	\$ 282,334
814023 CAPPs	\$ 3,043,752	\$ 2,943,752	\$ 100,000	\$ 100,000	\$ -
814026 Chameleon Carriers	<u>\$ 80,000</u>	<u>\$ -</u>	<u>\$ 80,000</u>	<u>\$ -</u>	<u>\$ 80,000</u>
TXDMV Total	\$ 40,700,981	\$ 13,074,053	\$ 27,626,926	\$ 2,572,603	\$ 25,054,324

Notes

All Adjusted Budget amounts were based on an estimate of 2015 expenditures.

(1) The RTS Refactoring project includes encumbrances for Deloitte contract, Greentree IV & V contract, Forge Rock, and contracts for project contractors.

(2) Web Dealer encumbrances include project contractors and Forge Rock software.

(3) LACE Replacement includes encumbrances for software and IV & V services and Forge Rock software

(4) The Single Sticker project has been added to the list of Automation projects as it falls within the guideline of a capital project.



**TxDMV Internal Audit Division Status Update
Nov. 13, 2015 TxDMV Board Meeting**

To:	<u>TxDMV Board Members</u> Laura Ryan, Chairman Robert "Barney" Barnwell Blake Ingram Guillermo "Memo" Treviño John H. Walker, III	<u>Finance and Audit Committee</u> Raymond Palacios, Jr., Chair Luanne Caraway William Marvin Rush Gary Swindle
From:	Sandra Vice, Internal Audit Director	
cc:	Whitney Brewster, Executive Director Shelly Mellott, Deputy Executive Director	

Status of the Fiscal Year 2015 Internal Audit Plan

- **Completed:** *Audit of the TxDMV's Administration of Statutes and Rules through Tax Assessor-Collectors, TxDMV 15-4*
- **Completed:** *A Confidential Follow-up Audit Report on the Information Security Standards Gap Assessment, TxDMV 15-5*

Status of the Fiscal Year 2016 Internal Audit Plan

- **Completed:** *Annual Internal Audit Report for Fiscal Year 2015, TxDMV 16-1*
- **In Progress:** Fraud Prevention Program

External Audit Coordination

Engagement Topic	External Auditor	Status
Triennial Review regarding Heavy Vehicle Use Tax (HVUT) Proof of Payment, report issued Sept. 18, 2015	U.S. DOT Federal Highway Administration (FHWA)	Completed. FHWA concluded that TxDMV's HVUT enforcement and procedures are compliant with federal requirements. FHWA is required to perform compliance reviews regarding the certification of proof of payment of HVUT at least every 3 years.
Texas International Registration Plan (TxIRP) Peer Review	IRP Peer Review Committee	In progress. On-site visit scheduled for Nov. 11-12, 2015
State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2015	State Auditor's Office	In progress.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Audit of the Texas Department of Motor Vehicles' Administration of Statutes and Rules Through Tax Assessor-Collectors

TxDMV 15-4

Internal Audit Division
November 13, 2015

Table of Contents

Chapter 1: Tax Assessor-Collector Offices Remitted Registration and Title Fee Collections Late During Fiscal Years 2014 and 2015	1
Chapter 1-A: TAC Offices did not Remit Registration and Title Collections to the TxDMV within Statutorily-required Timeframes	1
Chapter 1-B: TAC Offices Remitted Motor Vehicle Sales Taxes and Penalties within Required Timeframes 62 Percent of the Time	6
Chapter 1-C: Communication between Regional Service Centers (RSC) and TAC Offices Could be Improved	6
Chapter 2: The TxDMV, with Input from the Title and Registration Working Group, Can Recognize Service and Performance that Meets or Exceeds Statutory Requirements	11
Chapter 2-A: Participation should be Voluntary and Achievement Levels should be Certified on a Periodic Basis.....	12
Chapter 2-B: Multiple Designations Recognize Different Service and Performance Levels.....	12
Chapter 2-C: A Point System May be Used to Assess Attainment of an Achievement Level	13
Chapter 2-D: Achievements Should Align with the TxDMV Philosophy and Goals.....	14
Chapter 2-E: The TxDMV will have to Create Processes and Tools to Support an Achievement Program	19
Appendix 1: Objectives, Scope, and Methodology	20
Appendix 2: Example Scoring Sheet for the Bronze Star Level	22
Appendix 3: Example Scoring Sheet for Silver Star Level	23
Appendix 4: Example Scoring Sheet for the Gold Star Level	32
Appendix 5: Executive Director’s Management Response	34



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

November 13, 2015

Ms. Laura Ryan, Chairman
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Subject: *Audit of the Texas Department of Motor Vehicles' Administration of Statutes and Rules through Tax Assessor-Collectors (TxDMV-15-4)*

Dear Chairman Ryan:

The Internal Audit Division has completed the *Audit of the TxDMV's Administration of Statutes and Rules through TACs*, which was included in the *Internal Audit Plan for Fiscal Year 2015*. 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 5 of the report.

The objectives of this audit were to:

- Evaluate internal controls the TxDMV has established to administer agency rules and statutes to register and title motor vehicles through TACs
- Compile TACs' practices for the TxDMV Titling and Registration Working Group's consideration in developing the TAC gold standard

We thank TxDMV management and staff for their cooperation and assistance. Special thanks to tax assessor-collector offices that provided feedback and expertise during the course of the audit.

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

Respectfully,

Sandra H. Vice, CIA, CGAP, CISA
Internal Audit Director

cc: Mr. Raymond Palacios, Chairman, Finance and Audit Committee
Ms. Luanne Caraway, Member, Finance and Audit Committee
Mr. William Marvin Rush, Member, Finance and Audit Committee
Mr. Gary Swindle, Member, Finance and Audit Committee
Mr. Blake Ingram, Board Member
Mr. Robert "Barney" Barnwell, Board Member
Mr. Guillermo "Memo" Treviño, Board Member
Mr. John H. Walker, III, Board Member
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EVALUATING ENTITY

The Internal Audit Division, which reports functionally to the Board of Directors, provides the Texas Department of Motor Vehicles (TxDMV) independent and objective assurance and consulting services. Assurance services may include financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and investigations. Also, the Division offers advisory services—which may include advice and counsel, facilitation, and training.

PURPOSE OF THE ENGAGEMENT

The purpose of this audit was to:

- Evaluate internal controls the TxDMV has established to administer agency rules and statutes to register and title motor vehicles through Tax Assessor-Collectors (TAC)
- Compile TAC offices' practices for the TxDMV and its Titling and Registration Working Group's consideration in developing the TAC Gold Standard

SCOPE AND METHODOLOGY

We focused this audit on fee remittances to the TxDMV and sales tax remittances to the Office of the Comptroller of Public Accounts (CPA). The scope of this audit included registration and title fees collected by TAC offices during September 1, 2013 through May 31, 2015 and motor vehicle sales tax and penalty remittances to the CPA during September 1, 2013 through July 17, 2015.

Work performed included the following:

- Reviewing registration and title remittance transactions to determine whether TAC offices remitted payments timely
- Reviewing the agency's processes to track and monitor TAC offices' payment remittances
- Obtained feedback on the TxDMV Gold Standard from TxDMV and Tax Assessor-Collector Association (TACA) committee members
- Surveyed 50 TAC offices regarding the TxDMV Gold Standard and TxDMV services provided

Internal Audit Division Report Summary

November 2015

Report Number TxDMV 15-4

Audit of the Texas Department of Motor Vehicles' Administration of Statutes and Rules Through Tax Assessor-Collectors

REPORT SUMMARY

The TxDMV has opportunities to strengthen its enforcement over late registration and title fee remittances (see page 8). For example, the TxDMV could:

- Seek legislative action to allow the agency to calculate and collect interest from late registration fee remittances 35 days after those fees are reported
- Determine if it is cost effective to collect interest on late registration fee remittances
- Adjust the Finance and Administrative Services Division's processes to track and monitor late registration fee collections by working with Information Technology Services staff to receive and review historical remittance data, rather than a daily aging report

Also, auditors compiled information related to the TxDMV Gold Standard for the TxDMV managements' and Title and Registration Working Group's consideration. Below is a summary of the information we compiled:

- Participation should be voluntary and submitted information should be certified on a periodic basis
- The TxDMV could recognize different service and performance levels with multiple designations, such as Bronze, Silver, and Gold Star (see page 12)
- The TxDMV may use a point system may to take the size of the office into consideration for achieving the various designations. The achievement program should align with TxDMV's philosophy and goals
- The TxDMV will need to create processes to support the achievement program

MANAGEMENT RESPONSE

Management agrees with recommendations in this report. The Government and Strategic Communications Division will work with the TxDMV Board's Legislative Committee to determine if recommended statute change should be included in the TxDMV legislative package for proposal during the 85th Legislative Session. Management will also determine, on a periodic basis, whether it is cost effective to collect interest on late registration fee remittances and work with the Information Technology Services Division to develop a new monthly, ad hoc report to track and monitor historical remittance data.

Management's complete remediation activities and expected implementation dates are detailed within the "Management's Response" section at the end of Chapter 1; and the Executive Director's transmittal letter for the management response is in Appendix 5.

Management also acknowledges that the information compiled in this report pertaining to TAC office practices will be useful as the TxDMV strives to encourage improvement in service delivery by setting standards for all entities conducting motor vehicle titling and registration in Texas.

Chapter 1: Tax Assessor-Collector Offices Remitted Registration and Title Fee Collections Late During Fiscal Years 2014 and 2015

More than 65 percent of Tax Assessor-Collector (TAC) offices remitted either a registration or title fee collection late to the TxDMV during fiscal years 2014 and 2015. Current statutory language allows TAC offices to retain collections for up to 60 days without monetary penalties. The TxDMV has statutory authority to collect interest from TAC offices that remit registration fees after the 60 days; however, the agency has not assessed late interest charges because collection costs outweigh the interest due. The TxDMV does not have authority to collect interest from late title fee remittances. The TxDMV is not involved with motor vehicle sales taxes and penalties that TAC offices remit directly to the Office of the Texas Comptroller of Public Accounts (CPA).

Chapter 1-A: TAC Offices did not Remit Registration and Title Collections to the TxDMV within Statutorily-required Timeframes

The TxDMV process for remittance of registration fees does not comply with statute.

The TxDMV Registration and Titling System (RTS) automatically reports on Saturdays the total registration fees TAC offices collected during the preceding workweek. TAC offices may choose to remit registration fee collections either 3 days or 34 days after the Saturday report date.¹ This means that TAC offices remitting registration fees three days after receiving the Saturday report would remit on a Tuesday. This practice is in conflict with Transportation Code §502.198, which states that “*each Monday the county assessor-collector shall send to the department [TxDMV] all collections made during the preceding week.*”²

We tested registration fee collections reported on 7 judgmentally selected days from September 1, 2013 through May 31, 2015 and identified 135 out of 254 Texas counties that currently remit registration fees 3 days after the report date.

Current TxDMV processes prevent TAC offices from remitting registration fee collections on Monday. RTS places a hold on registration transactions for one business day to allow TxDMV staff to conduct quality assurance processes. RTS runs a transaction batch update each Monday to

Defining a Fee Remittance

TAC offices report registration and title fee collections to the TxDMV through the RTS. TAC offices report **registration fee** collections each Saturday for the preceding week’s registration transactions. TAC offices report **title fee** collections each business day for the prior day’s title transactions.

RTS records fee collections according to the portion of the total fees that go into state funds, programs, or entities—such as the Texas Highway Fund, the TxDMV fund, the Texas Commission on Environmental Quality (TCEQ) and the Department of Public Safety (DPS) for their portion of vehicle inspection fees, programs benefiting from special plates, and others. A single fee collection refers to an amount collected for one specific state fund, program, or entity. A reported amount is the total registration or title fee collections reported to RTS weekly or daily, respectively. TAC offices can remit one or more fee collections to the TxDMV.

Source: TxDMV Finance and Administrative Services Division and Information Technology Services Division

¹ Transportation Code §502.1983 states that a TAC office “*may deposit the [registration] fees in an interest-bearing account or certificate in the county depository; and send the fees to the department not later than the 34th day.*”

² Transportation Code §502.198 allows TAC offices to retain—in their county’s road and bridge fund—registration fees collected up to specific dollar amounts based on formulas described in the section and in §502.1981.

finalize registration transactions occurring the preceding Friday and sends each TAC office a report with the total registration transactions and fee collection amounts that successfully processed. TAC offices do not know the total registration fee collection amount to remit until Monday for the preceding week. Bringing the TxDMV process in compliance with the statute may require the agency to reprogram RTS and/or reports and the TxDMV and TAC offices to adjust current processes.

More than 65 percent of TAC offices remitted either a registration or title fee collection late for the 7 days reviewed.

We tested registration fee collections that 254 TAC offices reported on 7 days from September 1, 2013 through May 31, 2015. One hundred eighty-five (72.8 percent) TAC offices remitted at least 1 registration fee late—based on their RTS due date (see Figure 1).

Figure 1: Summary of Registration Remittances Tested

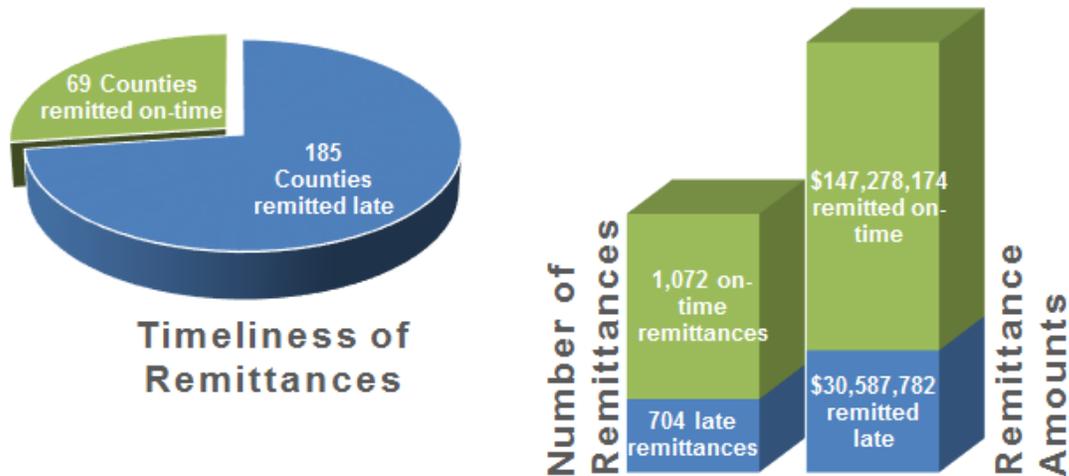


Table 1: Summary of Registration Fees Remittance Aging

	Due in 3 days		Due in 34 days	
	Auditor Tested	Annual Projection	Auditor Tested	Annual Projection
On-Time	\$13,993,596	\$103,952,425	\$133,284,578	\$990,114,010
1 to 10 days late	11,244,088	83,527,509	15,445,275	114,736,330
11 to 20 days late	1,931,920	14,351,405	611,644	4,543,639
More than 20 days late	1,045,007	7,762,907	309,849	2,301,737
Total	\$28,214,610	\$209,594,245	\$149,651,346	\$1,111,695,716

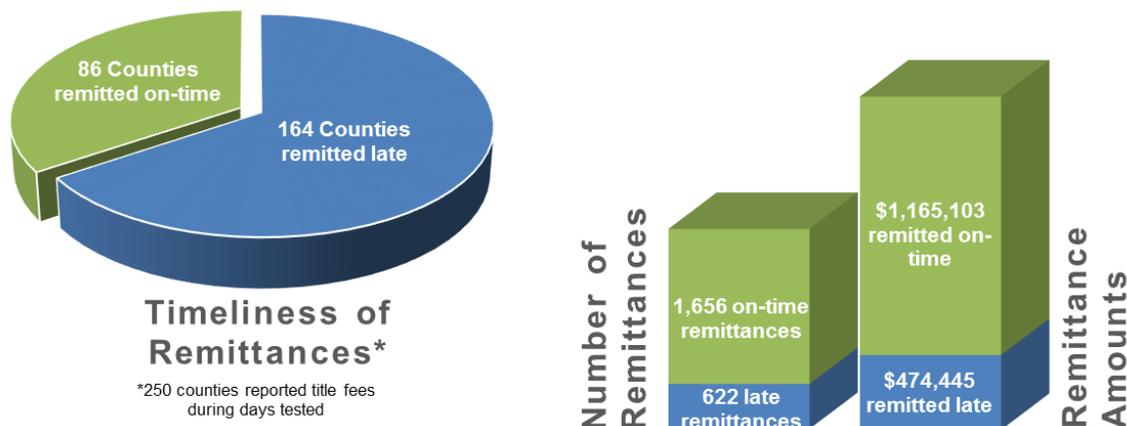
Additional results related to registration fee remittances included the following:

- 185 TAC offices submitted 704 registration fee remittances on average 7 days late
- 1 TAC office submitted 1 registration fee remittance 342 days after its due date
- 34 TAC offices (13.4 percent) submitted registration remittances late all 7 days that we tested
- \$2,906,610 was the largest amount for a late registration remittance for the days we tested, which was remitted 5 days late

Transportation Code §502.198 requires TAC offices to send to the TxDMV all registration fee collections made during the preceding week on Monday, and §502.1984 gives TAC offices an option to deposit registration collections in an interest-bearing account or certificate no later than 34 days after the due date.

We also tested title fee collections that 250 TAC offices reported on 7 days from September 1, 2013 through May 31, 2015. One hundred sixty-four (65.6 percent) TAC offices remitted at least 1 title fee late to the TxDMV (see Figure 2).

Figure 2: Summary of Title Remittances Tested



Additional results related to the title fee remittances included the following:

- 164 counties submitted 622 title fee remittances an average of 7 days late
- \$39,433 was the largest dollar amount for a late title fee remittance

The TxDMV does not exercise its authority to collect interest on registration fees remitted late.

Texas law requires counties to remit registration fees to the TxDMV no later than 34 days after TAC offices have collected fees. However, Texas law does not allow the TxDMV to assess TAC offices a late interest charge until 60 days after the counties collected fees. This means that TAC offices may retain registration fee collections up to 60 days in an interest-bearing account without any sanction or monetary penalty. Transportation Code §502.1984 states that the TxDMV should assess interest on fees not sent to the agency 60 days after fees are collected.³ For the 7 days that we tested, the state could have assessed \$656 in interest or a projected \$4,873 in interest for a full fiscal year. The TxDMV staff monitor late remittances and remind TAC offices to remit registration fees. The TxDMV has not assessed or collected interest on late remittances because current low interest rates means the cost of collecting the interest may outweigh the amount collected.

If statute were changed to allow the TxDMV to assess interest 35 days after registration fees are reported, the state could have a claim of \$25,383 for the 7 days tested or an estimated \$188,563 in interest for a full fiscal year. Legislative action is necessary to change the Transportation Code to allow the TxDMV to assess and collect interest on collections remitted 35 days after registration fees are reported. See Figures 3 and 4 below for current and proposed registration fee timeframes.

³ Transportation Code §502.1984 calculates interest at an annual rate of 10% beginning on the 60th day after the fee was collected. The state would have a claim against a TAC's official bond for the interest amount.

Figure 3 - Current Registration (REG) Fee Timeframe

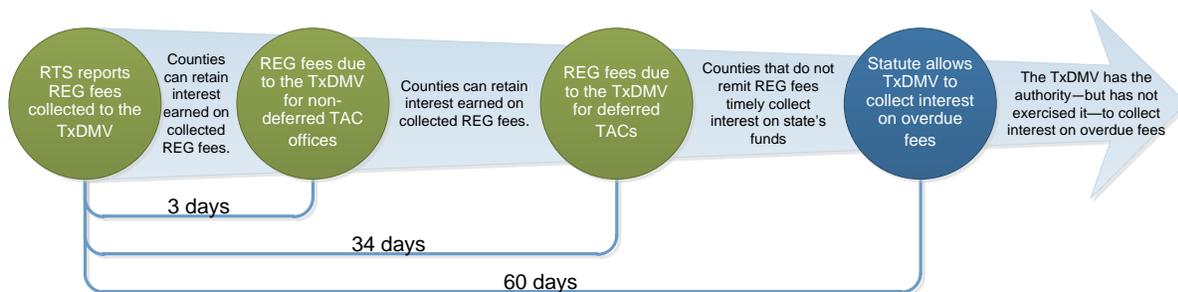
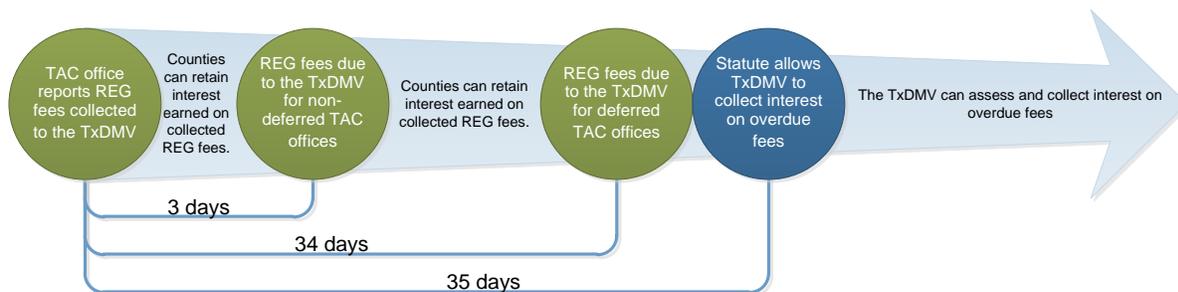


Figure 4 - Alternate Registration (REG) Fee Timeframe with Legislative Changes



The TxDMV process to track and monitor TAC offices’ remittances does not capture all late remittances.

The Finance and Administrative Services (FAS) division monitors and tracks registration fee collections from TAC offices using an RTS daily aging report. Once a month, an accounting specialist reviews the most recent aging reports and identifies—in a summary worksheet—the TAC offices that have not remitted registration fees within 60 days and calculates, but does not bill, the interest accrued. The accounting specialist contacts TAC offices with overdue registration fee collections to remind them to remit fees.

We reviewed the monitoring tool that FAS uses to track and monitor late registration collections. The monitoring tool that FAS uses to calculate interest does not identify all overdue collections. Some TAC offices that remit fees late to the TxDMV, but before the accounting specialist does his monthly analysis of late accounts, are not included in the analysis for interest owed because they do not appear in the daily aging report.

Transportation Code §502.1984 requires the agency to “*determine the exact amount of interest due on any fee not sent to the department.*” This requirement includes interest accrued for any late remittances. We identified 11 registration fee collections that the TAC offices remitted 60 or more days after their report date in the 7 days we tested. The FAS summary did not include 5 of 11 (46 percent) collections. Information Technology Services (ITS) division staff can create ad hoc reports from RTS that include historical registration and title fee remittances—rather than a daily “snapshot”—that could be used to track and monitor all late registration fees.

Chapter 1-B: TAC Offices Remitted Motor Vehicle Sales Taxes and Penalties within Required Timeframes 62 Percent of the Time

TAC offices remitted motor vehicle sales taxes and penalties on time 62 percent of the time. By comparisons, TAC offices remitted registration fees to the TxDMV on time 67 percent of the time and title fees on time 64 percent of the time. TAC offices remit motor vehicle sales taxes and penalties directly to the CPA, based on sales tax information recorded in RTS. The TxDMV is not involved in reporting or remitting motor vehicle sales taxes or penalties, but the CPA shared information with our office so we could determine how TAC office remittances to the CPA compared to remittances to the TxDMV. Auditors also shared the results of this analysis with the CPA Internal Audit Division.

We tested sales taxes and penalties that TAC offices remitted to the CPA during September 1, 2013 through July 17, 2015 that included 8,598 payments totaling \$3,078,053,520. We determined that 158 of 254 (62 percent) counties remitted taxes with the frequency required by statute (Tax Code §152.121). We also determined that 173 of 254 (68 percent) counties remitted at least 1 payment late during this 22.5 month period.

The Texas Tax Code §152.121 established the frequency for remittances based on the total motor vehicle sales taxes and penalties TAC offices collected the previous year. Specifically, the remittance frequency is as shown in Table 2.

Table 2: Motor Vehicle Sales Tax and Penalty Remittance Schedule for Fiscal Year 2014

Remittance Due to CPA	Collection Amount	Number of TAC Offices for Each Remittance Period
Tenth day of each month	Less than \$2 million in taxes and penalties collected the preceding fiscal year	131
Once a week	\$2 million to \$9.9 million in taxes and penalties collected the preceding fiscal year	56
Daily, as collected	\$10 million or more in taxes and penalties collected the preceding fiscal year	67

Chapter 1-C: Communication between Regional Service Centers (RSC) and TAC Offices Could be Improved

In July 2015, we surveyed 50 TAC offices that are geographically dispersed and of various sizes to obtain feedback on TxDMV services. We received 44 (88 percent) responses to the survey, although respondents skipped some questions. According to survey respondents, RSCs could improve communication with TAC offices.

Seventy-four percent of TAC offices agree that RSC staff have the knowledge to address their questions and RSCs provide a value to their offices. TAC offices contact RSC staff with questions

related to registering and titling motor vehicles. Seventy-three percent of respondents indicated that they contact RSC staff at least once daily and 32 percent of respondents said they contact RSC staff multiple times a day. The heavy reliance of TAC offices on RSCs may explain why TAC offices noted that they had difficulty reaching RSC staff on the telephone. TAC survey respondents commented that they experienced long hold times or calls were not answered. Respondents also commented RSC staff within the same office and at different locations sometimes provided inconsistent answers. See Figures 5 and 6 for TAC offices' responses related to TxDMV communications.

Figure 5: Summary of Survey Responses on TAC Offices' Communication with the TxDMV

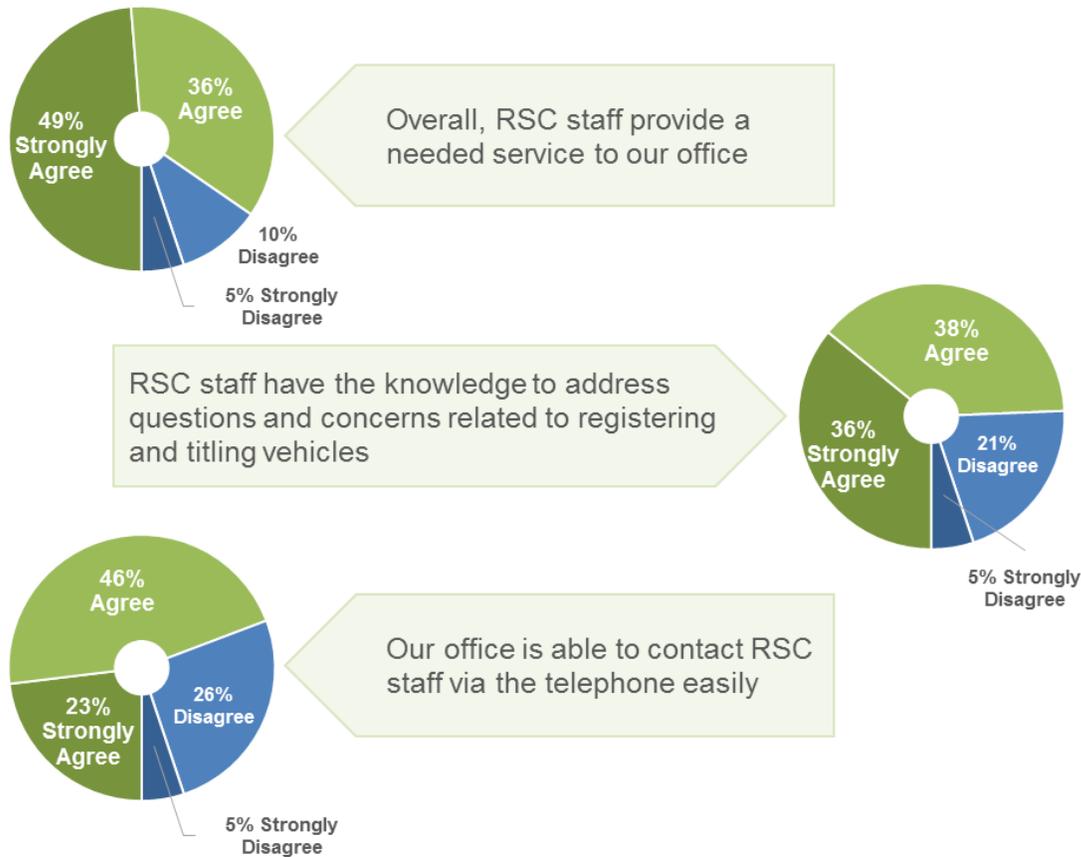
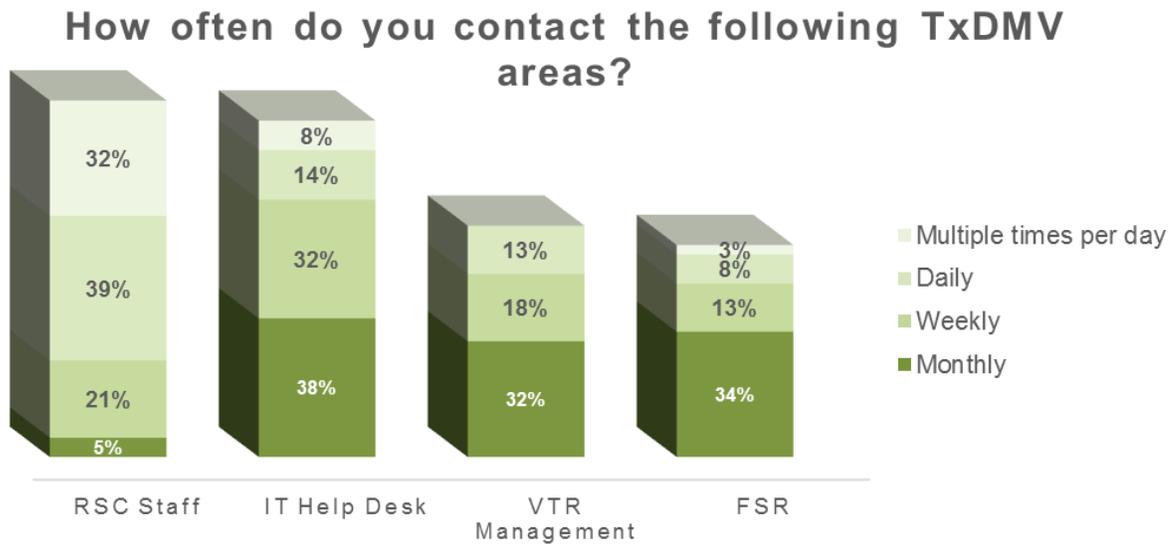


Figure 6: Summary of Survey Responses on TAC Offices' Communications with the TxDMV (continued)



Note: The TxDMV provides several resources to RSCs. The primary resource is the regional service center assigned to the county. Other resources include Vehicle Title and Registrations (VTR) headquarters staff, Field Service Representatives (FSR), and IT Support Services (IT help desk).

Source: Internal audit team survey of selected TAC offices, July 2015.

Recommendation

The TxDMV should:

- 1.1 Obtain guidance from the Board whether to seek legislative action to amend language in Transportation Code §502.198 to align the due date for registration fee collections with current business practices or work with TAC offices to establish a process to remit fees within statutorily-required timeframes
- 1.2 Obtain guidance from the Board whether to seek legislative action to allow the agency to calculate and collect interest from late registration fee remittances 35 days after those fees are reported
- 1.3 Review on a periodic basis if it is cost effective for the agency to collect interest on late registration fee remittances
- 1.4 Adjust FAS's processes to track and monitor late registration fee collections by working with ITS staff to receive and review historical remittance data, rather than a daily aging report
- 1.5 Adjust processes and training to improve RSC communications with TAC offices

Management's Response

Recommendation 1.1

Management agrees with this recommendation. The Government and Strategic Communications Division (GSC) will work with the Legislative Committee of the TxDMV Board to determine if the recommended statute change should be included in the TxDMV legislative package for proposal during the 85th Legislative Session.

Recommendation 1.2

Management agrees with this recommendation. GSC will work with the Legislative Committee of the TxDMV Board to determine if the recommended statute change should be included in the TxDMV legislative package for proposal during the 85th Legislative Session.

Recommendation 1.3

Management agrees with this recommendation. FAS will develop analytic procedures to determine the cost/benefit for the agency to collect interest on late registration fee remittances.

Recommendation 1.4

Management agrees with this recommendation. The Enterprise Reports Quarterly Release Schedule is currently overallocated with requested reports through the end of Fiscal Year 2016. Finance & Administrative Services Division will work with Information Technology to prioritize the development of a new monthly ad hoc report into the RTS Enterprise Reporting quarterly release schedule. ITS provided an estimate of 120 hours to develop an ad hoc report.

Recommendation 1.5

Management agrees with this recommendation. Management agrees with this recommendation. Communication with tax assessor-collectors has been an area of concern that prompted management to request this as an audit item.

Due to project related demands and staff shortages, communication improvement efforts have been limited. A strong emphasis will be placed on improving communication and made a high priority for FY 2016.

The Regional Services Section chiefs will make overall communications between regional service center and tax assessor-collector office personnel an ongoing discussion point during one-on-one meetings and it will be added to the regional service center manager's performance plans as they are reviewed in FY 2016, with the last scheduled to be completed by the end of FY 2016.

Management also agrees with the need to improve upon the consistency of information provided tax assessor-collector offices. The new phone system installed in the regional service centers has a new feature allowing the regional service centers to have a dedicated county line that is answered by senior customer service representatives.

Regional Services Section is also currently reviewing all regional policies and procedures and developing standard operating procedures for the 16 regional service centers. The goal is to ensure all regional service centers are processing transactions the same and providing

consistent and accurate information to the tax assessor-collector offices. These standard operating procedures will be approved by March 2016 and implemented by the end of FY 2016.

Chapter 2: The TxDMV, with Input from the Title and Registration Working Group, Can Recognize Service and Performance that Meets or Exceeds Statutory Requirements

The Transportation Code §520.004 requires the TxDMV to establish a uniform service quality for Tax Assessor-Collectors, their deputies, and dealers. The TxDMV is responsible for establishing processes to register and title motor vehicles through rulemaking and developing manuals. The Title and Registration Working Group (Working Group)⁴ is charged with evaluating titling and registration policies and procedures proposed by the TxDMV and the impacts on various customers and stakeholders. The Working Group's charges include evaluating Gold Standards for TAC offices and Regional Service Centers (RSC).

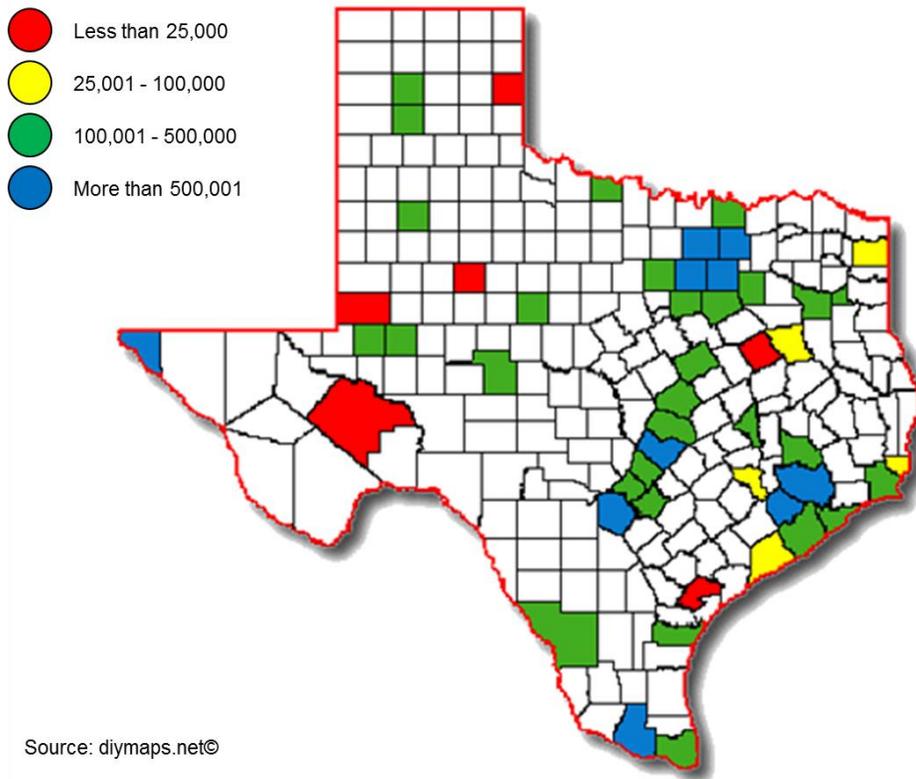
The TxDMV and TACs share a duty to comply with the Transportation Code and the TxDMV rules regarding registering and titling motor vehicles. The TxDMV could create an incentive for TAC offices to voluntarily standardize service quality by recognizing TAC offices and RSCs that meet or exceed practices and performances required by statute and rule.

The objective for this chapter is to compile TAC offices' practices for the TxDMV and Working Group's consideration in developing the TAC Gold Standard. Our methodology for compiling ideas included conducting research into achievement designation programs, obtaining feedback from the Tax Assessor-Collectors Association (TACA) Education/TxDMV Liaison Subcommittee on the Gold Standard, interviewing TxDMV senior managers, and conducting a survey of TAC offices. In July 2015, we surveyed 50 TAC offices that are geographically dispersed and of various sizes to gain a better understanding of current practices and how these could relate to a Gold Standard. We received 44 (88 percent) responses, although respondents skipped some questions. See Figure 7 for a map of TAC offices included in the survey.

The results of our research are summarized below as ideas we compiled for the TxDMV's management and the Working Group's use in developing achievement designations like the Gold Standard. This chapter defines an achievement as a business practice or performance goal that (1) **exceed** statute and rule requirements, or (2) **exceeds** expected levels of service.

⁴ The members of the Working Group are the TAC offices of Harris and Lubbock Counties; representatives from the Texas Independent Automobile Dealers Association, Texas Automobile Dealers Association, Texas Trucking Association, full and limited service deputies, leasing companies, lienholders, salvage dealers, law enforcement, insurance companies, the public, and the TxDMV.

Figure 7: Map of TAC Offices Surveyed by County Population



Chapter 2-A: Participation should be Voluntary and Achievement Levels should be Certified on a Periodic Basis

There is no statute or rule that requires the TxDMV to recognize TAC offices and RSCs that exceed minimum service and performance requirements. Therefore, TAC offices' and RSCs' participation should be voluntary. TAC offices and RSCs should apply to be considered for recognition either annually or on a timeframe determined by the TxDMV with input from the Working Group. Applicants should indicate which achievements their office meet and include verifiable evidence that the TxDMV can review. The Working Group should provide suggestions to the TxDMV on the evidence necessary to support each achievement. The TxDMV should review applications and supporting evidence to certify the level of achievement attained by the applicant.

Chapter 2-B: Multiple Designations Recognize Different Service and Performance Levels

Multiple designations allow the TxDMV to recognize TAC offices' and RSCs' performance by varying levels of achievement. See Table 3 for an example of different achievement levels.

Table 3: Possible Levels

Achievement Level	Description
	<p>Bronze Star: Recognizes TAC offices and RSCs that meet specific statutory and rule requirements determined by the TxDMV</p>
	<p>Silver Star: Satisfies requirements for Bronze Star and recognizes customer-centric and innovative TAC offices and RSCs. Applicants must meet or exceed specific statutory and rule requirements, and perform customer-centric business practices that meet or exceed expected levels of service, as determined by the TxDMV</p>
	<p>Gold Star: Satisfies requirements for Bronze and Silver Stars and recognizes performance-driven TAC offices and RSCs. Applicants must meet or exceed specific statutory and rule requirements, perform customer-centric business practices that meet or exceed expected levels of service, and meet or exceed specific registration and titling performance goals, as determined by the TxDMV</p>

Chapter 2-C: A Point System May be Used to Assess Attainment of an Achievement Level

The TxDMV, with input from the Working Group, should set and publish criteria to attain each achievement level. Criteria could either be met or not met or could be assessed with a points system. The TxDMV could establish points to each business practice and performance goal recognized as an achievement. Higher point values may be assigned to achievements with greater significance to the TxDMV’s philosophy and goals. TAC offices and RSCs would not have to complete each achievement to qualify; however, they must meet or exceed established point thresholds to qualify for different levels.

Establish different point thresholds for each achievement level to account for varying county sizes. To accommodate differences in county sizes, the TxDMV can establish different point thresholds to attain each level. TACA categorizes counties into four groups based on county population. The TxDMV can use a similar grouping or other criteria, such as the number of motor vehicle registrations and title transactions.

Applicants must meet specific statutory and rule requirements to attain the Bronze Star level. There are no points associated with the Bronze Star level. Applicants must demonstrate how they meet statutory and rule requirements to attain the Bronze Star level. See Table 4 for a list of possible statutory and rule requirements that applicants could meet to attain the Bronze Star level. To attain the Silver Star level, counties must satisfy the Bronze Star requirements and some achievements in Table 5. To attain the Gold Star level, counties must satisfy the Bronze and Silver Star requirements and performance goals in Table 6.

Table 4: Sample Statute and Rule Requirements for Bronze Star Level

Description	Criteria
Applicants should remit all registration fees to the TxDMV within 3 days, or 34 days if the TAC office defers remittance, during the year prior to submitting an application	Transportation Code §502.198 and §502.1983
Applicants should remit all motor vehicle sales tax and penalties to the CPA in the required frequency during the year prior to submitting an application	Tax Code §152.121
Applicants should charge only fees and amounts provided by statute or rule	Transportation Code Chapters 501, 502, and 504; 43 TAC, Part 10 - Texas Department of Motor Vehicles §217.12 and §217.37
Applicants and their deputies, if applicable, should maintain the required bond amounts with the State and the TxDMV	Tax Code §6.28; Transportation Code §520.001 and §520.0071

Chapter 2-D: Achievements Should Align with the TxDMV Philosophy and Goals

Achievements are practices or performance goals that (1) **exceed** statute and rule requirements, or (2) **exceed** expected levels of service. Achievements should align with the TxDMV’s philosophy and goals to promote a uniform service quality to Texans.

TxDMV 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.

TxDMV Goals:

Performance Driven • Optimized Services and Innovation • Customer Centric

The list of possible achievements in Tables 5 and 6 are categorized based on the TxDMV’s goals. The list includes achievements for the TxDMV and Working Group’s consideration. The list is not all-inclusive and achievements may be added, deleted, or modified.

Table 5: Sample Achievements for Silver Star Level

Achievements	Description
<i>Performance Driven</i>	
Develop methods to measure performance in other areas	Applicants should submit their methodology to the TxDMV measuring the office’s performance in other areas to receive points for this achievement. Performance measures could include the following: average phone call wait time, number of transactions completed per employee by transaction type, and number of training hours completed per employee.
Measure and review more complex transactions on a regular basis	Applicants should submit procedures to measure and review high-risk transactions, such as voids, over-rides, even trades, exemptions, and gifts. Procedures should include how often reviews occur and the method for selecting transactions to review.
Review transactions completed by limited and full-service deputies	Applicants should submit procedures to review limited and full-service deputies, if applicable. Procedures should include how often reviews occur and the method for selecting transactions to review.
Receive a Field Service Representative (FSR) review with no concerns or recommendations	Applicants should receive an FSR report with no concerns or recommendations during the preceding year prior to submitting an application to receive points for this achievement. The TxDMV will award points based on filed reports.
Receive a TxDMV inventory review with no findings	Applicants should receive an inventory review from FSRs with no findings during the preceding year prior to submitting an application to receive points for this achievement. An inventory review may be completed separately or in conjunction with an FSR review, and points may be awarded for both reviews if they occurred within the established timeframes. The TxDMV will award points based on filed inventory review.
Require that all employees who handle titles and registrations have a minimum of four hours of TxDMV training annually and supervisors have eight hours of training annually	Applicants should send a list of employees with the number of training hours taken annually

Achievements	Description
Have a fraud, waste or abuse prevention and detection program	Applicants should describe their fraud, waste, or abuse detection and prevention program and its results
<i>Optimized Services and Innovation</i>	
Use fraud detection equipment to detect potentially fraudulent documents	Applicants should submit a list of fraud detection equipment and how the offices uses them to inspect fake documents to receive points for this achievement. Fraud detection equipment could include—but is not limited to—ultra violet lights, counterfeit detector pens, and magnifying glasses, to detect counterfeit cash, checks, titles, and other fraudulent documents.
Perform alternative business practices that streamline services	<p>Applicants should submit evidence of alternative business practices the office performs to streamline service to receive points for this achievement. Examples of alternative methods include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • A dedicated line or window for dealers • An express lane for registration renewals • Self-service kiosks • Extend limited service deputy opportunity to vehicle inspection stations • Checklists for specialized transactions like mechanic or storage liens • Displaying or providing handouts with information customers need to complete registration and title transactions
Develop methods to safeguard state property and equipment	Applicants should submit evidence of its methods to safeguard state property. State property and equipment includes—but is not limited to—registration stickers, placards, title paper, RTS workstations, and other equipment provided by the TxDMV. Methods to safeguard state property and equipment should exceed requirements in TxDMV manuals and Registration and Title Bulletins.

Achievements	Description
Partner with other organizations to promote motor vehicle services	Applicants should submit evidences of its partnerships with other organizations. Examples of partnerships include working with Automobile Burglary and Theft Prevention Authority task forces or other law enforcement to combat auto crimes, collaborating with organizations to make motor vehicle services more accessible to citizens in need, and partnering with dealerships to aid with their unique needs such as creating and submitting dealer transaction files and troubleshooting WebDEALER issues.
Dealership adoption rate for WebDEALER	Encourage and assist dealerships adopt and use WebDEALER
<i>Customer Centric</i>	
Expand office hours to be accessible to more customers	Applicants should submit their office hour schedule demonstrating extended office hours during the workweek or opening the office during the weekend.
Use queuing equipment to manage customer wait times	Applicants should submit evidence that the office uses queuing equipment to manage customers' wait time.
Provide motor vehicle service information to non-English speaking or hearing impaired customers	Applicants should submit evidence of materials provided to non-English speaking or hearing impaired customers Applicants may also affirm that they employ staff that can serve customers in a language(s) other than English, including sign language.
Publish motor vehicle services and office hours on the office's website	Applicants should submit a link to its website showing the motor vehicle services it provides and office hours.
Engage in outreach activities to notify customers about motor vehicle services	Applicants should submit evidence of outreach activities that notify customers about motor vehicle. Evidence of outreach activities include—but is not limited to—enclosing fliers in non-motor vehicle related mailings; distributing fliers, posters or brochures at other locations (libraries, retail and convenience stores); connecting to social media; and participating in local events.

Table 6: Sample Performance Goals for Gold Star Level

Achievements	Description
<i>Performance Driven</i>	
<p><u>Performance Goal:</u> Average time to complete a registration transaction</p>	<p>Applicants should meet an average timeframe. Different timeframes could be established based on county population, number of transactions, or other achievement.</p>
<p><u>Performance Goal:</u> Average time to complete a title transaction</p>	<p>Applicants should meet an average timeframe. Different timeframes could be established based on county population, number of transactions, or other achievement.</p>
<p><u>Performance Goal:</u> Percent of data errors identified by the TxDMV</p>	<p>Applicants should perform registration and title transactions at a high level of accuracy. The TxDMV can verify information from RTS to determine applicants' performance level.</p>
<p><u>Performance Goal:</u> Percent of National Motor Vehicle Title Information System (NMVTIS) errors returned to county to correct</p>	<p>Applicants should ensure NMVTIS data is entered accurately. NMVTIS error reports include data quality issues, such as incorrect data entry, incorrect bands, duplicate information. These errors delay customers from receiving their vehicle titles.</p>
<p><u>Performance Goal:</u> Average number of days to correct NMVTIS errors</p>	<p>Applicants should correct NMVTIS errors timely. The TxDMV allots 5 of days for counties to correct NMVTIS errors. Counties that take fewer days are striving to provide customers with a timely response.</p>
<p><u>Performance Goal:</u> Positive customer satisfaction ratings</p>	<p>Applicants should receive satisfied customer ratings. Applicants should use a customer satisfaction survey developed by the TxDMV to ensure it is applied consistently at TAC offices and RSCs.</p>

Chapter 2-E: The TxDMV will have to Create Processes and Tools to Support an Achievement Program

Once the TxDMV, with input from the Working Group, has established the achievement program, the TxDMV will have to administer the program. Activities for administering the program may include the following:

- Creating a marketing strategy and associated materials to introduce the program to TAC offices and RSCs

- Assigning responsibility and timeframes for reviewing applications, verifying achievements, and awarding achievement levels

- Obtaining agency data to validate compliance with statutes and achievements

- Tools to capture data or to establish goals. For example, the TxDMV may have to develop a customer satisfaction survey, a training plan, or a performance measure template to support achievements for customer satisfaction, minimum training requirements, and performance goals

Appendix 1: Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Evaluate internal controls the TxDMV has established to administer agency rules and statutes to register and title motor vehicles through Tax Assessor-Collectors (TAC)
- Compile TAC practices for the TxDMV and its Titling and Registration Working Group's consideration in developing the TAC Gold Standard.

Scope and Methodology

We focused this audit on fee remittances to the TxDMV and sales tax remittances to the CPA. The scope of this audit included registration and title fee collections by TAC offices during September 1, 2013 through May 31, 2015 and motor vehicle sales tax and penalty remittances to the CPA during September 1, 2014 through July 17, 2015. We reviewed registration and title fees collected by TAC offices from RTS, the TxDMV's tool to track and monitor late remittances, and motor vehicle sales tax and penalty remittances received from the CPA. We obtained feedback related to the TxDMV Gold Standard from TxDMV management and employees, and TACA committee members. We surveyed 50 TAC offices regarding the TxDMV Gold Standard and TxDMV services provided.

Project Information

This audit was included in the *TxDMV Internal Audit Plan for Fiscal Year 2015*.

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:

- Texas Transportation Code, Chapter 501 "Certificate of Title Act"
- Texas Transportation Code, Chapter 502 "Registration of Vehicles"
- Texas Transportation Code, Chapter 520 "Miscellaneous Provisions"
- Texas Tax Code, Chapter 152 "Taxes on Sale, Rental, and Use of Motor Vehicles"
- Title 43, Texas Administrative Code, Chapter 217 "Vehicle Titles and Registration"
- Registration and title fee remittances
- Motor vehicle sales tax and penalty fee remittances to CPA
- Internal Audit Division Survey related to the TxDMV Gold Standard
- Texas Comptroller Leadership Circle
- Ohio Environmental Protection Agency Encouraging Environmental Excellence Program

The following contributed to this report:

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

We also distributed the report to the members of the following groups:

- Tax Assessor-Collectors Association of Texas (TACA)
- TACA Education/TxDMV Liaison Subcommittee on the Gold Standard
- TxDMV Title and Registration Working Group

Appendix 2: Example Scoring Sheet for the Bronze Star Level

Below is an example of a scoring sheet for the Bronze Star level. The scoring sheet is not finalized and information may be added, deleted, or modified.



Bronze Star Level

Recognizes TAC offices and RSCs that meet specific statutory and rule requirements

Applicants must meet **all** of the following achievements to attain the Bronze Star level

Achievement	Meet	Did Not Meet
1. <i>Remit registration fee collections on time</i> Remit all registration fees to the TxDMV during the year prior to submitting an application	<input type="checkbox"/>	<input type="checkbox"/>
2. <i>Remit motor vehicle sales tax and penalties on time</i> Remit all motor vehicle sales tax and penalties to the CPA during the year prior to submitting an application	<input type="checkbox"/>	<input type="checkbox"/>
3. <i>Charge only fees allowed</i> Charge only fees and amounts provided by statute or rule.	<input type="checkbox"/>	<input type="checkbox"/>
4. <i>Maintain required bond amounts</i> Maintain the required bond amounts with the state and the TxDMV	<input type="checkbox"/>	<input type="checkbox"/>
BRONZE STAR	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 3: Example Scoring Sheet for Silver Star Level

Below is an example of a scoring sheet for the Silver Star level. The scoring sheet is not finalized and information may be added, deleted, or modified.

Option 1: Minimum number of points to qualify



Silver Star Level

Recognizes customer-centric and innovative TAC offices and RSCs

Applicants must (1) meet the requirements for the Bronze Star level and (2) meet or exceed the following point thresholds to attain the Silver Star level.

TxDMV Goals	Small Counties*	Other Counties
	Minimum points to meet	Minimum points to meet
<i>Performance Driven</i>	6 of 17	10 of 17
<i>Optimized Services and Innovation</i>	3 of 12	6 of 12
<i>Customer Centric</i>	6 of 14	8 of 14

* Counties with population less than 25,000



Performance Driven

Achievement	Points	Meet
1. <i>Measure performance</i> Develops and submits methodology to measure performance in other areas.	2	<input type="checkbox"/>
2. <i>Review high-risk transactions</i> Submit procedures to measure and review high-risk transactions, such as voids, over-rides, even trades, exemptions, and gifts.	3	<input type="checkbox"/>
3. <i>Review full-service and limited service deputies transactions</i> Submit procedures to review limited and full-service deputies, if applicable.	2	<input type="checkbox"/>
4. <i>Receive a Field Service Representative (FSR) review with no concerns or recommendations</i> Receive an FSR report with no concerns or recommendations during the preceding year prior to submitting an application.	2	<input type="checkbox"/>
5. <i>Receive a TxDMV inventory review with no findings</i> Receive an inventory review from FSRs with no findings during the preceding year prior to submitting an application to receive points for this achievement.	3	<input type="checkbox"/>
6. <i>Require minimum training</i> Require that all employees who handle titles and registrations have a minimum of four hours of TxDMV training annually and supervisors have eight hours of training annually.	3	<input type="checkbox"/>
7. <i>Have a fraud, waste or abuse prevention and detection program</i> Describe their fraud, waste, or abuse detection and prevention program and its results.	2	<input type="checkbox"/>
Performance Driven Points =		<input type="checkbox"/>



Optimized Services and Innovation

Achievement	Points	Meet
<p>1. <i>Use fraud detection equipment to detect potentially fraudulent documents</i> Submit a list of fraud detection equipment and how the offices uses them to inspect fake documents. Fraud detection equipment could include—but is not limited to—ultra violet lights, counterfeit detector pens, and magnifying glasses, to detect counterfeit cash, checks, titles, and other fraudulent documents.</p>	2	<input type="checkbox"/>
<p>2. <i>Perform alternative business practices that streamline services</i> Submit evidence of alternative business practices the office performs to streamline service to receive points for this achievement. Examples of alternative methods include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • A dedicated line or window for dealers • An express lane for registration renewals • Self-service kiosks • Extend limited service deputy opportunity to vehicle inspection stations • Checklists for specialized transactions like mechanic or storage liens • Displaying or providing handouts with information customers need to complete registration and title transactions 	4	<input type="checkbox"/>
<p>3. <i>Partner with other organizations to promote motor vehicle services</i> Submit evidences of its partnerships with other organizations. Examples of partnerships include working with Automobile Burglary and Theft Prevention Authority task forces or other law enforcement to combat auto crimes, collaborating with organizations to make motor vehicle services more accessible to citizens in need, and partnering with dealerships to aid with their unique needs such as creating and submitting dealer transaction files and troubleshooting WebDEALER issues.</p>	3	<input type="checkbox"/>
<p>4. <i>Dealership adoption rate for WebDEALER</i> Encourage and assist dealerships adopt and use WebDEALER</p>	3	<input type="checkbox"/>
Optimized Services and Innovation Points =		<input type="checkbox"/>



Customer Centric

Achievement	Points	Meet
<p>1. <i>Expand office hours to be accessible to more customers</i> Submit their office hour schedule demonstrating extended office hours during the workweek or opening the office during the weekend.</p>	2	<input type="checkbox"/>
<p>2. <i>Use queuing equipment to manage customer wait times</i> Submit evidence that the office uses queuing equipment to manage customers' wait time.</p>	3	<input type="checkbox"/>
<p>3. <i>Provide motor vehicle service information to non-English speaking or hearing impaired customers</i> Submit evidence of materials provided to non-English speaking or hearing impaired customers Applicants may also affirm that they employ staff that can serve customers in a language(s) other than English, including sign language.</p>	4	<input type="checkbox"/>
<p>4. <i>Publish motor vehicle services and office hours on the office's website</i> Submit a link to its website showing the motor vehicle services it provides and office hours.</p>	1	<input type="checkbox"/>
<p>5. <i>Engage in outreach activities to notify customers about motor vehicle services</i> Submit evidence of outreach activities that notify customers about motor vehicle. Evidence of outreach activities include—but is not limited to—enclosing fliers in non-motor vehicle related mailings; distributing fliers, posters or brochures at other locations (libraries, retail and convenience stores); connecting to social media; and participating in local events.</p>	4	<input type="checkbox"/>
Optimized Services and Innovation Points =		<input type="checkbox"/>

Silver Star

TxDMV Goals	Small Counties*	Other Counties
	Meet	Meet
<i>Performance Driven</i>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Optimized Services and Innovation</i>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Customer Centric</i>	<input type="checkbox"/>	<input type="checkbox"/>
SILVER STAR	<input type="checkbox"/>	<input type="checkbox"/>

Option 2: Minimum number of achievements to qualify



Silver Star Level

Recognizes customer-centric and innovative TAC offices and RSCs

Applicants must (1) meet the requirements for the Bronze Star level and (2) meet or exceed the following point thresholds to attain the Silver Star level.

TxDMV Goals	Small Counties*	Other Counties
	Minimum Achievements to Meet	Minimum Achievements to Meet
<i>Performance Driven</i>	3	5
<i>Optimized Services and Innovation</i>	1	2
<i>Customer Centric</i>	1	2

* Counties with population less than 25,000



Performance Driven

Achievement	Meet	Did Not Meet
<p>1. <i>Measure performance</i> Develops and submits methodology to measure performance in other areas.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. <i>Review high-risk transactions</i> Submit procedures to measure and review high-risk transactions, such as voids, over-rides, even trades, exemptions, and gifts.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. <i>Review full-service and limited service deputies transactions</i> Submit procedures to review limited and full-service deputies, if applicable.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. <i>Receive a Field Service Representative (FSR) review with no concerns or recommendations</i> Receive an FSR report with no concerns or recommendations during the preceding year prior to submitting an application.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. <i>Receive a TxDMV inventory review with no findings</i> Receive an inventory review from FSRs with no findings during the preceding year prior to submitting an application to receive points for this achievement.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. <i>Require minimum training</i> Require that all employees who handle titles and registrations have a minimum of four hours of TxDMV training annually and supervisors have eight hours of training annually.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7. <i>Have a fraud, waste or abuse prevention and detection program</i> Describe their fraud, waste, or abuse detection and prevention program and its results.</p>	<input type="checkbox"/>	<input type="checkbox"/>
Performance Driven Achievements =	<input type="checkbox"/>	<input type="checkbox"/>



Optimized Services and Innovation

Achievement	Meet	Did Not Meet
<p><i>1. Use fraud detection equipment to detect potentially fraudulent documents</i> Submit a list of fraud detection equipment and how the offices uses them to inspect fake documents. Fraud detection equipment could include—but is not limited to—ultra violet lights, counterfeit detector pens, and magnifying glasses, to detect counterfeit cash, checks, titles, and other fraudulent documents.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>2. Perform alternative business practices that streamline services</i> Submit evidence of alternative business practices the office performs to streamline service to receive points for this achievement. Examples of alternative methods include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • A dedicated line or window for dealers • An express lane for registration renewals • Self-service kiosks • Extend limited service deputy opportunity to vehicle inspection stations • Checklists for specialized transactions like mechanic or storage liens <p>Displaying or providing handouts with information customers need to complete registration and title transactions</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>3. Partner with other organizations to promote motor vehicle services</i> Submit evidences of its partnerships with other organizations. Examples of partnerships include working with Automobile Burglary and Theft Prevention Authority task forces or other law enforcement to combat auto crimes, collaborating with organizations to make motor vehicle services more accessible to citizens in need, and partnering with dealerships to aid with their unique needs such as creating and submitting dealer transaction files and troubleshooting WebDEALER issues.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>4. Dealership adoption rate for WebDEALER</i> Encourage and assist dealerships adopt and use WebDEALER</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Optimized Services and Innovation Achievements =</p>	<input type="checkbox"/>	<input type="checkbox"/>



Customer Centric

Achievement	Meet	Did Not Meet
<p>1. <i>Expand office hours to be accessible to more customers</i> Submit their office hour schedule demonstrating extended office hours during the workweek or opening the office during the weekend.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. <i>Use queuing equipment to manage customer wait times</i> Submit evidence that the office uses queuing equipment to manage customers' wait time.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. <i>Provide motor vehicle service information to non-English speaking or hearing impaired customers</i> Submit evidence of materials provided to non-English speaking or hearing impaired customers Applicants may also affirm that they employ staff that can serve customers in a language(s) other than English, including sign language.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. <i>Publish motor vehicle services and office hours on the office's website</i> Submit a link to its website showing the motor vehicle services it provides and office hours.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. <i>Engage in outreach activities to notify customers about motor vehicle services</i> Submit evidence of outreach activities that notify customers about motor vehicle. Evidence of outreach activities include—but is not limited to—enclosing fliers in non-motor vehicle related mailings; distributing fliers, posters or brochures at other locations (libraries, retail and convenience stores); connecting to social media; and participating in local events.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Optimized Services and Innovation Achievements =</p>	<input type="checkbox"/>	<input type="checkbox"/>

Silver Star

TxDMV Goals	Small Counties	Other Counties
	Meet	Meet
<i>Performance Driven</i>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Optimized Services and Innovation</i>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Customer Centric</i>	<input type="checkbox"/>	<input type="checkbox"/>
SILVER STAR	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 4: Example Scoring Sheet for the Gold Star Level

Below is an example of a scoring sheet for the Gold Star level. The scoring sheet is not finalized and information may be added, deleted, or modified.



Recognizes top performing TAC offices and RSCs

Applicants must (1) meet the requirements for the Bronze Star level, (2) meet the requirements for the Silver Star level, and (3) meet **all** of the following achievements to attain the Gold Star level

Achievement	Meet	Did Not Meet
1. <i>Average time to complete a registration transaction</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
2. <i>Average time to complete a title transaction</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
3. <i>Percent of data errors identified by the TxDMV</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
4. <i>Percent of National Motor Vehicle Title Information System (NMVTIS) errors returned to county to correct</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
5. <i>Average number of days to correct NMVTIS errors</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
6. <i>Positive customer satisfaction ratings</i>		
Small Counties:	<input type="checkbox"/>	<input type="checkbox"/>
Other Counties:		
GOLD STAR	<input type="checkbox"/>	<input type="checkbox"/>

Achievement Level Attained

Level	
 Bronze Star	<input type="checkbox"/>
 Silver Star	<input type="checkbox"/>
 Gold Star	<input type="checkbox"/>

Appendix 5: Executive Director's Management Response



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

November 2, 2015

Sandra Vice, Internal Audit Division Director
Texas Department of Motor Vehicles
4000 Jackson Ave
Austin, TX 78731

Dear Ms. Vice,

Thank you for the opportunity to respond to the recommendations from the Audit of the Texas Department of Motor Vehicles' Administration of Statutes and Rules through Tax Assessor-Collectors.

Texas Department of Motor Vehicles (TxDMV) management agrees with recommendations in this report. Specific remediation activities and expected implementation dates are detailed and included with this correspondence.

Further, the information compiled by the Internal Audit Division pertaining to tax assessor-collectors' practices will be particularly useful as the TxDMV strives to encourage improvement in service delivery by setting standards for all entities conducting motor vehicle titling and registration in Texas.

We appreciate the thoroughness and cooperative spirit exhibited by you and Mr. Arby Gonzales throughout this review. We look forward to utilizing the information presented in the report to improve the way in which customers are served by the TxDMV and its stakeholders.

Sincerely,

A handwritten signature in blue ink that reads "Whitney H Brewster".

Whitney Brewster
Executive Director



Texas Department
of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Internal Audit Annual Report
for Fiscal Year 2015

TxDMV 16-1

TxDMV Internal Audit Division
October 27, 2015

Table of Contents

Chapter 1: Posting the Internal Audit Plan, Internal Audit Annual Report, and Other Audit Information on the TxDMV Web Site.....	1
Chapter 2: Internal Audit Plan for Fiscal Year 2015	4
Chapter 3: External Quality Assurance Review.....	5
Chapter 4: Internal Audit Plan for Fiscal Year 2016	8
Chapter 5: External Audit Services Procured in Fiscal Year 2015	14
Chapter 6: Reporting Suspected Fraud and Abuse	15
Appendix A: <i>Texas Department of Motor Vehicles Internal Audit Division External Quality Assurance Review.....</i>	16



October 27, 2015

Honorable Greg Abbott, Governor
Ms. Ursula Parks, Director, Legislative Budget Board
Mr. Ken Levine, Director, Sunset Advisory Commission
Mr. John Keel, State Auditor, State Auditor's Office
Ms. Laura Ryan, Chairman, TxDMV Board

Subject: *Internal Audit Annual Report for Fiscal Year 2015, TxDMV 16-1*

Attached is the annual report for the Internal Audit Division of the Texas Department of Motor Vehicles (TxDMV). This report includes a status update on the internal audit plan for fiscal year 2015, the board-approved audit plan for fiscal year 2016, and external audit services procured. The Internal Audit Division also successfully underwent its first peer review and received the highest rating possible (see Appendix A for the peer review report).

This report fulfills the requirements set forth in the Texas Internal Auditing Act and the State Auditor's Office guidelines for submitting the annual report. The TxDMV posts required reports at <http://www.txdmv.gov/reports-and-data>.

Please contact me at (512) 465-4118 or Sandra.Vice@txdmv.gov with questions about this report or internal audit activities.

Sincerely,



Sandra H. Vice, CIA, CGAP, CISA
Internal Audit Director

cc: Members of the TxDMV Board
Whitney Brewster, TxDMV Executive Director
Shelly Mellott, TxDMV Deputy Executive Director
Kara Belew, Governor's Office of Budget, Planning, and Policy
Ed Osner, Legislative Budget Board
Kelly Linder, State Auditor's Office

Chapter 1: Posting the Internal Audit Plan, Internal Audit Annual Report, and Other Audit Information on the TxDMV Web Site

Texas Government Code §2102.015 requires that within 30 days of approval, an entity should post its audit plan and internal audit annual report on its internet web site.

The Texas Department of Motor Vehicles (TxDMV) Board approved the *TxDMV Internal Audit Plan for Fiscal Year 2016* on August 15, 2015, and the agency web master posted the plan to the agency’s web site on August 18, 2015. The *Annual Internal Audit Report for Fiscal Year 2015* will be posted to the TxDMV web site following the November 2015 TxDMV Board meeting. These reports may be found at <http://www.txdmv.gov/reports-and-data>.

Government Code §2102.015 also requires an entity to post a summary of any weaknesses or concerns resulting from the audit plan or annual report and actions taken to address those issues. To address these requirements, the Internal Audit Division summarized fiscal year 2015 audit recommendations and the agency’s progress in implementing corrective actions in Table 1 below. The Internal Audit Division will fulfill the requirement to post this information when the annual report is added to the TxDMV web site following the November 2015 TxDMV Board meeting.

Table 1

Summary of Fiscal Year 2015 Internal Audit Recommendations and Agency Implementation Status	
Recommendation	Implementation Status
<i>A Follow-up Audit Report on the Implementation of Recommendations</i> (Report Number P 14-14, Sept. 12, 2014)	
The TxDMV should either complete implementation of the following recommendations that are partially implemented or inform the TxDMV Board that it has decided not to implement a recommendation from the Organizational Assessment Report:	Substantially Implemented
<ul style="list-style-type: none"> • Create an Office of Strategic Planning and Policy Analysis • Design, develop, and deploy a Strategic Management System for the agency • Develop competency models for executive, professional, and support staff, and align Human Resources processes to the required competencies • Develop succession planning and talent management programs to ensure continuity and availability of needed skills and competencies 	

Summary of Fiscal Year 2015 Internal Audit
Recommendations and Agency Implementation Status

Recommendation

Implementation Status

*An Audit of the Automobile Burglary and Theft Prevention Authority
(Report Number P 14-14, Sept. 12, 2014)*

The report included 4 recommendations to the ABTPA Board and 35 to the ABTPA Team to address issues with the grant award process, the grant monitoring process, and the ABTPA administrative functions.

Ongoing

The ABTPA Redesign Team is addressing the audit report recommendations as follows:

- Proposed statute and rule changes to ensure their relevance and applicability in the ABTPA future state
- Reinvented grant goals and objectives
- Redesigned the grant award process.
- Created an ABTPA Grant Administrative Manual
- Developed an annual monitoring plan for its grantees
- Revised reporting requirements
- Acquired strategic partnerships to advance ABTPA’s mission

*Audit of the Texas Department of Motor Vehicles’ Use of Contract Workers
(Report Number TxDMV-15-1, Feb. 13, 2015)*

The report included 12 recommendations to TxDMV management to address issues with managing contract workers, controlling contract workers’ hours, and providing feedback to vendors.

Ongoing

Agency management is addressing the audit report recommendations as follows:

- The Office of General Counsel and the Finance and Administrative Services divisions are revising existing guidance for contracts providing contract workers, which includes vendor feedback and asset management
- The Finance and Administrative Services Division is revising requirements for contracts’ statements of work and needs assessments
- The Information Technology Services Division and Enterprise Project Management Office are working to monitor contract workers’ hours and will use deliverable-based contracts, instead of hourly ones, when possible

Summary of Fiscal Year 2015 Internal Audit
Recommendations and Agency Implementation Status

Recommendation	Implementation Status
<p><i>Audit of Internal Controls over the State of Texas Titling Process (Report Number TxDMV-15-2, August 2015)</i></p>	
<p>The report included 10 recommendations to TxDMV management to address issues in monitoring titling transactions, user security in the Registration and Titling System, and processes to ensure the agency processes title transactions appropriately.</p>	<p>Ongoing</p> <p>The Vehicle Title and Registration Division is addressing the audit report recommendations as follows:</p> <ul style="list-style-type: none"> • Revising processes to monitor title transactions and standardize regional offices procedures related to title transactions • Working with Information Technology Services to establish security profiles in the Registration and Titling System and emphasize proper security practices among users.

Chapter 2: Internal Audit Plan for Fiscal Year 2015

The status of the fiscal year 2015 audit plan engagements are in Table 2. The Internal Audit Division did not conduct consulting or nonaudit services during fiscal year 2015.

Table 2

Report Title	Report Number	Release Date
<i>Annual Internal Audit Report for Fiscal Year 2014</i>	N/A	October 27, 2014
<i>An Audit of the Texas Department of Motor Vehicles' Use of Contract Workers</i>	TxDMV-15-1	February 13, 2015
<i>Audit of Internal Controls over the State of Texas Titling Process (formerly Vehicle Titles and Registration Division Mission)</i>	TxDMV-15-2	August 14, 2015
<i>TxDMV Internal Audit Plan for Fiscal Year 2016</i>	TxDMV 15-3	August 14, 2015
<i>An Audit of the Texas Department of Motor Vehicles' Administration of Statute and Rules through Tax Assessor-Collectors (formerly Selected Tax Assessor-Collector Processes)</i>	TxDMV 15-4	November 13, 2015 (scheduled)
<i>A Confidential Follow-up Audit Report on the Information Security Standards Gap Assessment</i>	TxDMV 15-5	November 13, 2015 (scheduled)
Other Audit Plan Engagements	Status	
Texas International Registration Plan (TxIRP)	This audit was carried forward to the fiscal year 2016 audit plan when the TxDMV learned that the program was scheduled for a November 2015 external peer review. The internal audit staff will re-evaluate the potential scope for the audit after reviewing the results of the peer review.	

Chapter 3: External Quality Assurance Review

The Internal Audit Division underwent its inaugural external quality assurance review (peer review) in March 2015. Representatives of the State Agency Internal Audit Forum performed the peer review in accordance with its peer review policies and procedures effective February 2013. On April 1, 2015, the Internal Audit Division received a rating of “pass” out of three possible ratings: pass, pass with deficiencies, or fail. The report noted one opportunity for improvement; the opportunity and the Audit Director’s response is as follows:

Opportunity for Improvement:

In evaluating the impact of technology on the Agency’s future resource needs, consideration should be given to additional audit resources whose primary expertise and responsibility is auditing technology, including the complexities of contracts required for technology projects.

Director’s Response:

The Director agrees with the above opportunity for improvement. Current staff will take steps to increase their technology skills and knowledge through professional development. If an audit requires technical skills the audit team does not possess, the Division will request approval to hire a temporary contract IT auditor. Also, the Internal Audit Division will seek an auditor with information technology experience when it has a vacancy or if additional resources are assigned to the Division.

See the following page for the peer review opinion and certificate, excerpted from the *TxDMV Internal Audit Division External Quality Assurance Review* (see Appendix A for the report in its entirety).

TEXAS DEPARTMENT OF MOTOR VEHICLES
 INTERNAL AUDIT DIVISION
 EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

OVERALL OPINION

Based on the information received and evaluated during this external quality assurance review, it is our opinion that the Texas Department of Motor Vehicles (TxDMV) Internal Audit Division receives a rating of “pass” and is in compliance with the Institute of Internal Auditors (IIA) *International Professional Practices Framework (effective January 1, 2013)* and Code of Ethics, the United States Government Accountability Office (GAO) *Government Auditing Standards (December 2011 Revision)*, and the Texas Internal Auditing Act (*Texas Government Code, Chapter 2102*). This opinion, which is the highest of the three possible ratings, means that policies, procedures, and practices are in place to implement the standards and requirements necessary for ensuring the independence, objectivity, and proficiency of the internal audit function.

We found that the Internal Audit Division is independent, objective, and able to render impartial and unbiased judgments on the audit work performed. The staff members are qualified, proficient, and knowledgeable in the areas they audit. Individual audit projects are planned using risk assessment techniques; audit conclusions are supported in the working papers; and findings and recommendations are communicated clearly and concisely.

The Internal Audit Division is well managed internally. In addition, the Division has effective relationships with the Board and is well respected and supported by management. Surveys and interviews conducted during the quality assurance review indicate that management considers Internal Audit a useful part of the overall agency operations and finds that the audit process and report recommendations add value and help improve the Agency’s operations.

ACKNOWLEDGEMENTS

We appreciate the courtesy and cooperation extended to us by the Internal Audit Director, Internal Audit staff, the Chairman of the Board and Finance and Audit Committee Chairman, the Executive Director, and the senior managers who participated in the interview process. We would also like to thank each person who completed surveys for the quality assurance review. The feedback from the surveys and the interviews provided valuable information regarding the operations of the Internal Audit Division and its relationship with management.


 Héctor Lozano
 Senior Internal Auditor
 Texas Department of Family and
 Protective Services
 SAIAF Peer Review Team Leader

4/1/15
 Date


 Luis Solis
 Audit Manager
 Texas Workforce Commission
 SAIAF Peer Review Team Member

4/1/15
 Date



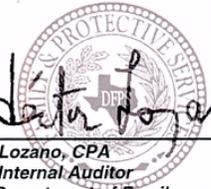
The Internal Audit Division of the Texas Department of Motor Vehicles

Receives a rating of

Pass

In compliance with the Institute of Internal Auditors' International Professional Practices Framework, Government Auditing Standards, and the Texas Internal Auditing Act

This opinion is based on a quality assessment review conducted by members of the Texas State Agency Internal Audit Forum during the period of February 2015 through March 2015. The review was based on the methodology developed by the Texas State Agency Internal Audit Forum



Hector Lozano, CPA
Senior Internal Auditor
Texas Department of Family and Protective Services



Luis Solis, CGAP, CRMA
Audit Manager
Texas Workforce Commission

Chapter 4: Internal Audit Plan for Fiscal Year 2016

The TxDMV Board approved the *TxDMV Internal Audit Plan for Fiscal Year 2016* on August 14, 2015 as shown in Tables 3 and 4. The audit topics in Table 4, which also received “high” risk rankings, were approved by the TxDMV Board in case additional audit resources become available. As a result, these audits are not scheduled and may not be performed.

Table 3

Texas Department of Motor Vehicles Fiscal Year 2016 Internal Audit Plan		
Topic and Budgeted Hours	Division	Background and Preliminary Objectives
Required Reports under the Texas Internal Auditing Act		
1. Fiscal Year 2015 Annual Internal Audit Report 50 hours	Agency-wide	<u>Background:</u> A summary of internal audit activities, including the status of the FY 2015 audit plan, non-audit services provided, and external audit services procured; and the FY 2016 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).
2. Fiscal Year 2017 Internal Audit Plan 100 hours	Agency-wide	<u>Background:</u> 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).
Risk Based Audit and Advisory Services		
3. Texas International Registration Plan (TxIRP) 600 hours <i>Carry-over from Fiscal Year 2015 Internal Audit Plan</i>	Motor Carrier	<u>Background:</u> In calendar year 2014, Commercial Fleet Services oversaw over 20,633 active apportioned fleets through TxIRP with 158,449 apportioned vehicles; collected more than \$206 million in fees; and conducted 431 compliance audits. The Motor Carrier Division’s Commercial Fleet Services manages apportioned registration, also known as the International Registration Plan. The IRP is an agreement providing for registration reciprocity among member jurisdictions. Under this agreement, commercial carriers pay a proportionate, or “apportioned,” amount to each jurisdiction in which they intend to operate. This gives commercial vehicles the

Texas Department of Motor Vehicles
Fiscal Year 2016 Internal Audit Plan

Topic and Budgeted Hours	Division	Background and Preliminary Objectives
		<p>ability to travel interstate without having to purchase trip permits.</p> <p><u>Objective:</u> To be determined. Representatives from the IRP are scheduled to perform a peer review of the Texas program in November 2015. The peer review covers internal controls, including accounting procedures; a review of Texas compliance audits; and a review of records. The Internal Audit staff will reevaluate the potential scope and need for an audit after reviewing the results of the peer review.</p>
<p>4. Fraud Prevention Program (Advisory Service) 400 hours</p> <p><i>Advisory Service</i></p>	<p>Agency-wide</p>	<p><u>Background:</u> Advisory Services allow internal audit to assist management on special projects. An agency that proactively identifies and manages fraud risks can save money by preventing fraud and increasing external oversight and the public's confidence in the agency. The Association of Certified Fraud Examiners offers tools for agencies to take a fraud prevention check-up, conduct a fraud risk assessment, and develop a fraud risk response.</p> <p><u>Objectives:</u></p> <ul style="list-style-type: none"> (1) Assess the TxDMV staffs' preparedness and knowledge about their role in preventing, detecting, and reporting fraud, waste, and abuse. (2) Make recommendations to implement a robust agency-wide fraud prevention program.
<p>5. RTS Refactoring and Single Sticker Post-implementation Review 1,600 hours</p>	<p>Agency-wide</p>	<p><u>Background:</u> The TxDMV is making changes to processes and systems with significant impact to citizens and stakeholders. In the fall of 2015, the TxDMV anticipates launching the refactored Registration and Titling System to all users, including Tax Assessor-Collectors statewide. In March 2015, TxDMV implemented the consolidation of the State Vehicle Inspection Certificate and the State Vehicle Registration Stickers into a single sticker.</p>

Texas Department of Motor Vehicles
Fiscal Year 2016 Internal Audit Plan

Topic and Budgeted Hours	Division	Background and Preliminary Objectives
		<p><u>Objectives:</u></p> <ol style="list-style-type: none"> (1) Verify that TxDMV approved contract deliverables the lead RTS refactoring vendor and the independent validation and verification vendor submitted prior to making payments (2) Determine that fees are assessed, collected, and remitted accurately and timely (3) Review if capital budget controls and expenditure transfers complied with General Appropriations Act provisions (4) Verify the accuracy of reports (5) Compile lessons learned
<p>6. Oversize/Overweight Permitting 1,400 hours</p>	<p>Motor Carrier</p>	<p><u>Background:</u> 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 and GIS-based mapping system, to allow customers to apply for and self-issue many permits.</p> <p><u>Objectives:</u></p> <ol style="list-style-type: none"> (1) Determine if TxDMV has data it needs to issue permits in accordance with laws and regulations and to ensure public safety (2) Review whether TxPROS has accurate and complete data (3) Determine if the contract with the hosting services vendor is managed in accordance with the Texas Contract Management Guide (4) Verify that TxDMV is assessing and collecting the appropriate fees
<p>7. Driver's Privacy Protection Act (DPPA) 600 hours</p>	<p>Agency-wide</p>	<p><u>Background:</u> The Congress enacted DPPA to protect the release and use of certain personal information in state motor vehicle records. The law provides some exceptions including the courts and law enforcement. The Texas Legislature passed protections under the Motor Vehicle Records Disclosure Act and the Public Information Act.</p>

**Texas Department of Motor Vehicles
Fiscal Year 2016 Internal Audit Plan**

Topic and Budgeted Hours	Division	Background and Preliminary Objectives
		<p>Objectives:</p> <ul style="list-style-type: none"> (1) Determine whether the TxDMV's process for allowing individuals and companies access to the motor vehicle title and registration database is in compliance with the DPPA (2) Analyze service contracts and inter-local agreements to determine if TxDMV is monitoring and enforcing contract terms (3) Determine if TxDMV is sharing information securely (4) Verify the reasonableness of processing fees and other fees
Total Budgeted Hours with TxIRP		4,750
Total Budgeted Hours without TxIRP		4,150

Table 4

Other Audit Topics if Additional Audit Resources are Available		
Topic and Budgeted Hours	Division	Background and Preliminary Objectives
<p>8. My Plates Contract 800 hours</p>	<p>Vehicle Titles and Registration</p>	<p>Background: TxDMV contracts with the vendor My Plates to and market and sell specialty license plates. During its first award Registration period, My Plates satisfied its guarantee of \$25 million in state general revenue over 5 years. In April 2014, the TxDMV renewed its contact with the specialty plate vendor, My Plates, to design, market and sell new specialty license plates in the State of Texas. Under this new 5-year contract, the TxDMV anticipates a significant increase in revenue to the state.</p> <p>Objectives:</p> <ul style="list-style-type: none"> (1) Analyze the contract to determine if it contains required contract terms (2) Determine if TxDMV is monitoring vendor performance to ensure My Plates is in compliance with the contract (3) Verify the TxDMV is receiving the revenue it is due in a timely manner
<p>9. Enforcement Division 1,200 hours</p>	<p>Enforcement</p>	<p>Background: The Enforcement Division investigates complaints against licensees in industries TxDMV regulates and, when hours appropriate, files administrative charges alleging violation of laws. It also protects the public by enforcing the Lemon Law program.</p> <p>Objectives:</p> <ul style="list-style-type: none"> (1) Review key performance measures, such as number of motor vehicle consumer complaints completed and average number of weeks to complete a motor vehicle complaint, to determine whether TxDMV is accurately reporting measures to the Automated Budget and Evaluation System of Texas (ABEST) (2) Identify potential efficiencies to streamline the investigative process
Total Budgeted Hours		2,000

The Internal Audit Division developed the audit plan using a risk-based methodology, including obtaining input from TxDMV Board members and executive management. The Internal Audit Division also analyzed agency information to rank potential audit topics by risk, including expenditure transfers, capital budget controls, contract management and information technology risks. The proposed audits that address these risks are the following:

- RTS Refactoring and Single Sticker Post-Implementation Review will address expenditure transfers, capital budget controls, and contract management
- Oversize/Overweight Permitting will address contract management
- Drivers' Privacy Protection Act will address contract management and information technology risks related to Title 1, Texas Administrative Code, Chapter 202, Information Security Standards
- My Plates Contract, which will be conducted in fiscal year 2016 if resources are available, would address contract management

Chapter 5: External Audit Services Procured in Fiscal Year 2015

Table 5

Report Title	Provider	Report Number and Date Released
<p><i>State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2015</i></p> <p>A financial audit of the State of Texas' consolidated financial statements for fiscal year 2015</p>	<p>Texas State Auditor's Office</p>	<p>On-going</p>
<p><i>State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2014</i></p> <p>A financial audit of the State of Texas' consolidated financial statements for fiscal year 2014</p>	<p>Texas State Auditor's Office</p>	<p>SAO Report Number 15-555, February 2015</p>

Chapter 6: Reporting Suspected Fraud and Abuse

To comply with fraud reporting requirements in the General Appropriations Act (83rd Legislature, Article IX, Section 7.09), the TxDMV has taken the following actions:

- Provides information on the home page of the TxDMV website (www.txdmv.gov) on how to report suspected fraud, waste, and abuse directly to the State Auditor's Office (SAO)
- Includes in the agency's Human Resources Manual information on how to report suspected fraud involving state funds to the SAO. Employees are directed by agency policy to report any suspected incidents of fraud to their manager, the Internal Audit Director, and the SAO
- Provides a link on the Internal Audit Division's Intranet page to the SAO fraud hotline website

In addition, the Internal Audit Division included in its fiscal year 2016 audit plan a project to review the TxDMV's Fraud Prevention Program.

The Internal Audit Division coordinates compliance with Texas Government Code, Section 321.022 "Coordination of Investigations." Internal audit will evaluate all instances of fraud, waste or abuse reported to the Internal Audit Division to determine appropriate action. If the Internal Audit Director has reasonable cause to believe that fraudulent or unlawful conduct has occurred in relation to the operation of the TxDMV, the Director will notify the SAO.

Also, the Internal Audit Division follows up on SAO hotline referrals to the TxDMV and reports results to the SAO in the prescribed form, content, and timing.

Appendix A:

Texas Department of Motor Vehicles Internal Audit
Divison External Quality Assurance Review

**REPORT ON THE
EXTERNAL QUALITY ASSURANCE REVIEW
OF THE TEXAS DEPARTMENT OF MOTOR
VEHICLES**

INTERNAL AUDIT DIVISION

April 2015



PERFORMED BY

**HÉCTOR LOZANO, CPA
SENIOR INTERNAL AUDITOR
TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

**LUIS SOLIS, CGAP, CRMA
AUDIT MANAGER
TEXAS WORKFORCE COMMISSION**

**PERFORMED IN ACCORDANCE WITH THE
STATE AGENCY INTERNAL AUDIT FORUM
PEER REVIEW POLICIES AND PROCEDURES EFFECTIVE
FEBRUARY 2013**

TEXAS DEPARTMENT OF MOTOR VEHICLES
 INTERNAL AUDIT DIVISION
 EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

OVERALL OPINION

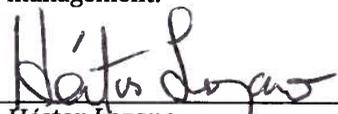
Based on the information received and evaluated during this external quality assurance review, it is our opinion that the Texas Department of Motor Vehicles (TxDMV) Internal Audit Division receives a rating of “pass” and is in compliance with the Institute of Internal Auditors (IIA) *International Professional Practices Framework (effective January 1, 2013)* and Code of Ethics, the United States Government Accountability Office (GAO) *Government Auditing Standards (December 2011 Revision)*, and the Texas Internal Auditing Act (*Texas Government Code, Chapter 2102*). This opinion, which is the highest of the three possible ratings, means that policies, procedures, and practices are in place to implement the standards and requirements necessary for ensuring the independence, objectivity, and proficiency of the internal audit function.

We found that the Internal Audit Division is independent, objective, and able to render impartial and unbiased judgments on the audit work performed. The staff members are qualified, proficient, and knowledgeable in the areas they audit. Individual audit projects are planned using risk assessment techniques; audit conclusions are supported in the working papers; and findings and recommendations are communicated clearly and concisely.

The Internal Audit Division is well managed internally. In addition, the Division has effective relationships with the Board and is well respected and supported by management. Surveys and interviews conducted during the quality assurance review indicate that management considers Internal Audit a useful part of the overall agency operations and finds that the audit process and report recommendations add value and help improve the Agency’s operations.

ACKNOWLEDGEMENTS

We appreciate the courtesy and cooperation extended to us by the Internal Audit Director, Internal Audit staff, the Chairman of the Board and Finance and Audit Committee Chairman, the Executive Director, and the senior managers who participated in the interview process. We would also like to thank each person who completed surveys for the quality assurance review. The feedback from the surveys and the interviews provided valuable information regarding the operations of the Internal Audit Division and its relationship with management.


 Héctor Lozano
 Senior Internal Auditor
 Texas Department of Family and
 Protective Services
 SAIAF Peer Review Team Leader

4/1/15
 Date


 Luis Solis
 Audit Manager
 Texas Workforce Commission
 SAIAF Peer Review Team Member

4/1/15
 Date

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

BACKGROUND

The Institute of Internal Auditors (IIA) *International Professional Practices Framework*, U.S. Government Accountability Office (GAO) *Government Auditing Standards*, and the Texas Internal Auditing Act require that internal audit functions obtain external quality assurance reviews to assess compliance with standards and the Act and to appraise the quality of their operations. *Government Auditing Standards* require these reviews at least every three years. A periodic external quality assurance review, or peer review, of the internal audit function is an essential part of a comprehensive quality assurance program. This quality assurance review was performed in accordance with *State Agency Internal Audit Forum (SAIAF) Peer Review Process Manual* (February 2013).

OBJECTIVES, SCOPE, AND METHODOLOGY

The primary objective of the quality assurance review was to evaluate the Texas Department of Motor Vehicles Internal Audit Division's compliance with auditing standards and the Texas Internal Auditing Act. Additional objectives included identifying best practices as well as areas where improvement may be needed. The review covered all completed audit and non-audit service projects performed by the Texas Department of Motor Vehicles Internal Audit Division from February 2014 through February 2015.

The work performed during the review included:

- Review, verification, and evaluation of the self-assessment prepared by the Internal Audit Division according to SAIAF guidelines.
- Review and evaluation of 15 responses to 17 e-mailed surveys completed by management.
- Interviews with the Internal Audit Director, Internal Audit Division staff, Executive Director, Deputy Executive Director, General Counsel, four Division Directors, Chairman of the Board, Finance and Audit Committee Chairman, and a former external auditor with knowledge of the Internal Audit Division.
- Review and evaluation of audit working papers for one audit project included in the self-assessment and the most recently completed audit project in February 2015.
- Review of Internal Audit's policies and procedures, annual risk assessment, annual audit plan, and other relevant documents.

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

DETAILED RESULTS

The results of the quality assurance review for the Texas Department of Motor Vehicles Internal Audit Division are presented in the order of the *International Standards for the Professional Practice of Internal Auditing (Standards)*. No significant weaknesses were identified during the review that would prevent the Division from fulfilling its responsibilities. The detailed results include identification of best practices.

IIA Code of Ethics

Internal Audit relies on and practices its policy for professional conduct which is consistent with the tone at the top that has been established by the Board and Executive Management regarding ethics and integrity in achieving the Agency's mission and goals. The Internal Audit Director shares articles with staff about ethical behavior. Also, the Agency has sent out memorandums to division directors reminding them of ethical and professional behavior requirements for the Agency. Internal Audit's charter states that Internal Audit will abide by the Code of Ethics. In conducting its work, Internal Audit communicates to the divisions the importance of ethical behavior in conducting operations.

Standard 1000: Purpose, Authority, and Responsibility

The purpose, authority, and responsibility of Internal Audit have been defined in a charter that is consistent with auditing standards. The current charter was signed by the Chairman of the Board, Finance and Audit Committee Chairman, and the Executive Director in March 2014. It defines the nature of audit and consulting services and grants the Internal Audit Division authorized access to agency records, property, and personnel when performing their official duties.

Standard 1100: Independence and Objectivity

The Internal Audit Division is independent in terms of the agency's organizational structure and the Division's practices. To assure the independence of the internal audit function, the Internal Audit Director reports functionally to the Board and its Finance and Audit Committee and administratively to the Executive Director. Removal of the Internal Audit Director requires Board approval.

The charter helps ensure continued independence by specifying that internal auditors must remain free of operational and management responsibilities that could impair their ability to make independent reviews of all areas of the Agency's operations. None of the internal auditors has prior responsibility for any areas that the Division audits. In addition, auditors are required to evaluate and attest to the status of their independence on each audit performed.

Standard 1200: Proficiency and Due Professional Care

The internal auditors individually and collectively possess the knowledge, skills, and abilities to perform their responsibilities. Staff accreditations with professional organizations include the Institute of Internal Auditors, Information Systems Audit and Control Association, and the Association of Certified Fraud Examiners. All auditors are required to obtain at least 40 hours of continuing education every year, for a minimum total of 80 hours of each two-year reporting period.

As part of the documentation obtained by the Peer Review Team, the Agency's Strategic Plan for Fiscal Years 2015 - 2019 was reviewed, noting that the Texas Department of Motor Vehicles is establishing technology strategies to respond to key factors that will affect the

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

Agency over the next five years. The Agency's technology is intricately intertwined with that of the Texas Department of Transportation. This is a major factor affecting the Agency's

ability to become fully independent and agile enough to meet future needs. Furthermore, there were 19 business process analysis initiatives identified as part of the Texas Automation Systems Project that was conducted in Fiscal Year 2011.

Given the strategic priority and impact that technology will have on the Agency's future and day-to-day operations, the internal auditors will require knowledge of key information technology risks and controls and available technology-based audit techniques to perform their assigned work in an expanding technological and contract environment. Enhancing this area of audit proficiency would help the Agency in its strategy to mitigate the risks associated with complex technology initiatives and projects that are at the core of the Agency's business operations.

Opportunity for Improvement:

In evaluating the impact of technology on the Agency's future resource needs, consideration should be given to additional audit resources whose primary expertise and responsibility is auditing technology, including the complexities of contracts required for technology projects.

Director's Response:

The Director agrees with the above opportunity for improvement. Current staff will take steps to increase their technology skills and knowledge through professional development. If an audit requires technical skills the audit team does not possess, the Division will request approval to hire a temporary contract IT auditor. Also, the Internal Audit Division will seek an auditor with information technology experience when it has a vacancy or if additional resources are assigned to the division.

Standard 1300: Quality Assurance and Improvement Program

The Internal Audit Director implemented a quality assurance and improvement program to help ensure that Internal Audit adds value, improves the Agency's operations, and provides assurance that the Division complies with *Standards* and the IIA Code of Ethics.

The cornerstone of Internal Audit's quality assurance and improvement program is the experience, knowledge, and competency of its Internal Audit Director and audit staff. Under the Internal Audit Director's leadership, Internal Audit hired auditors with the skill sets needed to audit the Agency's operations in a timely and professional manner.

Another hallmark of quality assurance resides in the interpersonal and listening skills of the Internal Audit Director and her staff to ensure that risks and concerns of the Board and management are considered in the planning, field work, and reporting phases of an audit engagement. Feedback from auditees is sought and thoughtfully considered by Internal Audit in writing audit reports, developing audit findings that are easily understood, and providing recommendations that are agreeable to the auditee, reasonable, and can be implemented.

Standard 2000: Managing the Internal Audit Activity

The Internal Audit Director conducted an annual risk assessment that formed the basis for the Fiscal Year 2014 Annual Audit Plan, which was approved by the Board. Each internal audit report addressed risk and control issues within the Agency. The Director developed policies and procedures to guide the internal audit activity in accordance with the *Standards*. The Director reported the Division's performance relative to the Fiscal Year 2014 Annual Audit Plan in the Fiscal Year 2014 Annual Report on Internal Audit submitted to the

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

Executive Director, Deputy Executive Director, Board, and external oversight agencies, including the Governor's Office, Legislative Budget Board, Sunset Advisory Commission, and the State Auditor.

Standard 2100: Nature of Work

Internal Audit evaluates risks related to financial and operating information as well as the effectiveness and efficiency of operations, safeguarding of assets, and compliance with laws and regulations. The Division also evaluates the extent to which operating and program objectives have been achieved. Internal Audit attends various governance and steering committee meetings to stay informed on Agency matters and initiatives that could have an impact on the nature of Internal Audit's work.

To comply with the January 2013 revision to the IIA *Standards* that requires Internal Audit to contribute to the organization's risk management and governance processes, the Division provides information and assistance to Executive Management and the Board about how the accomplishment of goals is monitored and how accountability is ensured. Internal Audit is included in the agenda of the Finance and Audit Committee Meetings to help ensure that the Board is kept informed of audit related issues.

Standard 2200: Engagement Planning

During planning, internal auditors consider the scope and objectives of the activity being reviewed and the related risks and controls. A project plan, which is prepared and documented in the work papers, includes the assignment of audit staff, milestones, and budget required for achieving the audit's objectives. Audit criteria and risk assessments are documented and used to develop the objectives of each audit.

Entrance conferences and engagement letters are documented and communicated to the auditees to help ensure the objectives of audits are clearly understood by the auditees, and auditees have an opportunity to provide input and feedback during the planning phase of the audit. Planning procedures, the project plan, and the audit procedures to be performed during field work are reviewed and approved by the Director and documented in the work papers.

Standard 2300: Performing the Engagement

The Internal Audit Director ensures that the auditors assigned to the project have the skills to perform the engagement, and the Director and Deputy Director closely supervise field work. The Director and Deputy Director review work papers as appropriate to ensure compliance with the *Standards*. Internal auditors gather, organize, and evaluate audit evidence that is sufficient, reliable, and relevant to their audit objectives and can support audit conclusions. Work papers are neat, legible, and well organized, including sources, purpose, procedures, results, and conclusions that make it easy for a reviewer to determine what the purpose of the work paper is.

Standard 2400: Communicating Results

Audit results are communicated in a timely manner, and the Peer Review Team was told in interviews that Internal Audit is very approachable, and it is easy to discuss potential findings and other audit issues with the auditors. The Peer Review Team was also told during interviews that Internal Audit is willing to listen to auditees to ensure that findings are accurate, complete, and understandable, incorporating wording changes when deemed necessary and appropriate. Internal Audit also gives management the opportunity to provide management responses to findings and recommendations. Auditees who were interviewed described Internal Audit's recommendations as reasonable for implementation.

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

Internal Audit has excellent templates for summarizing audit issues and preparing audit reports that are well organized and visually formatted. Audit reports contain the audit objectives, results, conclusions, recommendations, and management's responses and action plans. The results of our surveys and interviews with Board members and management indicated that internal audit reports are timely, accurate, clear, complete, and objective. The Internal Audit Director distributes internal audit reports to the Board, Executive Management, and management of the activity being audited. In addition, the Internal Audit Director complies with House Bill 16 (83rd Legislature, Regular Session), which amended the Texas Internal Auditing Act by adding the requirement that within 30 days of approval, an entity should post its audit plan and internal audit annual report on its Internet Web site.

Standard 2500: Monitoring Progress

The Agency has a system and database for monitoring the disposition of audit issues. Internal Audit tracks recommendations made to the Agency regardless of the source and periodically conducts an audit to follow up on the status of the implementation of the recommendations. Internal Audit will report to the Board annually on the *"Percent of Audit Recommendations Implemented."*

Standard 2600: Resolution of Senior Management's Acceptance of Risks

During the quality assurance review, no instances were identified of management accepting an inappropriate level of risk that would require the Internal Audit Director to notify the Board.

TEXAS DEPARTMENT OF MOTOR VEHICLES
INTERNAL AUDIT DIVISION
EXTERNAL QUALITY ASSURANCE REVIEW - April 2015

BEST PRACTICES

Internal Audit is a progressive division that is dedicated to continuous improvement. During the quality assurance review, we observed a number of practices that demonstrate outstanding commitment and professionalism. These leading practices include the following:

- The Internal Audit Director and staff have effective working and reporting relationships with the Board, executive management, and division management based on mutual respect, trust, and commitment to improving controls within the agency.
- Internal Audit offers a proactive perspective on business risks and how to mitigate them through its advisory role on the governance team, executive steering committees, and workgroups.
- The Internal Audit Director and staff have significant experience and expertise in governmental auditing and a working knowledge of the state government environment. The Director was appointed to the U.S. Government Accountability Office's Advisory Council on Government Auditing Standards, which reviews standards and recommends necessary changes.
- The internal auditors are professional and proficient. They are knowledgeable of and have a firm grasp of government and internal audit standards. They collectively hold professional certifications, including Certified Internal Auditor, Certified Government Auditing Professional, Certified Information Systems Auditor, and Certified Fraud Examiner.
- All internal audit staff members obtain at least 80 hours of continuing professional education each two-year period provided by recognized, professional auditing organizations. The division staff is implementing a succession plan that includes providing the deputy director with management and leadership training.
- There is an excellent and automated system for tracking and reporting the status of prior audit recommendations and communicating the percent of recommendations implemented on an annual basis.
- Internal Audit developed the *TxDMV Internal Audit Policies and Procedures Manual* and an audit template that incorporates procedures, excellent guides that provide direction to staff auditors, assuring consistent internal audit practices and compliance with audit standards.
- The Internal Audit Director participates in the State Agency Internal Audit Forum (SAIAF) and its Peer Review Committee. SAIAF is an organization designed to promote the role and importance of internal auditing and advancement of the internal auditing profession.
- Internal Audit uses audit software to manage, plan, execute, and report the results of audit engagements in a timely, efficient and effective manner.
- Internal Audit coordinates external audit engagements to assist management in responding to requests for information in a timely and complete manner.

REPORT DISTRIBUTION LIST

John H. Walker, III, Chairman of the Board

Raymond Palacios, Jr., Chairman of the Finance and Audit Committee

Whitney Brewster, Executive Director

Sandra Vice, Chief Audit Executive



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

84th Legislative Session: Final Report and Implementation Efforts

Prepared by

Government & Strategic Communications

November 13, 2015

Table of Contents

Introduction	3
Summary of Implementation Efforts	3
Single Sticker Continued Implementation	4
Conclusion.....	6

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 remain well underway, with a few highlights as noted below.

Before reviewing implementation efforts, please note Lieutenant Governor Dan Patrick released interim charges for Texas Senate committees to consider during the interim. There are several charges of note, including:

Senate Transportation Committee

- A review of transportation funding, including new and anticipated revenues for transportation projects.
- A review of the vehicle inspection program to determine the efficiency and effectiveness, including potential recommendations on how to compress or otherwise reduce the number of required inspections.
- A review of oversize/overweight vehicle regulations, penalties and fines, with a focus on potential recommendations to minimize impacts on the state's roadways and bridges.

Business and Commerce

- A review of all occupational licenses allowed under law to determine the extent to which continued state regulation and licensure is required to protect public health and safety. This will include consideration of methods to ensure the necessity of certain licenses and make recommendations for state licenses that should be repealed or transitioned to private-sector enforcement.

Speaker Joe Straus has not yet released interim charges for the Texas House of Representatives committees to consider, however the House Select Committee on Transportation Planning as created by the passage of HB 20 by Simmons (SP: Nichols) this past session met on November 9 to discuss their charges from the legislation. The committee requested TxDMV provide testimony related to current and projected revenue estimates available to the State Highway Fund from various sources, such as vehicle registration, titling, motor carrier permitting, and licensing fees. GSC will continue to monitor activities and provide regular updates.

Summary of Implementation Efforts

The Government & Strategic Communications Division continues to monitor the implementation of legislation from the 84th Legislative Session that impacts TxDMV. To date, the implementation activities have focused on legislation containing an effective date of

September 1, 2015 and completing the required portions of the legislation. Of the legislation passed by the 84th Legislature, here are some statistics on implementation efforts:

- 71 bills have been identified as requiring implementation on behalf of the department
- 8 bills are on hold due to prerequisite 3rd party actions such as specialty license plate deposits and actions from other agencies to establish guidelines or rules (such as contracting rules associated with SB 20 by Nelson)
- 15 bills have been fully implemented
- 48 bills are on schedule for full implementation
 - Of these bills, 18 have an effective date of January 1, 2016 or later as requested by the department to allow for programming and technical updates for full implementation
 - Of the legislation containing this later effective date, 10 bills are related to specialty license plates
 - There are three specialty license plate bills with delayed action that are on hold due to 3rd party deposit requirements
 - Of the 30 bills currently in effect, all are on schedule for full implementation with minor remaining actions such as revisions to forms and updates to manuals.

In addition, the TxDMV Board is scheduled to consider several items today related to implementation efforts, including:

- The adoption of rules amending Chapter 206 of the Texas Administrative Code implementing **HB 763 by S. King (SP: Perry)** limiting those who can petition agencies for rulemaking to only state residents or businesses.
- The adoption of rules amending Chapter 208 of the Texas Administrative Code implementing **HB 3337 by Clardy (SP: Nelson)** requiring agencies to only reimburse employees for tuition payments after the course is successfully completed and executive director approval.
- The consideration of proposed rules in Chapter 210 of the Texas Administrative Code related to contract management to comply with some of the provisions in **SB 20 by Nelson (SP: Price)**, the state contracting legislation.
- The consideration of proposed rules in Chapter 217 of the Texas Administrative Code which adds references to “autocycle” to reflect changes made to statute in **SB 449 by Bettencourt (SP: L. Gonzales)** allowing such vehicles to be registered and titled.

Single Sticker Continued Implementation

The department continues implementation efforts of **HB 2305 by E. Rodriguez (SP: Watson)**, **83rd Legislature** to inform Texas motorists of the requirements of the Two Steps, One Sticker – or “Single Sticker” – program where the vehicle registration sticker serves as proof of both

inspection and registration. During this first year of implementation; which began March 1, 2015 and concludes at the end of February, 2016; motorists simply need to insure a vehicle has obtained a valid inspection prior to renewing registration to help synchronize vehicle inspection and registration expiration dates. The goal for the second year of Single Sticker implementation is to effectively leverage existing mechanisms and relationships to increase consumer awareness about the new 90-day inspection requirement that begins March 1, 2016, and minimize confusion about the process of vehicle inspection and registration renewal.

In addition to utilizing stakeholder and legislative communication efforts through newsletters, magazines and other publications, an essential component of our efforts relates to the use of the existing eReminder system to provide information about vehicles needing an inspection no earlier than 90-days prior to registration renewal.

We are working on a system to send customized messages at 90- and 45-days prior to registration expiration with the inspection requirement reminder, in addition to the existing three week eReminder currently distributed to customers signed up for the service. Staff is also working on opportunities to highlight the eReminder service availability to motorists and sign up more customers for the service through push cards, social media efforts, and other collateral. We have seen a tremendous year-over-year increase in the number of emails sent via the eReminder system since 2012.

In addition, staff will be utilizing various social media outlets, such as Twitter and Facebook, to highlight Single Sticker requirements, promote the eReminder service, and post inspection requirements at the start of each of the 90-day inspection/registration periods. On September 1, 2015, we began promoting the eReminder service as well as posting images of vehicle registration stickers expiring at the end of the month. Our messaging will expand in January 2016 to include calls to action for motorists with March 2016 renewal dates.

This aggressive social media promotion schedule will be complemented by traditional media efforts, including press releases, articles provided to trade magazines (e.g., TIADA, TADA, TACA), and TxDMV responses to media enquiries. Along with print media, we will pursue no-cost PSA placement on both public and commercial broadcasting radio stations.

Customizable press releases were utilized by the County Tax Assessor-Collectors to great effect during the first year of the Single Sticker campaign, particularly in rural areas, in both traditional and online/new media formats. We plan to continue to provide the counties with press releases that can be easily tailored to their needs.

Starting in December, we plan to compliment the above mentioned efforts through the purchase of geotargeted advertising (sponsored tweets) on Twitter, as well as purchasing geotargeted advertising (sponsored posts, banner ads) on Facebook. We propose to maximize the number of ad impressions by focusing on the smaller media markets in the state throughout the campaign, with targeted statewide ads launched at key points along the

campaign timeline. We are also reviewing options for additional paid advertising opportunities and will provide the updates as initiatives progress further.

Conclusion

As shown above, several pieces of legislation passed during the 84th Session to support the department's ability to effectively deliver customer service in an accountable and efficient manner. 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.



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



Enterprise Projects Quarterly Report

Enterprise Project Management Office

November 13, 2015



RTS Refactoring Project

Status

Behind Schedule / Within Budget

Achievements to Date

- ✓ Refactored RTS and Enterprise Reporting (Cognos) are operational in 254 counties
- ✓ Maintenance of Refactored RTS (work stream 4) Releases 1 and 2

Work in Progress

- ❑ Migrate off mainframe onto servers in state data center services (DCS) 11/20/2015 – 11/22/2015
- ❑ Start public information campaign on 11/6/2015
- ❑ Proprietary contract for additional hours required for work stream 4
- ❑ Work Stream 4 Releases 3 through 11

Schedule

08/15/2013 - 12/31/2018

Budget

\$72M

Risks / Issues

- Mainframe migration scheduled for 8/3/2015 was delayed.
- New target date for mainframe migration, 11/20/2015, is at risk due to instability of batch jobs.
- Public Information campaign start date is at risk due to instability revealed by testing.
- Mitigation Strategy: Invoke critical path tactical plan, overtime, daily executive updates, readiness prep, monitor for 3-4 consecutive successful batch jobs, go/no go decisions.



Single Sticker Phase 2

Status

On Schedule / Within Budget

Achievements to Date

- ✓ Inter-Agency Executive Partner Group Kickoff
- ✓ Inter-Agency Project Team Meetings
- ✓ Requirements for systems

Work in Progress

- Planning Public Information Campaign
- Coding new Renewal Notices
- Printing new Mail-out Inserts
- Requesting contract approvals
- Design/Coding for systems

Schedule

5/12/2015 – 3/1/2016

Budget

\$2,380,000

Risks

- RTS schedule may slip due to RTS Refactoring Project delays.
- TxIRP schedule may slip due to dependency on external contract.
- Mitigation Strategy: Added vendor resources and non-automated work-arounds.



webDealer

Status

On Schedule / Within Budget

Achievements to Date

- ✓ New Cars
- ✓ Used Cars
- ✓ Document Management
- ✓ Commercial Fleet Buyers
- ✓ Adoption Improvements I

Work in Progress

- ❑ Adoption Improvements II – 1/2016
- ❑ Salvage – 5/2016
- ❑ E-Tags – 7/2016
- ❑ Future Phases: e-Titles, Centralized Payments, Private Party

Schedule

9/1/2012 – 2/1/2017

Budget

\$9,693,482

\$7,018,250 (External Costs)

\$2,675,232 (Internal Costs)

Risks

- Schedule may slip due to RTS Refactoring Project (mainframe migration), Single Sticker II, and resource constraints.
- Mitigation Strategy: Additional services from contractors/vendors.



LACE Project

Status

On Schedule / Within Budget*

Achievements to Date

- ✓ Services contract awarded to Deloitte
- ✓ IV&V contract awarded to Software Engineering Services
- ✓ Project Team established
- ✓ Project kickoff held

Work in Progress

- ❑ Requirements – 12/29/2015
- ❑ Purchasing software licenses
- ❑ Data Cleansing

Schedule

09/01/2015 – 02/28/2017*

Budget*

\$13,060,511

Risks / Issues*

- Project is behind original schedule due to agency priorities and time to procure.
- All proposals received exceeded original project budget.
- Mitigation Strategy: Obtained board approval for executive director to approve increased budget and contracts. Used agency governance process to rebaseline budget and schedule. Reported to Texas Quality Assurance Team (TxQAT).

**Schedule and budget were rebaselined. End date was 02/2016 and budget was \$5M. TxQAT considers this behind schedule and over budget but they will explain issues in any state reports.*



Closed Projects

- ✓ **RTS Data Purification**
- ✓ **CAPPS HR Phase I (Time & Leave)**
- ✓ **Temporary Permits**
- ✓ **Single Sticker Phase I**
- ✓ **CAPPS Finance**
- ✓ **Active Directory**



DATE: November 13, 2015
Continued From: N/A
Action Requested: APPROVAL

To: Texas Department of Motor Vehicle Board
From: Jimmy Archer, Director, Motor Carrier Division
Agenda Item: 5.B.1
Subject: Commercial Vehicle Information Systems & Network (CVISN) Contractor Contract Renewal

RECOMMENDATION

The Motor Carrier Division (MCD) is seeking Board approval to allow the Executive Director to renew and add \$334,000 to the contract with Southwest Research Institute (SWRI), a staff-recommended contractor that provides specialized assistance and consulting with the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Vehicle Information Systems & Network (CVISN) program.

PURPOSE AND EXECUTIVE SUMMARY

TxDMV uses SwRI's CVISN-specific expertise to accomplish the goals and requirements of the FMCSA-sponsored CVISN program at this time, particularly as a requirement of the federal grants awarded to the state. We need support in maintaining Core & Expanded CVISN compliance and architecture, developing new projects under Expanded CVISN, and maintaining and updating the state's Commercial Vehicle Information Exchange Window (CVIEW).

TxDMV has been using SwRI's expertise and services to assist in CVISN projects and responsibilities since January 2012. SWRI is also a contractor of the Texas Department of Transportation (TxDOT) performing work on the Texas Intelligent Transportation System (ITS). The knowledge attained through SwRI's TxDOT work along with their CVISN expertise has made them an excellent contractor in assisting with our CVISN program.

FINANCIAL IMPACT

We have funds of \$204,000 set aside for this from one Federal CVISN grant. This is a 50/50 grant where the FMCSA has awarded half of these funds and the state has matched the other half. We will also be using Motor Carrier Division funds of \$130,000 for monthly operational expenses through August of 2017.

BACKGROUND AND DISCUSSION

The FMCSA's CVISN program provides a framework or architecture that enables state and federal government agencies, the motor carrier industry, and other parties engaged in commercial vehicle operations safety assurance and regulation to exchange and use information to improve safety and security, and to conduct business transactions electronically. The benefits of participating in CVISN are improved productivity of motor carriers, commercial vehicles and their drivers, improved safety & security in the state's ITS, improved safety and effectiveness of safety programs through targeted enforcement, and reduced federal/state and industry regulatory and administration costs.

Texas joined the CVISN program in 2001. The passage of Senate Bill 1420 in 2011 transferred the MCD of TxDOT along with the CIVSN program to the TxDMV. The TxDMV became the CVISN designated lead agency for the state in 2012.

State agencies involved in Texas' CVISN program as members of the state's working group and steering committee are: TxDMV, TxDOT, Texas Department of Public Safety and the Texas Comptroller's Office. The agencies work together under a Memorandum of Understanding (MOU) signed by all as required by FMCSA. The Texas Trucking Association and ABF Freight System (as industry reps) are also members. Members from TxDMV include directors and staff of MCD, ENF, VTR, and the CIO.



DATE: November 13, 2015
Continued From: N/A -
Action Requested: APPROVAL

To: Texas Department of Motor Vehicle Board
From: Judy Sandberg, Director, Enterprise Project Management Office
Agenda Item: 6.B.2
Subject: Single Sticker Phase II Programming for Texas International Registration Plan (TxIRP)

RECOMMENDATION

The Enterprise Project Management Office (EPMO) and Motor Carrier Division (MCD) seek Board approval to issue a Statement of Work (SOW) and contract award for vendor services to revise the Texas International Registration Plan (TxIRP) system to be in compliance with HB 2305 and HB 1888 and to enable real-time communication with the inspection database via secure web services.

PURPOSE AND EXECUTIVE SUMMARY

TxIRP is maintained by a third party vendor. All maintenance or enhancements to TxIRP must be outsourced to meet the Single Sticker Phase II implementation timeline (March 2016).

FINANCIAL IMPACT

Not to exceed approved budget.

BACKGROUND AND DISCUSSION

The Texas Department of Motor Vehicles (TxDMV) plans to issue a proprietary Statement of Work (SOW) to enhance TxIRP by automating the verification of vehicle inspection records.

If approved, this enhancement will provide increased customer service through real-time electronic query of the inspection database, increased efficiency in the verification of inspection and emission compliance, streamlining the process and management of vehicle inspection stickers reducing cost, and potentially reducing fraud by electronic verification of inspection.

If denied, the agency will continue the current manual process for management of vehicle inspections and will not realize increased efficiency in the verification of inspection and emission compliance. The current volume of work exceeds staff capacity when the manual process is used. This may result in a longer time to process registration requests and the department may be out of compliance with HB 2305 for incomplete actions.



DATE: November 13, 2015
Continued From: N/A -
Action Requested: APPROVAL

To: Texas Department of Motor Vehicle Board
From: Eric Obermier, CIO, IT Services Division
Judy Sandberg, Director, Enterprise Project Management Office
Agenda Item: 6.B.3
Subject: TxDMV – TxDOT Technology Separation

RECOMMENDATION

The Information Technology Services Division (ITSD) and Enterprise Project Management Office (EPMO) seek Board approval to engage a technology services vendor to facilitate completion of the technology infrastructure separation from the Texas Department of Transportation (TxDOT).

PURPOSE AND EXECUTIVE SUMMARY

TxDMV has fifty-five (55) servers remaining in the TxDOT technology infrastructure. These servers run a variety of applications and services such as eTags, LACE, and network file storage. While TxDMV has separated much of the technology infrastructure from TxDOT since its creation in 2009, a significant amount of effort remains. Complete technology infrastructure separation from TxDOT will position TxDMV to improve services to its customers and increase overall systems availability.

A contract project manager will oversee the project in accordance with direction from the executive sponsor/chief information officer (CIO) and will hold the technology services vendor accountable. A technology services vendor, under direction from the CIO and project manager, will assist TxDMV with moving its applications and databases from Texas Department of Transportation (TxDOT) supported systems to TxDMV supported systems. Implementation will be planned in two phases. Phase 1, the project manager and services vendor will develop a schedule to separate TxDMV applications/databases from TxDOT infrastructure/network and provide the pricing structure. Phase 2 will include the execution of a Phase 1 plan approved by the CIO.

FINANCIAL IMPACT

Funding for the remaining technology infrastructure separation effort comes from the one dollar automation fee included in automobile registration renewal transactions. TxDMV will utilize a Request for Offer (RFO) publication to select a technology services vendor to complete the remaining separation efforts.

BACKGROUND AND DISCUSSION

TxDMV has one-hundred and ninety-five (195) servers in the consolidated data centers managed by the Texas Department of Information Resources (DIR) under the Data Center Services (DCS) program. As a result of the remaining technology separation efforts from TxDOT, additional servers will be provisioned within the consolidated data centers to house the applications and services still shared with or managed by TxDOT. As technology separation efforts progress, fees paid to TxDOT for the associated servers under the Memorandum of Understanding (MOU) will decrease, eventually being eliminated when complete technology separation is realized.

TxDMV appropriations for DCS have been aligned in the fiscal year 2016 and 2017 budgets to cover the additional charges anticipated as a result of the increased server counts in the consolidated data centers.



Completion of the technology separation from TxDOT requires assistance from a technology services vendor. TxDMV's existing technical and project management staff are already working on high priority projects and initiatives already in flight. Failure to complete technology separation from TxDOT will adversely TxDMV and its customers due to availability of aging servers and associated infrastructure. Many systems already require repeated server reboots to keep applications running, sometimes resulting in unexpected outages during the business day. These reactive support activities are likely to be required more frequently in the upcoming biennium, and some servers would likely not be recoverable if a hardware failure occurs due to unavailability of replacement parts.



DATE: November 13, 2015
Continued From: N/A -
Action Requested: APPROVAL

To: Texas Department of Motor Vehicle Board
From: David D. Duncan, General Counsel
Agenda Item: 6. B. 4.
Subject: Revised Resolution - Agency Contracts 2016 Fiscal Year

RECOMMENDATION

To amend the August 14, 2015, Resolution No. 15-034, Approving the Texas Department of Motor Vehicles FY 2016 Operating Budget, to state that the Board "approves delegation to the executive director for negotiation, execution, and signature of the contracts listed on page 31 of the Fiscal Year 2016 Operating Budget as presented to the Board in the August 14, 2015 meeting."

PURPOSE AND EXECUTIVE SUMMARY

To amend the resolution for the board to expressly delegate authority to sign contracts to the Executive Director.

BACKGROUND

In the August 14, 2015 Board meeting, the TxDMV Board approved a motion and accompanying resolution regarding a group of essential agency contracts for the 2016 fiscal year. The motion and resolution omitted certain key language from Senate Bill 20 (84th Legislature, Regular Session, 2015, Sec. 18), which requires that all contracts over \$1 million be approved by the board and signed by the presiding officer unless specifically delegated. The wording of the August motion and resolution stated that the Board "approved" of the contracts, but did not expressly delegate the authority to sign. Staff recommends that the Board amend their resolution from the August 14, 2015 meeting to state that the Board "approves delegation to the executive director for negotiation, execution, and signature of the contracts listed on page 31 of the Fiscal Year 2016 Operating Budget as presented to the Board in the August 14, 2015 meeting."

DATE: November 13, 2015
Continued From: N/A
Action Requested: APPROVAL

To: Texas Department of Motor Vehicle Board
From: Jeremiah Kuntz, Vehicle Title and Registration Division
Agenda Item: 6. D.
Subject: Specialty Plate Design

RECOMMENDATION

The Vehicle Title and Registration Division (VTR) seeks Board approve or denial of the proposed vendor plate designs submitted for consideration.

PURPOSE AND EXECUTIVE SUMMARY

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs is in Texas Transportation Code Section(s) [504.851](#) (g) and (g-1) (i)). The board's approval criteria is clarified in Administrative Code [§217.52](#), *Marketing of Specialty License Plates through a Private Vendor*.

The renewed vendor contract specifies (paragraph #11, *Inventory Management Controls*) that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval in order for the plate to be produced. (Equally, existing plates must maintain 200 registered in order to stay in the program.) My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for pre-paid orders. My Plates confirms when 200 pre-paid orders are achieved. (FYI, since the contract with My Plates was renewed in March 2014; the board has contingently-approved eleven vendor plates. Of the eleven, five did not achieve the required 200 commitments and were not produced.)

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there exists any unforeseen public concerns about a plate's design. The department publishes a 10-day "like/dislike/comment-by-email" survey, called an E-view, on its website. Although the survey counts the public's "likes" and "dislikes", it is unscientific, and is not used as an indicator of a plate's popularity. (The vendor's OU plate received thousands of E-view "dislikes" in 2010 (presumably because of college football rivalry), has since gone on to sell over 1,000 plates.

OCTOBER 2015 E-VIEW

No negative comments were received during the public comment period in October 2015. Three plates were presented: two from the vendor: Southern Miss, and Classic Black, and one, Childhood Cancer Awareness, from a non-profit organization. As a result of the public's comments on the pink color in its proposed design, the non-profit withdrew the cancer plate from the board's consideration with plans to redesign and resubmit in the future. A housekeeping note: the vendor re-named Classic Black after it underwent public comment under the name "All Black".

PROPOSED PLATES

Classic Black

At 10/27/2015, My Plates states that 517 people have registered their interest in this plate. In the E-view, 259 people liked, and 56 did not like this design.



Southern Miss

At 10/27/2015, My Plates states that 133 people have registered their interest in this plate. In the E-view, 88 people liked and 155 did not like this design.





MEMORANDUM

TO: TxDMV Board Members **DATE:** November 13, 2015
FROM: Jeremiah Kuntz, Director, VTR
SUBJECT: Specialty License Plate Recommendation

The Texas Department of Motor Vehicles Board is responsible for approving or declining all proposed vendor and non-vendor specialty license plate applications pursuant to Texas Administrative Code, Title 43, Part 10, Chapter 217, Subchapter B, §217.52. Consideration of two specialty plate designs will be on the board agenda for the November 2015 meeting.

The plates being proposed: Southern Miss and Classic Black by My Plates, the specialty license plate marketing vendor.

The applications presented in this packet have been reviewed and certified complete; all legislatively required processes have been met. The rules do not allow the board to consider incomplete applications. Board members may request additional information from TxDMV to reach a decision. The resolution prepared for the meeting provides for approval or disapproval of the specialty license plates.

The attachment displays the design of the specialty license plates.

If you have questions or need additional information, please call me at (512) 465-4023.

Attachment

Attachment

Proposed Specialty License Plates	Design Graphics
1. Southern Miss	 <p>The image shows a white license plate with 'TEXAS' at the top, a small star on the right, and a Southern Miss logo on the left. The main text is 'BB01BB' in large black letters. At the bottom, it says 'SOUTHERN MISS' in orange and black.</p>
2. Classic Black	 <p>The image shows a black license plate with 'TEXAS' at the top, a star on the left, and a small star on the right. The main text is 'BB01BB1' in large white letters. At the bottom, it says 'THE LONE STAR STATE' in white.</p>





AGENCY # 608

**SUMMARY OF PROPOSED AMENDMENTS TO THE
RULES FOR CONSIDERATION BY
THE TEXAS DEPARTMENT OF MOTOR VEHICLES BOARD**

November 13, 2015

- 1. Adoption of Rules under Title 43, Texas Administrative Code:**
 - a. Chapter 206, Management** – Section 206.41, Procedure for Petition to Adopt Rules, §206.41 - Would be amended to comply with implementation of HB 763 regarding a petition to a state agency for the adoption of a rule. House Bill 763 added the requirement that an “interested person” must be a resident of Texas or an entity that is located in Texas, the adopted amendment to §206.41 requires the petitioner to provide a physical address in Texas. The department will use the physical address to determine whether a petitioner is an “interested person.”
 - b. Chapter 208, Employment Practices** – Section 208.12, General Standards - Would be amended to comply with implementation of HB 3337. The amendment requires the executive director to authorize reimbursement to an administrator or employee prior to tuition reimbursement.
 - c. Chapter 215, Motor Vehicle Distribution** - Rule Review, Government Code, §2001.039 Repeals/Amendments. Would be amended to Subchapter A, §215.1 and §215.2 replace terminology with defined terms, delete definitions already defined by statute, revise existing terminology for consistency with other department rules, correct referenced citations, and delete language that duplicates statute. The reasons for initially adopting §§215.3 - 215.6 no longer exist and are repealed.
 - d. New Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders** – New Subchapters A - F, Sections 221.1 – 221.115 Repeal Chapter 217, Subchapter I, Salvage Vehicle Dealers. Would be amended to repeal Chapter 217, Subchapter I, Salvage Vehicle Dealers. Simultaneously, the department is adopting new Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, which replaces Chapter 217, Subchapter I.
 - e. Chapter 219, Oversize and Overweight Vehicles and Loads** - Subchapters A - E, G and H – Would be amended 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 delete language that duplicates and comply with certain federal size and weight laws and regulations to receive federal highway funding.
 - f. Chapter 217, Vehicle Titles and Registration** –Section 217.56, Registration Reciprocity Agreements - Adopt by reference the future amendments to the International Registration Plan (IRP) that become effective on January 1, 2016
- 2. Proposal of Rules under Title 43, Texas Administrative Code:**
 - a. Chapter 206, Management** - Subchapter E, Advisory Committees – Would remove inapplicable language regarding reimbursement of expenses and language relating to the applicability of certain laws, policies, and ethical standards of conduct. The proposed new §206.94 and §206.95, set out the purpose and tasks of the advisory committees.

- b. **Chapter 210, Contract Management** - New Section 210.3, Contract Monitoring Program – Would establish a procedure to identify each contract that requires enhanced contract or performance monitoring.
- c. **Chapter 217, Vehicle Titles and Registration** - Section 217.3, Motor Vehicle Titles – The amendments are proposed to address the consequences of 7 Senate Bill 449, 84th Legislature, Regular Session, 2015, which 8 added autocycles to those items that are considered to be motor vehicles. The amendments also clarify the titling requirements of certain house trailer-type vehicles and assembled vehicles.

ADOPTION PUBLICATION OF AMENDMENT TO 43 TAC SECTION 206.41, RELATING TO PETITION

Description

This order authorizes the adoption of an amendment to Chapter 206, Management, Subchapter C, Procedure for Petition to Adopt Rules, §206.41, Petition.

Background

The adopted amendment to §206.41 implements House Bill 763, 84th Legislature, Regular Session, 2015, regarding a petition to a state agency for the adoption of a rule.

Only an “interested person” may petition a state agency for the adoption of a rule. Because House Bill 763 added the requirement that an “interested person” must be a resident of Texas or an entity that is located in Texas, the adopted amendment to §206.41 requires the petitioner to provide a physical address in Texas. The department will use the physical address to determine whether a petitioner is an “interested person.”

Other Comments

There are no fiscal implications related to the adopted amendment.

If the board adopts the amendment during its November 13, 2015, open meeting, staff anticipates:

- Publication of the adoption in the December 4, 2015, issue of the *Texas Register*; and
- An effective date of the rule of December 10, 2015.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES
RESOLUTION APPROVING ADOPTION
AMENDMENT TO 43 TAC SECTION 206.41, RELATING TO PETITION

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt the amendment to Chapter 206, Management, Subchapter C, Procedure for Petition to Adopt Rules, §206.41, Petition.

The preamble and the 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 amendment is adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

David D. Duncan, General Counsel
Texas Department of Motor Vehicles

Order Number: _____

Date Passed: November 13, 2015

Texas Department of Motor Vehicles
Chapter 206, Management

Page 1 of 2

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts an
3 amendment to Chapter 206, Management, Subchapter C, Procedure
4 for Petition to Adopt Rules, §206.41, Petition, without changes
5 to the proposed text as published in the September 4, 2015,
6 issue of the *Texas Register* (40 TexReg 5753). The amended
7 section will not be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENT

10 The amendment to §206.41 implements House Bill 763, 84th
11 Legislature, Regular Session, 2015, regarding a petition to a
12 state agency for the adoption of a rule. Government Code,
13 §2001.021(a) states an "interested person" may petition a state
14 agency to adopt a rule. House Bill 763 amended §2001.021, by
15 adding the requirement that an "interested person" must be
16 either a resident of this state or a business entity,
17 governmental subdivision, public organization, or private
18 organization located in this state.

19

20 The amendment to §206.41 requires the petitioner to include
21 their Texas physical address in their written request for the
22 adoption of a rule. The department will use the physical

Texas Department of Motor Vehicles
Chapter 206, Management

Page 2 of 2

1 address to determine whether a petitioner is an "interested
2 person."

3

4 COMMENTS

5 No comments on the proposed amendment were received.

6

7 STATUTORY AUTHORITY

8 The amendment is adopted under Transportation Code, §1002.001,
9 which provides the Board of the Texas Department of Motor
10 Vehicles with the authority to adopt rules that are necessary
11 and appropriate to implement the powers and duties of the
12 department under the laws of this state; and more specifically,
13 Government Code, §2001.004(1), which requires state agencies to
14 adopt rules of practice stating the nature and requirements of
15 all available formal and informal procedures, and Government
16 Code, §2001.021(b), which requires state agencies by rule to
17 prescribe the form for a petition under §2001.021 and the
18 procedure for its submission, consideration, and disposition.

19

20 CROSS REFERENCE TO STATUTE

21 Government Code, §2001.021.

1 SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

2 §206.41. Petition.

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

**ADOPTION PUBLICATION OF AMENDMENT TO 43 TAC SECTION 208.12,
RELATING TO GENERAL STANDARDS**

Description

This order authorizes the adoption of an amendment to Chapter 208, Employment Practices, §208.12 General Standards.

The amendment requires the executive director to authorize reimbursement to an administrator or employee prior to tuition reimbursement.

Background

The adopted amendment is necessary to implement House Bill 3337, 84th Legislature, Regular Session, 2015, which amends, in part, Government Code, §656.048(b), requiring a state agency to adopt rules requiring that the executive head of the agency authorize tuition reimbursement payments of an administrator or employee, prior to reimbursement.

Other Comments

There are no significant fiscal implications related to the adopted amendment.

If the board adopts the amendment during its November 13, 2015, open meeting, staff anticipates:

- Publication of the adoption in the December 4, 2015, issue of the *Texas Register*; and
- An effective date of the rule of December 10, 2015.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES
RESOLUTION APPROVING ADOPTION AMENDMENT
43 TAC SECTION 208.12, RELATING TO GENERAL STANDARDS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt the amendment to Chapter 208, Employment Practices, §208.12, General Standards.

The preamble and the 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 amendment is adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

Sharon Brewer, Director
Human Resources Division

Order Number: _____

Date Passed: November 13, 2015

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts an
3 amendment to Chapter 208, Employment Practices, §208.12, General
4 Standards, without changes to the proposed text as published in
5 the September 4, 2015, issue of the *Texas Register* (40 TexReg
6 5754). The amended section will not be republished.

7

8 EXPLANATION OF ADOPTED AMENDMENT

9 The amendment to §208.12 is adopted to implement House Bill
10 3337, 84th Legislature, Regular Session, 2015, which amends, in
11 part, Government Code, §656.048(b), requiring a state agency to
12 adopt rules requiring that the executive head of a state agency
13 authorize tuition reimbursement payments of an administrator or
14 employee of the agency, prior to reimbursement.

15

16 The amendment to §208.12, General Standards, implements House
17 Bill 3337 by adding subsection (d)(4), which establishes that
18 the executive director must authorize tuition reimbursement to
19 program participants prior to the reimbursement.

20

21 COMMENTS

22 No comments on the proposed amendment were received.

23

1 STATUTORY AUTHORITY

2 The amendment is adopted under Transportation Code, §1002.001,
3 which provides the board of the Texas Department of Motor
4 Vehicles with the authority to establish rules for the conduct
5 of the work of the department; and more specifically, Government
6 Code, §656.048(b), which requires a state agency to adopt rules
7 requiring that before an administrator or employee of the agency
8 may be reimbursed under Government Code, §656.047(b), the
9 executive head of the agency must authorize the tuition
10 reimbursement payment.

11

12 CROSS REFERENCE TO STATUTE

13 Government Code, §656.047.

1 SUBCHAPTER B. EMPLOYEE TRAINING AND EDUCATION

2 §208.12. General Standards.

3 (a) Applicability. This section establishes standards applicable
4 to all program participants.

5 (b) Eligibility and reimbursement. An employee must meet the
6 following requirements to be eligible for an assistance program. The
7 employee must:

8 (1) be a full-time, regular status employee who has
9 been continuously employed for one year at the time of
10 application;

11 (2) maintain satisfactory job performance;

12 (3) not have any disciplinary action for six months
13 prior to applying or during the program; and

14 (4) sign a commitment to employment for six months to
15 begin the month following reimbursement.

16 (c) Scope of assistance.

17 (1) Eligible expenses.

18 (A) The department may pay the cost of fees on a
19 per-hour basis, in an amount equal to the latest average

20 semester hour cost for Texas public colleges and universities,
21 as reported by the Texas Higher Education Coordinating Board.

22 The participant will be responsible for paying the difference in
23 cost.

1 (B) The department may provide reimbursement for
2 mandatory fees.

3 (2) Use of state property. A program participant may
4 not use duty hours for attending classes, studying, or other
5 activities associated with the program. A program participant
6 may use state equipment for activities related to coursework
7 with supervisor approval.

8 (3) Retaken courses. The department will not reimburse
9 a program participant for a course taken more than once.

10 (d) Conditions of reimbursement.

11 (1) Within four weeks of receipt of grades, a program
12 participant shall provide the department with:

13 (A) a passing grade report or transcript
14 verifying the passing course credit; and

15 (B) an itemized statement of tuition and
16 mandatory fees.

17 (2) The department may require an employee to
18 reimburse the department for tuition if the employee does not
19 complete the employment commitment.

20 (3) The executive director shall adopt policies
21 related to education and training for employees.

1 (4) Before a program participant may be reimbursed
2 under this section, the executive director must authorize the
3 reimbursement payment.

**ADOPTION PUBLICATION OF REPEALS AND AMENDMENTS
43 TAC CHAPTER 215, MOTOR VEHICLE DISTRIBUTION**

Description

This order authorizes the adoption of repeals and amendments in Chapter 215, Motor Vehicle Distribution, Subchapters A - J.

Background

The department conducted a review of its rules to comply with Government Code, §2001.039.

The adopted changes:

- 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

Additional amendments to Subchapter A, *General Provisions*, add and define the term "GDN"; clarify the statutory authority of a final order authority and motion for rehearing authority; 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 as the mailing address provided to the department when the license holder applies or renews its license; 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; and repeal §§215.136, 215.142, and 215.143 because they are adequately addressed by statute. The repeal of §215.133 has been withdrawn.

An additional amendment to Subchapter F, *Lessors and Lease Facilitators*, repeals §215.172 because all existing definitions are being deleted 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 "new motor vehicle" and "savings claim or discount"; provide that a manufacturer's suggested retail price (MSRP) must be the actual MSRP set by the manufacturer when advertised by a dealer; incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250; replace certain textual language with graphics; 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 as the mailing address provided to the department when the license holder applies or renews its license; 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 as the mailing address provided to the department when the license holder applies or renews its license; 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.

Other Comments

There are no significant fiscal implications related to the proposed amendments and repeals.

The proposal was published in the *Texas Register* on June 19, 2015 and June 26, 2015. The comment period closed on July 20, 2015. Comments were received from:

1. Texas Automobile Dealers Association "TADA"
2. Texas Independent Automobile Dealers Association "TIADA"
3. Laird M. Doran, Gulf States Toyota, Inc. "GST"
4. Lloyd E. Ferguson "Ferguson"

Comments Received:

§215.1 - GST commented that the proposed change to remove "party in interest" might be interpreted to expand the powers granted to the department by statute.

RESPONSE: Changes were made to address this comment.

§215.2 - GST commented that removing "party in interest" and substituting "party" may bring confusion as to who can bring a claim.

RESPONSE: The use of the term “party” is consistent throughout the statutes and rules governing the TxDMV. No changes were made.

§215.22 - GST commented that removing the term “party in interest” may broaden the scope of prohibited ex parte communications.

RESPONSE: The department disagrees that substituting the term “party” for “party in interest” somehow broadens the scope of prohibited communications. No changes were made.

§215.24 - Ferguson commented that the addition of language requiring that a Petition cite the “appropriate law” would allow a Petitioner to drag the board into a matter outside of its jurisdiction.

RESPONSE: No change was made as the current and proposed language require the department to make a “determination that a hearing is appropriate under the applicable Occupations Code, etc.”

§215.30 - GST's comment inquired whether there might be an alternative to a certificate of service for electronic filings.

RESPONSE: No changes were made as the amended language mirrors the Texas Administrative Code.

§215.35 - GST commented that the elimination of the requirement that a reply be sworn to by a party could produce bad consequences.

RESPONSE: The proposed amendment mirrors SOAH's requirements. No changes were made.

§215.40 - GST commented that replacing the term “exceptional circumstances” with “good cause” when considering a request for a continuance is problematic.

RESPONSE: GST's preferred terminology creates a higher, often more difficult, burden to meet. No changes were made.

§215.41 - GST questioned the removal of the word “impartial” from the type of hearing that a hearing officer will conduct.

RESPONSE: The proposed rule requires that a hearing be “fair” and is sufficient. No changes were made.

§215.56 - GST commented that there should still be a deadline for amicus brief.

RESPONSE: Changes were made to address this issue.

§215.58 - GST commented that this section could be misinterpreted.

RESPONSE: Changes were made to clarify when the director is authorized to issue a final order in a contested case.

§215.83 - GST commented regarding what happens to dealer plates in a buy-sell.

RESPONSE: This is addressed in §215.87.

§215.83 - Ferguson expressed concern about the requirement of a "complete" rather than "sufficient" renewal application.

RESPONSE: The amendments were changed to "sufficient" together with the definition.

§215.102 - Ferguson commented regarding impact on the requirement to be licensed as a representative.

RESPONSE: The amendments to this section were withdrawn.

§215.104- GST questioned whether a change in general manager required a business entity amendment application.

RESPONSE: This is not a critical change and can be addressed at time of renewal. No changes were made.

§215.105 - GST commented in support of the rule amendment involving “Notification of License Application; Protest Requirements,” which now requires that a protesting dealer assert how he or she meets the standing requirements in §215.119.

§215.112 - TADA commented on the proposed rule, “Motor Home Show Limitations and Restrictions,” stating that the proposed amendment would allow a motor home dealer, on the same day that sales are suspended to “discuss finance options.” TADA requested its removal. RESPONSE: Changes were made to remove this from the amendments.

§215.113 - Ferguson commented suggesting adding language that on showing of good cause, the 30-day requirement can be waived for failure to close on the buy-sell agreement.

RESPONSE: Changes were made to address this comment.

§215.135 - TADA requested a typographical error be corrected.

RESPONSE: The requested error has been changed.

§215.139 - TADA commented there was an error in the graphic showing one dealer plate allowed instead of five.

RESPONSE: The department agrees with TADA comment regarding “Metal Dealer License Plate Allocations, in that the allocation should have stated the correct number of five, not one. This change has been made.

§§215.141, 215.144, 215.147 - TADA made several comments throughout the proposed rules regarding its objection to the adding of “peace officer” as a person permitted to examine and copy a dealer’s records. TIADA also commented and/or questioned this addition.

RESPONSE: The department agrees to the removal of “peace officer” from several proposed amended sections of the rules.

§215.145 - Ferguson commented regarding succession following the death of a franchised dealer clarification.

RESPONSE: Changes were made to clarify this language.

§215.154 - TADA requested that deleted language remain to allow a dealer’s temporary tag to be used on a courtesy vehicle. TADA also commented regarding removing amendments that were deleted regarding a light truck not considered to be a laden commercial vehicle when mounted with a camper unit or towing a trailer for recreational purposes.

RESPONSE: The department declines to make a change on dealer's temporary tags as such practice is not allowable under the Transportation Code. Also, no changes were made to vehicles mounted with a camper or towing a trailer for recreational purposes is specific to allowable uses for dealer plates, not dealer temporary tags.

§215.244 - TADA suggested adding the word “new” motor vehicle to the definition of “saving claim or discount.”

RESPONSE: No changes were made as the definition of “savings claim or discount” does not specifically mention “new” vehicles because it is a broad explanation meant to cover the terms generally. The term also applies to “used” vehicles even in the context of a violation.

§215.245 - TADA commented that the proposed language relating to “Availability of Motor Vehicles” did not track the language as set out in the Texas Deceptive Trade Practices Act.
RESPONSE: The department does not disagree with the language proposed by TADA to address this concern and changes have been made in the adopted rules.

§215.246 - TADA commented in support of amendments to this section.
RESPONSE: None.

§215.248 - TADA’s commented regarding an amendment to include “an internet or an online streamed advertisement via an online service.”
RESPONSE: Changes were made to add this language.

§215.250 - TADA commented suggesting language to include "in an advertisement," and to make revisions to the graphic to replace "Advertised Price" with "MSRP."
Ferguson commented concern that the proposed language would prohibit a dealer from advertising a savings claim where a dealer added an option.
RESPONSE: Changes were made to add language to clarify that the rule is referring to an advertisement. Figure: §215.250 (h)(2) was revised to replace "Advertised Price" with "MSRP," and changes were made to clarify Figure: §215.250(j).

§215.264 - Ferguson suggested that the Internet be an option for obtaining additional information about a lease.
RESPONSE: No changes were made as the Federal Trade Commission has not provided an option at this time.

§215.305 - TADA commented suggesting adoption by rule of the Supreme Court guidelines "Ethical Guidelines to Mediator."
RESPONSE: No changes were made as these are guidelines only.

§215.314 - TADA and TIADA suggested that certain language from the Texas Rules of Civil Procedure be added to the department’s rule on “Cease and Desist” Orders.
RESPONSE: The department declines to adopt the suggested changes as the current rule on “Cease and Desist” Orders sufficiently sets forth the prerequisites for “Cease and Desist” Orders.

The department made additional changes as follows:

- §215.2 - adding definition of "new motor vehicle."
- §215.41 - renumber per *Texas Register* preference.
- §215.82 - changed to include department's practice to require plate application when replacement plates are requested.
- §215.83 - changed to implement Senate Bill 1307, 84th Legislature, to extend exemption to all military service members on "active duty."
- §215.103 - changed to include reference to Chapter 2301 instead of referencing only §2301.652.
- §215.105 - changed to add "franchised" as protests only apply to franchised dealers; removed subsection (c) as proposed as the amendment created a burden on the department.
- §215.112 - references to "representing" and "represent," were changed for clarification purposes to "participating with" and "participate with," as well as reference to "products" changed to "motor homes."
- §215.115 - removed reference to "peace officers" inspection of records.
- §215.135 - clarification change made from "owned" to "operated."
- §215.139 - clarification change to remove "between licensed dealers."

- §215.140 - changed reference to "motor vehicle" back to "vehicle."
- §215.141 - changed reference to "motor vehicle" back to "vehicle."
- §215.144 - changed reference to "motor vehicle" back to "vehicle;" and added clarifying language regarding requirements enforced by the department that assure titling and registration is timely, sales tax remitted, and issues regarding liens are handled.
- §215.145 - clarification changes and language added regarding requirement for qualifying person to submit bond rider and removed reference to "peace officers" inspection of records.
- §215.146 - removed reference to "peace officers" inspection of records.
- §215.148 - changes made to correct drafting error, sentence structure, and to add "purchasing' before dealer for clarification.
- §215.150 - changed reference to "motor vehicle" back to "vehicle."
- §215.154 - changed reference to "motor vehicle" back to "vehicle."
- §215.174 - changed to reflect department license application requirements and procedures. Also changed to replace "complete" with "sufficient" for consistency.
- §215.178 - removed reference to "peace officers" inspection of records.
- §215.208 - changed to correct drafting error.
- §215.244 - changed to include notice that only certain motor vehicles has a Monroney sticker.
- §215.500 - changed for clarification purposes.
- §215.503 - add language regarding not refunding fees to include "in the absence of director approval."

If the board adopts the amendments and repeals during its November 13, 2015, open meeting, staff anticipates:

- publication of the adoption in the December 4, 2015, issue of the *Texas Register*; and
- an effective date of the amendments of December 10, 2015.

From: [Doran, Laird \(GST\)](#)
To: [Howell, Raylynn](#)
Subject: Re: Draft Amendments - Chapter 215 Proposed Rule Review
Date: Monday, May 04, 2015 9:52:12 AM
Attachments: [image001.png](#)
[Comments regarding proposed changes to Chapter 215.docx](#)

Good morning Raylynn,

Attached is a short document with my comments regarding the proposed amendments concerning Chapter 215. Please let me know if you have any questions.

Best regards,

Laird

Laird M. Doran
Gulf States Toyota, Inc.
1375 Enclave Parkway
Houston, Texas 77077
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Ldoran@gstoyota.com

From: Howell, Raylynn
Sent: Friday, April 24, 2015 12:50 PM
To: Bruce Ormand; Jeff Martin; Karen Phillips; Laird Doran; Mike Marks; Phil Elam
Cc: Richards, David
Subject: Draft Amendments - Chapter 215 Proposed Rule Review

Good afternoon,

Attached, please find a draft of proposed amendments and repeals concerning Chapter 215, Motor Vehicle Distribution. Currently, the proposed amendments and repeals are scheduled to be presented to the board for approval of publication for comment during its May 8, 2015 board meeting.

Please review the attached draft and provide OGC with your comments to the proposed amendments and repealed sections, if any, by close of business on Thursday, April 30, 2015. Please submit your written comments by email to rules@txdmv.gov <<mailto:rules@txdmv.gov>>.

Because the attached document is in draft form, please do not circulate beyond those who have received this email.

Thank you.

Raylynn A. Howell
Paralegal
Office of General Counsel
(512) 465-4208 direct
(512) 465-4112 facsimile
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[cid:image001.png@01D07DD8.97990420]

Comments regarding proposed changes to Chapter 215.

215.1 – Purpose and Scope. Lines 14 – 20 appears to potentially expand the jurisdiction of TXDMV beyond regulating dealers, manufacturers, distributors converters, representatives, lessors and lease facilitators, regulating licensing, warranty performance obligations, advertising...etc. to something broader as described as “the policies and procedures for the motor vehicle industry in Texas.”

The concern here is that this seems to be an expansion of power beyond what was previously specifically set forth. Are there other areas beyond what has been stricken in lines 16 – 20 that are contemplated by these rules that the agency seeks to govern?

215.2. Definitions. Why remove the definition of “Party in interest”? Stakeholders are concerned about any expansion of standing to those that are not licensees under 2301. Does the removal of this definition in any way bolster the position of any dealer (not currently a franchisee of the manufacturer/distributor) that he/she/it has standing to bring a claim (e.g. in a buy/sell turndown)?

215.22. Prohibited Communications. The removal of “party in interest” and the substitution of “no party” would seem to broaden the scope of prohibited ex parte communications beyond licensees and those governed by 2301 of the Occupations Code. Would a mediator or court reporter’s general discussions with a board member or hearing officer be considered ex parte? What/who is considered a “party?”

215.30. Filing of Documents. Must we rely solely on a certificate from a party or a party’s authorized representative evidencing timely delivery of a document when filed electronically or is there a date stamp that can be

applied to verify timeliness?

215.35. Reply. Why are we eliminating the requirement that a reply be sworn to by the party or its representative? Depending upon the thoroughness of counsel, this was often times an important action to put a party (or its corporate officer) on notice as to the actual allegations in a case (notwithstanding what the party's own counsel may be telling the party).

215.40. Continuance. Removal of the "exceptional circumstances" language is problematic. There are concerns that utilizing a "good cause" standard alone will result in continuances that are too easily granted to the prejudice of the other party. The availability and scheduling of expert witnesses and company witnesses is challenging. It should be only in those exceptional circumstances that a party is granted a continuance because too often the other party seeks a continuance at the last minute because of something that could have been reasonably avoided or mitigated—thus causing the other party to incur (unnecessarily) significant cost and expense (and time lost) preparing witnesses and booking travel arrangements in preparation for a scheduled hearing.

215.41. Presiding Officials. Why the removal of language regarding "impartial?" A hearing should be both fair and impartial. When the rules talk about recusal of the Chief Hearing Officer – is that a reference to the Chief SOAH Judge? Others w/in TXDMV?

215.56 Amicus Briefs. There should still be a deadline for the submission/filing of amicus briefs. If a party in the case wants to respond to an amicus brief, it should have a reasonable expectation of the timing for when briefs are to be filed. Section (C) refers to (A) and (B), but (A) no longer has a deadline for submission/filing of amicus briefs.

215.58 Delegation of Final Order Authority. Instead of saying that “the director is authorized to issue, without a decision on the merits, a final order in a contested case..” would it be better to say that “the director is authorized to issue, *where there has not been a decision on the merits*, a final order in a contested case...”? There is some concern that the former could be read to imply a bypass of SOAH decisions on the merits. This is bolstered by the fact that the list of situations where a final order can be issued in cases without a decision on the merits is not exclusively limited to the 9 examples set forth in (a). Where a final order is issued after the submission or filing of a summary judgment or summary disposition, will this be for those filed with SOAH judges or w/the hearing officer at the TXDMV...or both?

215.83. License Applications, Amendments, or Renewals. With respect to (c), the addition of language making it clear that the department will not provide info to third parties regarding the status of an application is a good thing. It is troubling to think that potential litigants, associations, and non-parties are/could be making these requests of the agency regarding other licensees during the pendency of their applications. Language in (e) and (f) is beneficial to the process. This appears to create the presumption that where a complete application for renewal (e.g. distributor license) has been timely filed, the distributor is not at risk for operating without a license where the TXDMV is simply processing the license beyond the expiration date (i.e. no lapse). With respect to (m) and dealer plates, what happens to dealer plates when there is a buy-sell? Aren't these non-transferrable?

General comment about 215.83: If an authorized representative can file a license, amendment or renewal, then it would appear that the same should also be true for the self authorization forms used for vehicle displays/ride & drives. That form states that it should be signed by a “principal or officer” of the company. It would be helpful (and more practical) for an authorized representative to be able to sign these forms as well since 215.83 evidences

that there are situations where the agency is comfortable receiving applications and forms executed by authorized representatives of manufacturers, distributors, and dealers.

215.104. Changes to a Franchised Dealer's License. Does the removal of the reference to a change in general manager necessitating amending a license mean that such changes are no longer worthy of amendment or does the TXDMV consider a change in general manager as still fitting within the larger language of "a change in management" found in (d)(1)?

215.105. Notification of License Application; Protest. Section (e)(2) now includes reference to a protesting dealer having to assert how he/she/it meets the standing requirements under 215.119 – this is a very good thing and could help save the parties significant time and expense where a party lacks standing from the get go.



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July 20, 2015

Mr. David D. Duncan
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Sent via email: rules@txdmv.gov

Re: Proposed Amendments to Chapter 215. Motor Vehicle Distribution

Dear Mr. Duncan:

The following comments are submitted on behalf of the Texas Automobile Dealers Association (TADA) with respect to the proposed rule amendments to Chapter 215, Motor Vehicle Distribution, and as published in the June 19, 2015, *Texas Register*, 40 *TexReg* 3754 - 3812.

TADA recognizes the enormity of the agency's rule review and commends the staff on its thoroughness.

The following comments and suggestions are offered for additional clarification and understanding.

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

43 TAC §215.112. Motor Home Show Limitations and Restrictions.

The proposed language in (j)(1) allows a motor home dealer, on the day that sales are suspended to "discuss finance options."

Recognizing that the sale of a motor vehicle on a consecutive Saturday and Sunday is prohibited by Chapter 728, Transportation Code, an exception in the statute¹ allows a price to be quoted at a motor home or tow truck show or exhibition described by Section 2301.358, Occupations Code.² The statute does not allow for discussing finance options, just the quoting of a price.

In order to track the statute, TADA requests “and discuss finance options” be deleted from the rule.

Subchapter E. General Distinguishing Numbers³

43 TAC §215.139. Metal Dealer's License Plate Allocation.

The proposal changes the number of the maximum metal dealer’s license plates the department will issue to a new license applicant during the applicant’s first license term for a franchised motor vehicle dealer from 5 to 1.

The maximum allowed to a franchised dealer in former § 215.139(b)(1) is 5. TADA requests that the number remain at 5 and not be reduced to 1, as shown in proposed Figure 43 TAC § 215.139(c) and published in the June 26, 2015, *Texas Register* at 40 *TexReg* 4254.

TADA assumes this is a typographical mistake in that all of the current maximum number of metal dealer’s license plates issued during the first license term are carried forward from the current rule, 43 TAC § 215.139(b)(1) - (8), to the proposed rule except for the franchised motor vehicle dealer.

TADA requests the current number of 5 metal dealer plates be carried forward for a franchised motor vehicle dealer who is a new license applicant in lieu of the proposed number of 1.

¹TEX. TRANS. CODE § 728.002(d): “This section does not prohibit the quoting of a price for a motor home or tow truck at a show or exhibition described by Section 2301.358, Occupations Code.” (Vernon Supp. 2014).

²TEX. OCC. CODE § 2301.358(c): “This section does not prohibit the sale of a towable recreational vehicle, motor home, ambulance, fire-fighting vehicle, or tow truck at a show or exhibition if:

- (1) the show or exhibition is approved by the department; and
- (2) the sale is not otherwise prohibited by law.” (Vernon Supp. 2014).

³There is a minor typographical issue in 43 TAC § 215.135. *More Than One Location.*, subsection (e) in that “department’s” should be “department” so that it reads: “A dealer may not commence business at any location until the department [~~department’s~~] issues a license to that location.”

43 TAC § 215.141. Sanctions.

43 TAC § 215.144. Records.

43 TAC § 215.147. Export Sales.

The board or department may deny an application; revoke a license; suspend a license; and assess a civil penalty or other action against a license applicant, a licensed holder, or a person engaged in business for which a license is required for at least twenty-five (25) enumerated reasons in subsection (b) of Section 215.141.

Two of the twenty-five stated reasons to deny, revoke, suspend, or assess a civil penalty, include refusing or failing to comply with a request by a representative of the department or a peace officer to examine and copy during the license holder's business hours at the licensed location (43 TAC § 215.141(b)(3)) and refusing or failing to timely comply with a request for records made by a representative of the department (43 TAC § 215.141(b)(4)). In the latter subsection, "peace officer" is not proposed.

The statute allows the board to inspect the books and records of a license holder in connection with the performance of its duties.⁴

In order to assure a licensee that it is complying with a request from the department, TADA requests that a licensee may obtain written verification of a request from the department so that personal and confidential and non-public information is not revealed to anyone who does not have the authority to review a licensee's books and records.

The language proposed to be deleted in § 215.144(d) allows: "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."

If the above language is not re-proposed in the rule review, TADA requests that the language or similar language be continued in the proposal as well as allowing a licensee to obtain a written verification of the legitimacy of the records request by adding a provision such as: "A licensee may request and receive a written verification from the department prior to submitting its records."

An automobile dealership is required to limit the disclosure of non-public personal information which it maintains in books and records.⁵ An exception under federal law is allowed in order to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by federal, state or local authorities or to respond to judicial process or government

⁴TEX. OCC. CODE § 2301.153(b) (Vernon 2012).

⁵Gramm-Leach-Bliley Act, Pub. L. 106-102, 16 C.F.R. Part 313.

regulatory authorities having jurisdiction.⁶

It is preferable for a dealer to have a file copy of a written request from the agency inspecting their books and records in case an issue arises in the future regarding compliance with the dealership's Red Flags policy compliance⁷ to prevent identity theft as well as maintaining proper authorization as required by the Gramm-Leach Bliley Act and the necessary and adopted standards required for a dealer to safeguard a customer's information under Federal Trade Commission's (FTC) "Safeguards Rule."⁸

Allowing a dealership to obtain a written request for their files gives the dealer the necessary and proper verification and assures compliance and the safeguarding of their customer's records in order to comply with the FTC's rules.

As discussed above, the proposal adds "peace officer" as a person permitted to examine and copy records in the *Sanctions* rule, 43 TAC § 215.141(b)(3). "Peace officer" is also added to the rule regarding *Records*, § 215.144(a) and *Export Sales*, § 215.147(c). Although the board has the authority and may delegate its authority to an employee of the department,⁹ TADA is concerned that the delegation may not extend to a peace officer and requests the board to limit its rules and the availability of a licensee's records to the board or an employee of the board.

TADA notes that with respect to Subchapter F, *Lessors and Lease Facilitators*, there is no like provision adding "peace officer" under 43 TAC § 215.175. *Sanctions*, subsection (b)(3):

(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:

(3) [(2)] refuses [to permit] or fails to comply with a request by a representative of the department [division] to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or 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;

⁶16 C.F.R. § 313.15.

⁷16 C.F.R. Part 681.

⁸16 C.F.R. Part 314.

⁹TEX. OCC. CODE § 2301.154 (Vernon Supp. 2014).

~~and evidence of ownership or lease agreement for the property upon which the business is located.]~~

There is also no “peace officer” language added in § 215.178. *Records Required for Vehicle Lessors and Vehicle Lease Facilitators [of Leasing]* which allows in subsection (a)(2) that: “Within 15 days of [Upon] 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 [produce copies of] specified records to the address listed in the request [within 15 days].”

However, “peace officer” language is added to the advertising record provision in subsection (c) of § 215.178. *Records Required for Vehicle Lessors and Vehicle Lease Facilitators [of Leasing]*.: “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 [;] subject to inspection upon request by a representative of the department or a peace officer [Board] at the business of the license holder during posted [licensee during regular] business hours.”

If the agency determines that it may authorize a peace officer to review a licensee’s books records, and advertisements, TADA requests that the board also require the peace officer to provide written verification of the delegation from the agency as well as the request for records review.

43 TAC § 215.154. Dealer’s Temporary Tags.

Language proposed to be deleted in § 215.154 subsection (d) will no longer allow any courtesy vehicle with a dealer’s temporary tag. Currently, the rule allows for a courtesy vehicle to use a dealer’s temporary tag as long as that vehicle does not display a courtesy sign.

TADA requests that the current rule regarding the use of a dealer’s temporary tag and its use on a courtesy vehicle remain in place.

A dealer’s temporary tag may not be displayed on a “laden commercial vehicle” operated or moved on the public streets or highways or on the dealer’s service or work vehicles.¹⁰ Deleted from the rule is language stating that a light truck is not considered to be a laden commercial vehicle when it is mounted with a camper unit or towing a trailer for recreational purposes.

By repealing this language, it is not clear whether a light truck with a mounted camper unit or towing a trailer for recreational purposes is or is not now considered a “laden commercial vehicle.”

A concern for TADA is that local law enforcement may interpret “laden” in various ways and TADA requests guidance that may be shared with the dealers as well as local law enforcement in

¹⁰43 TAC § 215.154(f); re-proposed as 43 TAC § 215.154(d).

order to comply with this agency's interpretation as well as impart to authorities who may be issuing a citation for using a temporary tag on a "laden" vehicle. By deleting the explanation that a light truck is not a laden commercial vehicle when a camper unit is attached to it or if it is towing a trailer for a recreational purpose may unnecessarily cause misunderstanding for both dealers and law enforcement.

TADA requests the agency retain the current rule as written as well as consider adding a definition of "laden" or "laden commercial vehicle" to the Subchapter E. 43 TAC § 215.132 *Definitions*. in order for a dealer as well as law enforcement to understand when a dealer's temporary tag may not be displayed on a "laden" commercial vehicle.

Subchapter H. Advertising

43 TAC § 215.244. Definitions.

Proposed Repeal 43 TAC § 215.262. Savings Claims; Discounts.

With respect to the definitions in Subchapter H., the definition of "advertisement" is amended so that it does not include a direct communication between a person or person's representative and a prospective purchaser.

Currently, the definition states that it does not include direct communications between a *dealer or a dealer's* representative, as adopted May 30, 2014, 39 *TexReg* 4271.

TADA is unclear as to the purpose for the amendment to "person" and appreciates any information that can be provided regarding the proposed change.

A new definition of "savings claim or discount" is added and the rule regarding savings claims and discount offers is proposed for repeal (43 TAC § 215.262. *Savings Claims; Discounts*).

While understanding the desire to have a fewer number of advertising rules, TADA is concerned that repealing the current rule on savings claims and discounts and folding in provisions from that rule into the rule for dealer price advertising¹¹ may cause confusion and non-compliance for the industry with the unintended consequence of more advertising violations.

Commingling the savings claim and discount requirements into the current dealer price advertising rule may be useful; however, TADA is concerned that because of the breadth of the new advertising amendments, there will be misunderstanding as well as a new learning curve for the industry.

With respect to the proposed definition of "savings claim or discount," TADA suggests that because a savings claim or discount may only be from a manufacturer's suggested retail price

¹¹43 TAC § 215.250. *Dealer Price Advertising*.

(MSRP) that the definition in 43 TAC § 215.244 state that a savings claim or discount applies to a “new” motor vehicle: (15) Savings claim or discount—An offer to sell a *new* motor vehicle at a reduced price, including a manufacturer’s customer rebate, a dealer discount, and a limited rebate.

43 TAC § 215.245. Availability of Motor Vehicles.

An amendment to current § 215.245(b)(2) is proposed so that the language no longer tracks the language in the Texas Deceptive Trade Practices Act (DTPA),¹² specifically § 17.46(b)(10): “advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity.”

Although the proposed amendment may be more artful in its language, TADA requests the current language remain so that the rule more readily tracks the DTPA language.

43 TAC § 215.246. Accuracy.

TADA supports the amendment to this rule allowing a disclosure to be considered accurate, clear, and conspicuous regarding an Internet advertisement if the viewer hovers their mouse across the screen and the disclosure is immediately visible or if only one click is necessary to view the disclosure.

A disclosure can be very long and distracting and by viewing the disclosure with either one click or hovering the mouse across the screen allows for more effective advertising.

In addition, a featured price may be advertised and the formula showing the price from the MSRP as set out in § 215.250 may now be viewed with a click or with the mouse.

43 TAC § 215.248. Layout.

As the agency is proposing to amend the rule on the proper layout of an advertisement, TADA suggests that the rule also include an Internet or an online streamed advertisement via an online service. A suggested example is italicized and boldly underlined below:

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 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,

¹²TEX. BUS. & COM. CODE ANN. Chapter 17 (Vernon 2011).

conspicuously, and accurately set forth to prevent misunderstanding.

43 TAC § 215.250. [Dealer] Price Advertising; Savings Claims; Discounts [Internet or E-Pricing].

Since the § 215.250(a) proposal repeals “advertised sale” price and “such advertised” price, TADA suggests that subsection (a) include “in an advertisement” so that there is no misunderstanding that the rule is referring to an advertisement, such as:

(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.

Although implied, adding “in an advertisement” allays any potential misunderstanding.

In addition, this subsection appears to allow a dealer who is not advertising a savings claim or a discount to either:

1. Advertise the price of a new or used vehicle in an advertisement, such as “X available for \$Y”; or,
2. Advertise “MSRP is \$X” and “Dealership Price is \$Y.”

Allowing an advertisement to only state a sales price or to show the MSRP and the dealership’s sales price or featured sales price necessarily comes with the understanding that the featured price must include any destination and dealer preparation charges, if applicable, and that the only costs and charges that may be excluded from the featured sales price are registration, title, license fees; taxes; and any other fees or charges that are allowed or prescribed by law.¹³

With respect to Figure 43 TAC § 215.250(h)(2), the amended rule discusses a savings claim or discount including only a factory rebate that must be disclosed as a deduction from the “MSRP”; however, the acceptable format states “advertised price.”

(2) If a savings claim or discount offer includes only a dealer discount, 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 manufacturer’s customer rebate with and without a sales price. [price with a rebate.]

¹³Proposed 43 TAC § 215.250 (b) (current rule outlines the charges in 43 TAC § 215.250(a)).

Figure: 43 TAC § 215.250(h)(2)

Manufacturer’s Customer Rebate with Sales Price:

Advertised Price	\$18,000
Less Rebate	<u>500</u>
<u>Sales [Sale] Price</u>	\$17,500

Manufacturer’s Customer Rebate Without Sales Price: “\$500 Rebate Off MSRP”

~~[Figure: 43 TAC § 215.250(c)(2)]~~

Advertised Price	\$18,000
Less Rebate	<u>500</u>
<u>Sale Price</u>	\$17,500

TADA assumes that Figure 43 TAC § 215.250(h)(2) is intended to be amended and state “MSRP” in lieu of “Advertised Price.”

A type of incentive that TADA requests agency consideration for rule-making is an incentive that a manufacturer or distributor makes available as either a rebate or a monetary incentive reducing the price of a vehicle to a purchaser in a specific geographic area of the state, such as a Central Texas incentive or a Houston Astros incentive. The purchaser in these factory incentive promotions, if living in a factory designated zip code, is given an additional reduction from the MSRP or a rebate when making their purchase.

TADA requests that a dealer be allowed to include a geographic incentive in an advertised price and include that amount in the total savings available as long as the advertised price discloses that it is available only to a purchaser from the specific geographic region. An example is “Buy a new X for \$Y—price available to Houston residents only” or “\$Y Savings Off MSRP (\$Y only available to a Houston resident).

A font size and a specific required disclosure may be necessary for this exception to the general prohibition that requires a promotion to be available to all purchasers before it is included in the advertised or featured price.

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

§ 215.305. Filing of Complaints, Protests, and Petitions; Mediation.

The 83rd Legislature, Regular Session, H.B. 1692¹⁴ amended § 2301.703, Occupations Code by adding Subsection (c): “The parties to a contested case under this chapter or Chapter 503, Transportation Code, other than a contested case in an action brought by the department to enforce

¹⁴2013 Tex. Sess. Law Serv., ch. 1379, § 8, at 3667 (Vernon).

this chapter or Chapter 503, Transportation Code, must participate in mediation as provided by board rule before the parties may have a hearing in the case.”

TADA recognizes and appreciates the agency’s work regarding its mediation program as well as the diligence and preparedness of all involved.

In 2005, the Texas Supreme Court approved “Ethical Guidelines for Mediators” by Miscellaneous Docket No. 05-9107. TADA requests the board to incorporate the Court’s Guidelines into the agency’s mediation process, which will serve to bring added stature and confidence to the process. A copy is attached for convenience.

TADA believes that the Guidelines are already followed by the department; however, their adoption by rule allows a party, whether using an agency mediator or an outside mediator, to have additional confidence in the process.

43 TAC § 215.314. Cease and Desist Orders.

Proposed § 215.314(m) allows that before commencement of a proceeding at SOAH, the director is authorized to issue a cease and desist under.

TADA understands that a cease and desist order issued under this new provision will be rare. In order to safeguard the process, TADA suggests incorporating language similar to the Texas Rules of Civil Procedure Rule 680. Temporary Restraining Orders, into the proposal, such as: “A cease and desist order issued prior to the commencement of a SOAH proceeding and if issued without notice to the adverse party, will only issue if it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result before notice can be given and a hearing conducted.” In addition, the expiration of the order and a hearing regarding the cease and desist order should be included in the notice.

An administrative law judge and a hearings examiner have all of the board’s power and authority to conduct hearings, including the power to issue an interlocutory order, including a cease desist order in the nature of a temporary restraining order or a temporary injunction.¹⁵ The board has the power to issue cease and desist orders in the nature of temporary or permanent injunctions¹⁶ as well as the authority to delegate any of its powers.¹⁷

Although the authority to issue a cease and desist order in the nature of a temporary restraining order or temporary injunction is available to the board as well as the power to delegate,

¹⁵TEX. OCC. CODE § 2301.704(b)(6) (Vernon 2012).

¹⁶*Id.* at § 2301.153(a)(18).

¹⁷*Id.* at § 2301.154.

including language from Rule 680 is useful guidance for all parties.

TADA recognizes the breadth of the work involved in the Chapter 215 rule review and commends the agency and all involved.

TADA appreciates the opportunity to comment and requests that if you have any question regarding the comments, please do not hesitate to contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Phillips". The signature is fluid and cursive, written in a professional style.

Karen Phillips
General Counsel/EVP

Enclosure

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05- **9107**

APPROVAL OF ETHICAL GUIDELINES FOR MEDIATORS

The Supreme Court of Texas has long recognized the need for oversight of the quality of mediation in Texas. During the initial public debate of the issue, some mediation practitioners proposed adopting ethical rules of mediators to enhance the quality of Texas mediation and mediators. Others advocated mediation licensing or credentialing.

The Court determined that, at minimum, ethical rules should be implemented and enforced. Thus, the Court created the Advisory Committee on Court-Annexed Mediations to formulate mediation ethics rules that address, among other things, the avoidance and disclosure of conflicts of interest and the timely disclosure of fees.¹ The Court also instructed the Advisory Committee to study whether further oversight, such as licensing or credentialing, was warranted.

The Committee began its work by gathering relevant materials from various organizations throughout the country, including organizations unrelated to the practice of law and the justice system. These voluminous materials were reviewed by individual members and subcommittees for presentation to the full Committee. The Committee met formally numerous times, and, as a result of this work, the Committee proposed several recommendations to the Court.

Ultimately, the Committee concluded that there currently was no consensus within the mediation profession in Texas as to whether the Supreme Court should become involved in credentialing and/or registration of mediators. Therefore, the committee

¹Order Creating Advisory Committee on Court-Annexed Mediations, Misc. Docket No. 96-9125 (May 7, 1996). Members of the Committee were Tony Alvarado, Karl Bayer, Gary Condra, Herb Cook, Hon. Suzanne Covington, Claude Ducloux, Suzanne Duvall, John Estes, Hon. Frank Evans, Hon. Charles Gonzalez, Carol Hoffman, Dr. Lou Lasher, Bill Low, Hon. Tom McDonald, Hon. Margaret Mirabal, Lanelle Montgomery, William M. Morris, Hon. Jay Patterson, Ross Rommel, Michael J. Schless, Maxel "Bud" Silverberg, Rena Silverberg, Sid Stahl, Bruce Stratton, and Michael Wolf.

recommended that the Court take no action with regard to credentialing.

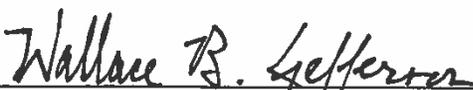
The Committee, however, concluded that there currently is consensus within the Texas mediation profession that the Court should promulgate ethical rules. Therefore, the committee recommended the Court adopt as its own aspirational guidelines those guidelines that the Alternative Dispute Resolution section of the State Bar of Texas has adopted.

The Court accepts this recommendation. The Court is committed to ensuring the continued quality of mediators and mediation services in Texas. Thus, the Court promulgates and adopts the attached Ethical Guidelines for Mediators.

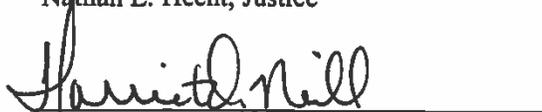
These rules are aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

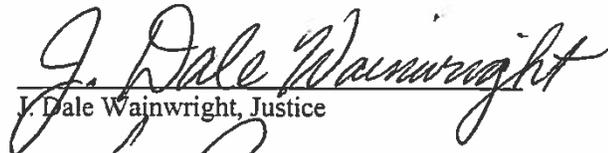
Moreover, counsel representing parties in the mediation of a pending case remain officers of the court in the same manner as if appearing in court. They are subject to the Texas Disciplinary Rules for Lawyers and any local rules or orders of the court regarding the mediation of pending cases. They should aspire during mediation to follow The Texas Lawyer's Creed—A Mandate for Professionalism. Counsel shall cooperate with the court and the mediator in the initiation and conduct of the mediation.

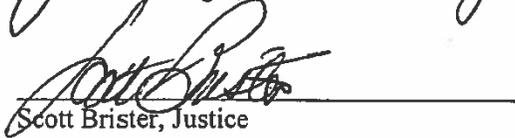
In Chambers, this 13th day of June, 2005.


Wallace B. Jefferson, Chief Justice

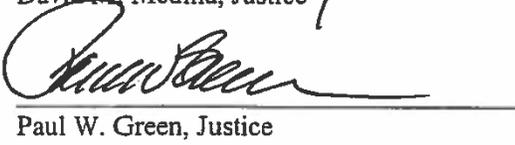

Nathan L. Hecht, Justice

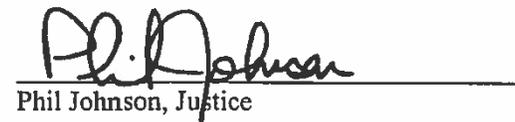

Harriet O'Neill, Justice


J. Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice

ETHICAL GUIDELINES FOR MEDIATORS

PREAMBLE

These Ethical Guidelines are intended to promote public confidence in the mediation process and to be a general guide for mediator conduct. They are not intended to be disciplinary rules or a code of conduct. Mediators should be responsible to the parties, the courts and the public, and should conduct themselves accordingly. These Ethical Guidelines are intended to apply to mediators conducting mediations in connection with all civil, criminal, administrative and appellate matters, whether the mediation is pre-suit or court-annexed and whether the mediation is court-ordered or voluntary.

GUIDELINES

1. Mediation Defined. Mediation is a private process in which an impartial person, a mediator, encourages and facilitates communications between parties to a conflict and strives to promote reconciliation, settlement, or understanding. A mediator should not render a decision on the issues in dispute. The primary responsibility for the resolution of a dispute rests with the parties.

Comment. A mediator's obligation is to assist the parties in reaching a voluntary settlement. The mediator should not coerce a party in any way. A mediator may make suggestions, but all settlement decisions are to be made voluntarily by the parties themselves.

2. Mediator Conduct. A mediator should protect the integrity and confidentiality of the mediation process. The duty to protect the integrity and confidentiality of the mediation process commences with the first communication to the mediator, is continuous in nature, and does not terminate upon the conclusion of the mediation.

Comment (a). A mediator should not use information obtained during the mediation for personal gain or advantage.

Comment (b). The interests of the parties should always be placed above the personal interests of the mediator.

Comment (c). A mediator should not accept mediations which cannot be completed in a timely manner or as directed by a court.

Comment (d). Although a mediator may advertise the mediator's qualifications and availability to mediate, the mediator should not solicit a specific case or matter.

Comment (e). A mediator should not mediate a dispute when the mediator has knowledge that another mediator has been appointed or selected without first consulting with the other mediator or the parties unless the previous mediation has been concluded.

3. Mediation Costs. As early as practical, and before the mediation session begins, a mediator should explain all fees and other expenses to be charged for the mediation. A mediator should not charge a contingent fee or a fee based upon the outcome of the mediation. In appropriate cases, a mediator should perform mediation services at a reduced fee or without compensation.

Comment (a). A mediator should avoid the appearance of impropriety in regard to possible negative perceptions regarding the amount of the mediator's fee in court-ordered mediations.

Comment (b). If a party and the mediator have a dispute that cannot be resolved before commencement of the mediation as to the mediator's fee, the mediator should decline to serve so that the parties may obtain another mediator.

4. Disclosure of Possible Conflicts. Prior to commencing the mediation, the mediator should make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance

of affecting the mediator's neutrality. A mediator should not serve in the matter if a party makes an objection to the mediator based upon a conflict or perceived conflict.

Comment (a). A mediator should withdraw from a mediation if it is inappropriate to serve.

Comment (b). If after commencement of the mediation the mediator discovers that such a relationship exists, the mediator should make full disclosure as soon as practicable.

5. Mediator Qualifications. A mediator should inform the participants of the mediator's qualifications and experience.

Comment. A mediator's qualifications and experience constitute the foundation upon which the mediation process depends; therefore, if there is any objection to the mediator's qualifications to mediate the dispute, the mediator should withdraw from the mediation. Likewise, the mediator should decline to serve if the mediator feels unqualified to do so.

6. The Mediation Process. A mediator should inform and discuss with the participants the rules and procedures pertaining to the mediation process.

Comment (a). A mediator should inform the parties about the mediation process no later than the opening session.

Comment (b). At a minimum, the mediator should inform the parties of the following: (1) the mediation is private (Unless otherwise agreed by the participants, only the mediator, the parties and their representatives are allowed to attend.); (2) the mediation is informal (There are no court reporters present, no record is made of the proceedings, no subpoena or other service of process is allowed, and no rulings are made on the issues or the merits of the case.); and (3) the mediation is confidential to the extent provided by law. (See, e.g., §§154.053 and 154.073, Tex. Civ. Prac. & Rem. Code.)

7. Convening the Mediation. Unless the parties agree otherwise, the mediator should not convene a mediation session unless all parties and their representatives ordered by the court have appeared, corporate parties are represented by officers or agents who have represented to the mediator that they possess adequate authority to negotiate a settlement, and an adequate amount of time has been reserved by all parties to the mediation to allow the mediation process to be productive.

Comment. A mediator should not convene the mediation if the mediator has reason to believe that a *pro se* party fails to understand that the mediator is not providing legal representation for the *pro se* party. In connection with *pro se* parties, see also Guidelines #9, 11 and 13 and associated comments below.

8. Confidentiality. A mediator should not reveal information made available in the mediation process, which information is privileged and confidential, unless the affected parties agree otherwise or as may be required by law.

Comment (a). A mediator should not permit recordings or transcripts to be made of mediation proceedings.

Comment (b). A mediator should maintain confidentiality in the storage and disposal of records and should render anonymous all identifying information when materials are used for research, educational or other informational purposes.

Comment (c). Unless authorized by the disclosing party, a mediator should not disclose to the other parties information given in confidence by the disclosing party and should maintain confidentiality with respect to communications relating to the subject matter of the dispute. The mediator should report to the court whether or not the mediation occurred, and that the mediation either resulted in a settlement or an impasse, or that the mediation was either recessed or rescheduled.

Comment (d). In certain instances, applicable law may require disclosure of information revealed in the mediation process. For example, the Texas Family Code may require a mediator to disclose child abuse or neglect to the appropriate authorities. If confidential information is disclosed, the mediator should advise the parties that disclosure is required and will be made.

9. Impartiality. A mediator should be impartial toward all parties.

Comment. If a mediator or the parties find that the mediator's impartiality has been compromised, the mediator should offer to withdraw from the mediation process. Impartiality means freedom from favoritism or bias in word, action, and appearance; it implies a commitment to aid all parties in reaching a settlement.

10. Disclosure and Exchange of Information. A mediator should encourage the disclosure of information and should assist the parties in considering the benefits, risks, and the alternatives available to them.

11. Professional Advice. A mediator should not give legal or other professional advice to the parties.

Comment (a). In appropriate circumstances, a mediator should encourage the parties to seek legal, financial, tax or other professional advice before, during or after the mediation process.

Comment (b). A mediator should explain generally to *pro se* parties that there may be risks in proceeding without independent counsel or other professional advisors.

12. No Judicial Action Taken. A person serving as a mediator generally should not subsequently serve as a judge, master, guardian ad litem, or in any other judicial or quasi-judicial capacity in matters that are the subject of the mediation.

Comment. It is generally inappropriate for a mediator to serve in a judicial or quasi-judicial capacity in a matter in which the mediator has had communications with one or more parties without all other parties present. For example, an attorney-mediator who has served as a mediator in a pending litigation should not subsequently serve in the same case as a special master, guardian ad litem, or in any other judicial or quasi-judicial capacity with binding decision-making authority. Notwithstanding the foregoing, where an impasse has been declared at the conclusion of a mediation, the mediator if requested and agreed to by all parties, may serve as the arbitrator in a binding arbitration of the dispute, or as a third-party neutral in any other alternative dispute proceeding, so long as the mediator believes nothing learned during private conferences with any party to the mediation will bias the mediator or will unfairly influence the mediator's decisions while acting in the mediator's subsequent capacity.

13. Termination of Mediation Session. A mediator should postpone, recess, or terminate the mediation process if it is apparent to the mediator that the case is inappropriate for mediation or one or more of the parties is unwilling or unable to participate meaningfully in the mediation process.

14. Agreements in Writing. A mediator should encourage the parties to reduce all settlement agreements to writing.

15. Mediator's Relationship with the Judiciary. A mediator should avoid the appearance of impropriety in the mediator's relationship with a member of the judiciary or the court staff with regard to appointments or referrals to mediation.



July 24, 2015

Mr. David Duncan
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Ave.
Austin, TX 78731

Sent via email: rules@txdmv.gov

Re: Proposed rule amendments to Chapter 215, published in the June 19, 2015 Texas Register.

Dear Mr. Duncan:

On behalf of the Texas Independent Automobile Dealers Association (TIADA) I want to thank you for the opportunity to submit the following comments with regard to the proposed rules.

TIADA appreciates the agency undertaking to make these significant changes and believes the overall result will be positive for the industry.

TIADA agrees with the concerns and recommendations proposed by the Texas Automobile Dealers Association (TADA) in their written comments on §215.144(d), submitted July 20, regarding the nature of records requests. TIADA also believes that the security of customer information and adherence to federal privacy laws are of paramount importance, and thus echoes TADA's desire for the dealership to be able to request a written verification of the legitimacy of a records request.

With regard to proposed §215.314(m), the association shares the concerns raised by TADA and would echo the suggestion that language from the Texas Rules of Civil Procedure Rule 680 be incorporated as useful guidance for all parties.

TIADA appreciates the opportunity to comment on these proposed rules and looks forward to working with the agency in the future. Please feel free to contact me directly with any questions or concerns you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny Langfield', is positioned below the 'Sincerely,' text.

Danny Langfield
TIADA Deputy Executive Director

July 31, 2015

LLOYD E. FERGUSON
(512) 499-3641
Direct Fax (512) 536-5705
Buddy.Ferguson@strasburger.com

David Duncan, General Counsel
Texas Department of Motor Vehicles
4000 Jackson Ave.
Austin, Texas 78731

david.duncan@txdmv.gov

RE: Proposed Rules

Dear Mr. Duncan:

First, I apologize for the late comments but would ask that the Board entertain the same based on their discretionary powers.

Second, the rules have needed to be updated and reworked for some time. That is an arduous task. To all who worked on promulgating the proposed rules, please extend my appreciation for their hard work. It is well deserved.

For the Board's consideration, I offer the following comments:

Proposed change to Rule 215.24(a)(2): The current rules require a person filing a petition to cite "by appropriate reference the article of the Codes or other law relied upon for relief....." The proposed revision only requires that the petition cite "the appropriate law". A concern has been raised that by not specifically requiring citation to one of the Codes that the Board is charged with administering, a party could improperly seek to drag the Board into a matter that is outside the jurisdiction of the agency. We think the better course is to require that petitions show how the Board's jurisdiction is actually invoked.

Proposed change to Rule 215.102: The current rule has an implied presumption that an employee of a manufacturer or employee is not a representative unless they perform certain tasks. The proposed rule now shifts that presumption such that now all employees are presumed to be a representative and thus have to be licensed. This is problematic for manufacturers and distributors. It would no doubt dramatically increase the historical cost of doing business for manufacturers or distributors who have a significant number of employees in the State of Texas and could unnecessarily require the licensing of individuals that have incidental duties related to dealerships at best. It also creates confusion as to who is really a "representative" in the future as it is a

David Duncan
July 31, 2015
Page 2

dramatic change from the historical interpretation and application of this otherwise straightforward rule.

Proposed change to Rule 215.83(d): The current rule requires a license holder to submit a sufficient license renewal application prior to the expiration of its existing license. The proposed rule change requires a “complete” license renewal. As a practical matter, the staff does a good job of notifying licensees of deficiencies in their renewals. However, as currently written, one inadvertent blank on a license renewal opens a licensee up to having its license renewal denied. If a “sufficient” license renewal is timely filed, licensees and the public would be better served if the existing license is extended so as to provide the licensee 20 calendar days to correct items set forth in any notice of deficiency.

Proposed change to Rule 215.113: This rule presently and as proposed requires that an application for a new motor vehicle dealer’s license of which a manufacturer or distributor owns any interest in must be submitted no later than 30 days before the (a) opening of the dealership, (b) the closing of the buy-sell agreement or (c) the expiration of the current license. Absent extraordinary circumstances, items (a) and (c) should not be difficult to anticipate and achieve. However, item (b) may not be achievable in some circumstances. For example, if a dealer suddenly needs to quickly sell its dealership due to financial crisis, death or some other unforeseeable event, a manufacturer or distributor may be the best buyer for that particular dealership. Due to the unforeseen nature of the circumstances, it may not be possible to file an application 30 days prior to the closing of that sale. It would seem that the rule can avoid this situation by adding language at the end of (a) that states. “On a showing of good cause, the 30 day requirement can be waived for item (a)(2).”

Proposed change to Rule 215.145(c): The proposed subsection addresses the bond requirements of the licensee upon the death of a dealer who operates as a sole proprietorship. Code Section 2301.462 covers the rights of the parties relative to “Succession Following Death of Franchised Dealer”. If a challenge is made, the manufacturer or distributor must show that the result of the succession will be detrimental to the public interest and to the representation of the manufacturer or distributor. While the proposed rule relates to the license and bond requirements, a concern has been raised that a party could argue that the agency will have deemed the surviving spouse or other person to be qualified in connection with the license before any dispute under Codes Section 2301.462 can be addressed. This confusion could be avoided by simply stating within the rule that any determination by the agency of qualification is separate from the determination to be made under Code Section 230.462.

David Duncan
July 31, 2015
Page 3

This is not to say the agency staff is not qualified to make the determinations that they need to make for purposes of Rule 215.145. But those considerations are not the same as the issues that could be raised under a Code 2301.462 proceeding.

Proposed Change to Rule 215.250(k): The proposed subsection of this rule would appear to prohibit a dealer from being able to advertise a savings claim on a vehicle where the dealer has added an option such as pin stripes that was not obtained from the manufacturer or distributor. As read, this literally means that if a manufacture or distributor has monies offered to all dealers that are unrelated to the dealer added option, the dealer cannot advertise the unrelated savings claim provided by the manufacturer or distributor. It is our belief that the intent of this subsection was to prohibit the dealer from advertising a savings claim on the dealer added option and not to prohibit the dealer from advertising manufacturer or distributor saving claims that are unrelated to the dealer added option.

Proposed change to rule 215.264(h)(1): The proposed rule provides that for a toll-free telephone number and a statement that the telephone number may be used by consumers to obtain the information required elsewhere in the rule. The suggestion is that the rule be expanded to allow the option of a toll-free number or a website or web-address at which the consumers could obtain the information. The proliferation of access to the internet certainly dictates that the web is clearly accessible by those purchasing a vehicle. Also, there is less likely to be a miscommunication of what was actually disclosed to the consumer if it is available in writing versus simply relayed via a telephone call.

If you have any questions, please do not hesitate to contact me.

Thank you.

Very truly yours,



BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION 43 TAC CHAPTER 215, AMENDMENTS TO SUBCHAPTERS A-J; AND REPEALED SECTIONS UNDER SUBCHAPTERS A-F, H, AND I, RELATING TO MOTOR VEHICLE DISTRIBUTION

The Board of the Texas Department of Motor Vehicles (board), having reviewed Chapter 215, Motor Vehicle Distribution, in accordance with Government Code, §2001.039, finds it necessary to adopt amendments to Subchapter A, General Provisions, §§215.1 and 215.2; Subchapter B, Adjudicative Practice and Procedure, §§215.21-215.24, 215.27, 215.29, 215.30, 215.32, 215.34-215.49, 215.55, 215.56, and 215.58; Subchapter C, Licenses, Generally, §§215.81-215.85 and 215.87-215.89; Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, §§215.101, 215.103-215.106 and 215.108-215.119; Subchapter E, General Distinguishing Numbers, §§215.131, 215.132, 215.135, 215.137-215.141, and 215.144-215.159; Subchapter F, Lessors and Lease Facilitators, §§215.171 and 215.173-215.181; Subchapter G, Warranty Performance Obligations, §§215.201-215.210; Subchapter H, Advertising, §§215.241-215.261 and 215.263-215.271; Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, §§215.301-215.303, 215.305-215.308, 215.310, 215.311, and 215.314-215.317; and Subchapter J, Administrative Sanctions, §§215.500-215.503. The board also finds it necessary to repeal Subchapter A, §§215.3-215.6; Subchapter B, §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54, and 215.57; Subchapter C, §215.86; Subchapter D, §215.107; Subchapter E, §§215.136, 215.142, and 215.143; Subchapter F, §215.172; Subchapter H, §215.262; and Subchapter I, §§215.309, 215.312, and 215.313.

The notice of readoption, preamble, proposed amendments, and repeals are attached to this resolution as Exhibits A-D, 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 notice of readoption is approved for publication and the attached rule amendments and repeals are adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

David D. Duncan, General Counsel
Texas Department of Motor Vehicles

Order Number: _____

Date Passed: November 13, 2015

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts
3 amendments to Chapter 215, Motor Vehicle Distribution,
4 Subchapter A, General Provisions, §215.1 and §215.2; Subchapter
5 B, Adjudicative Practice and Procedure, §§215.21 - 215.24,
6 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56,
7 and 215.58; Subchapter C, Licenses, Generally, §§215.81 -
8 215.85, and 215.87 - 215.89; Subchapter D, Franchised Dealers,
9 Manufacturers, Distributors, and Converters, §§215.101, 215.103
10 - 215.106, and 215.108 - 215.119; Subchapter E, General
11 Distinguishing Numbers, §§215.131, 215.132, 215.135, 215.137 -
12 215.141, and 215.144 - 215.159; Subchapter F, Lessors and Lease
13 Facilitators, §§215.171, and 215.173 - 215.181; Subchapter G,
14 Warranty Performance Obligations, §§215.201 - 215.210;
15 Subchapter H, Advertising, §§215.241 - 215.261, and 215.263 -
16 215.271; Subchapter I, Practice and Procedure for Hearings
17 Conducted by the State Office of Administrative Hearings,
18 §§215.301 - 215.308, 215.310, 215.311, and 215.314 - 215.317;
19 and Subchapter J, Administrative Sanctions, §§215.500 - 215.503.
20 The department also adopts the repeal of Subchapter A, §§215.3 -
21 215.6; Subchapter B, §§215.25, 215.26, 215.28, 215.31, 215.33,
22 215.50 - 215.54, and 215.57; Subchapter C, §215.86; Subchapter
23 D, §215.107; Subchapter E, §§215.136, 215.142, and 215.143;

Texas Department of Motor Vehicles
Chapter 215, Motor Vehicle Distribution

Page 2 of 30

1 Subchapter F, §215.172; Subchapter H, §215.262; and Subchapter
2 I, §§215.309, 215.312, and 215.313. The amendments to §§215.1,
3 215.2, 215.41, 215.56, 215.58, 215.82, 215.83, 215.103, 215.105,
4 215.112, 215.113, 215.115, 215.135, 215.139, 215.140, 215.141,
5 215.144 - 215.148, 215.150, 215.154, 215.174, 215.178, 215.208,
6 215.244, 215.245, 215.248, 215.250, 215.500, and 215.503, are
7 adopted with changes to the proposed text as published in the
8 June 19, 2015, issue of the *Texas Register* (40 TexReg 3754), and
9 (40 TexReg 4040) and the June 26, 2015, issue of the *Texas*
10 *Register (In Addition)*, (40 TexReg 4254), and will be
11 republished.

12

13 The published proposal included amendments to §215.102,
14 Representatives, however, the department has determined that no
15 amendments are necessary to §215.102. Therefore, the department
16 has withdrawn the proposed amendments to §215.102 (40 TexReg
17 3754). The withdrawal was published on October 30, 2015, at (40
18 TexReg 7618).

19

20 The published proposal also included repeal of §215.133, General
21 Distinguishing Number, however, this repeal has been withdrawn.
22 The withdrawal of this repeal was published on October 30, 2015,
23 at (40 TexReg 7618).

1

2 EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

3 The department has concluded the review of its rules under

4 Chapter 215 in compliance with Government Code, §2001.039.

5 Notice of the department's intention to review was published in

6 the June 19, 2015, issue of the *Texas Register* (40 TexReg 4012).

7 As a result of the review, the department adopts amendments and

8 repeals, as detailed in the following paragraphs.

9

10 Amendments to Subchapter A, §215.1 and §215.2 replace

11 terminology with defined terms, delete definitions already

12 defined by statute, revise existing terminology for consistency

13 with other department rules, correct referenced citations, and

14 delete language that duplicates statute. Additional amendments

15 to §215.1 add and define the term "GDN," clarify the statutory

16 authority of a "final order authority" and "motion for rehearing

17 authority," and rename the title of that section for consistency

18 with other department rules. The reasons for initially adopting

19 §§215.3 - 215.6 no longer exist and are repealed.

20

21 Amendments to Subchapter B, §§215.21 - 215.24, 215.27, 215.29,

22 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, and 215.58

23 clarify the purpose of that subchapter, replace terminology with

1 defined terms, correct referenced citations, revise existing
2 terminology for consistency with other department rules, and
3 delete language contained in statute. An amendment to §215.22
4 adds that a violation of that section will be reported to the
5 general counsel of the department in addition to the hearing
6 officer. An additional amendment to §215.34 establishes the last
7 known address of a license holder for purposes of giving notice
8 as the "mailing address provided to the department when the
9 license holder applies or renews its license." Amendments to
10 §215.37 clarify that the costs of transcribing and preparing a
11 record in a contested case hearing will be assessed to the party
12 requesting the record. An additional amendment to §215.58
13 authorizes the director of the division to issue final orders in
14 contested cases that are resolved by summary judgment or summary
15 disposition. Additional amendments throughout Subchapter B
16 simplify and clarify language by removing any unnecessary
17 statutory repetition. In addition, amendments rename the titles
18 of certain sections for consistency and accuracy. Sections
19 215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54, and
20 215.57 are repealed as they duplicate language contained in
21 statute.

22

23 Amendments to Subchapter C, §§215.81 - 215.85 and 215.87 -

1 215.89 replace terminology with defined terms, revise existing
2 terminology for consistency with other department rules, correct
3 referenced citations, and delete language contained in statute.
4 Additional amendments throughout Subchapter C replace "division"
5 with "department" for clarification and consistency with current
6 department practice. In addition, amendments to §215.83 include
7 procedures for processing license applications that are
8 currently set out under existing §215.86 because those
9 procedures are more appropriately located under §215.83.
10 Additional amendments to §215.83 subdivide the rule to improve
11 formatting and readability. Section 215.86 is repealed as it is
12 incorporated into §215.83. Additional amendments throughout
13 Subchapter C rename certain section titles for consistency and
14 accuracy with the language contained in those rules.
15
16 Amendments to Subchapter D, §§215.101, 215.103 - 215.106, and
17 215.108 - 215.119 delete language contained in statute, correct
18 referenced citations, replace terminology with defined terms,
19 and revise existing terminology for consistency with other
20 department rules and current department practice. An amendment
21 to §215.105 clarifies that the provisions of that section apply
22 only to purchases and transfers involving physical relocation.
23 Amendments to §215.112 clarify that the provisions of that

1 section are limited only to motor home shows that require
2 department approval. Additional amendments throughout Subchapter
3 D replace "division" with "department" for clarification and
4 consistency with current department practice. Also, amendments
5 throughout Subchapter D subdivide and restructure the rules for
6 formatting and improved readability. Section 215.107 duplicates
7 language contained in statute and is repealed.

8

9 Amendments to Subchapter E, §§215.131, 215.132, 215.135, 215.137
10 - 215.141, and 215.144 - 215.159 replace terminology with
11 defined terms, delete definitions already defined by statute or
12 add clarifying language to existing definitions, revise existing
13 terminology for consistency with other department rules, correct
14 referenced citations, and delete language contained in statute.
15 An additional amendment to §215.132 adds and defines the term
16 "VIN." An amendment to §215.135 specifies that a dealer may not
17 commence business at any location until the department issues a
18 license authorizing that location. Additional amendments to
19 §215.139 subdivide the rule for improved readability and replace
20 existing textual language with graphics under amended
21 subsections (c), (e), and (f)(1). Additional amendments
22 throughout §215.140 clarify that different requirements apply to
23 retail dealers and wholesale motor vehicle dealers. An amendment

1 to §215.144 clarifies that license holders are not required to
2 maintain copies of motor vehicle titles submitted
3 electronically. Additional amendments renumber the appendices
4 under §215.153. Sections 215.136, 215.142, and 215.143 are
5 repealed because those sections are adequately addressed by
6 statute.

7

8 An amendment to Subchapter F renames the title of that
9 subchapter for consistency with statutorily defined terms.
10 Additional amendments throughout §§215.171, and 215.173 -
11 215.181 delete definitions already defined by statute or add
12 clarifying language to existing definitions, revise existing
13 terminology for consistency with other department rules, correct
14 referenced citations, and delete language contained in statute.
15 Additional amendments throughout Subchapter F renumber and
16 subdivide certain sections for improved readability. Section
17 215.172 is repealed because the definitions are being deleted.

18

19 Amendments to Subchapter G, §§215.201 - 215.210 replace
20 terminology with defined terms, revise existing terminology for
21 consistency with other department rules, correct the referenced
22 citations, and delete language that is already contained in
23 statute. In addition, an amendment to §215.201 renames the title

1 of that section.

2

3 Amendments to Subchapter H, §§215.241 - 215.261 and §§215.263 -

4 215.271 revise existing terminology for consistency with other

5 department rules. Additional amendments replace terminology with

6 defined terms and correct referenced citations. Amendments to

7 §215.241 replace "Board" with "department" and replace "code"

8 with "Occupations Code, Chapter 2301" for clarification.

9 Amendments to §215.244 add and define the terms "new motor

10 vehicle" and "savings claim or discount." An amendment to

11 §215.249 provides that a manufacturer's suggested retail price

12 (MSRP) must be the actual MSRP set by the manufacturer when the

13 MSRP is advertised by a dealer. Additional amendments

14 incorporate the provisions under existing §215.262 relating to

15 savings claims and discount offers with §215.250 because those

16 provisions are more appropriately located under that section.

17 Amendments replace certain textual language under subsections

18 (h) - (j) of §215.250 with graphics for ease of reference.

19 Because the department determined that the savings claims and

20 discount offer provisions under §215.262 are more appropriately

21 located under §215.250, §215.262 is repealed. In addition,

22 amendments to §215.253 add additional clarifying language

23 regarding allowable use of trade-in amounts in advertisements.

1
2 Amendments to Subchapter I, §§215.301 - 215.303, 215.305 -
3 215.308, 215.310, 215.311, and 215.314 - 215.317 replace
4 terminology with defined terms and correct referenced citations
5 for consistency. Additional amendments throughout that
6 subchapter replace "matter" with "contested case" and "Board"
7 with "department." An amendment to §215.307 establishes a
8 license holder's last known address for purposes of giving
9 notice as the "mailing address provided to the department when
10 the license holder applies or renews its license." An additional
11 amendment to §215.314 authorizes the director of the division to
12 issue a cease and desist order prior to the commencement of a
13 proceeding by the State Office of Administrative Hearings
14 (SOAH). The cease and desist order may be issued without notice
15 and opportunity for hearing if the provisions under Occupations
16 Code, §2301.802(b) are met. An Administrative Law Judge shall
17 hold a hearing to determine whether the interlocutory cease and
18 desist order should remain in effect during the pendency of the
19 proceeding. Additional amendments to §215.317 clarify that a
20 motion for rehearing and a reply to a motion for rehearing of an
21 order issued by the board delegate must be decided by the board
22 delegate. Sections 215.309, 215.312, and 215.313 duplicate
23 language contained in statute and are repealed.

1

2 Amendments to Subchapter J, §§215.500 - 215.503 replace
3 terminology with statutorily defined terms and correct
4 referenced citations. Additional amendments subdivide certain
5 sections of that subchapter for improved formatting. An
6 amendment to §215.500 clarifies that an administrative sanction
7 may include denial of an application for a license. An
8 additional amendment establishes the last known address of a
9 license holder for purposes of giving notice as the "mailing
10 address provided to the department when the license holder
11 applies or renews its license." An amendment to §215.503
12 provides that the department will not refund a fee to a person
13 that is subject to an unpaid civil penalty imposed by a final
14 order.

15

16 Additional nonsubstantive amendments throughout Chapter 215
17 correct punctuation, grammar, and capitalization.

18

19 COMMENTS AND RESPONSES:

20 The department received comments from Texas Automobile Dealers
21 Association "TADA," Texas Independent Automobile Dealers
22 Association "TIADA," Gulf States Toyota, Inc. "GST," and Lloyd
23 E. Ferguson "Ferguson."

1

2 In §215.1, Purpose and Scope, GST commented that the proposed
3 amendments to language describing the purpose and scope of
4 Chapter 215 might be interpreted to expand the powers granted to
5 the department by statute. The intent of the amendment was to
6 briefly describe the purpose and scope of the rules. The
7 department does not object to the clarification and has included
8 clarification in §215.1, as adopted.

9

10 GST's comment in regard to §215.2, Definitions, questioned the
11 removal of the definition for "party in interest" and expressed
12 concern that without the definition, an unfranchised dealer who
13 is a buyer in a buy/sell matter, could have standing to bring a
14 claim. The amendments were proposed to §215.2 to simplify the
15 rule to avoid confusion. This section states that "definitions
16 contained in Occupations Code, Chapter 2301," govern Chapter
17 215. However, Occupations Code, §2301.002 contains a definition
18 for "party," but not for "party in interest." Further, in
19 accordance with Occupations Code, §2302.359 and §2302.360, only
20 the franchised dealer (the selling dealer) has standing to
21 protest in a turndown case. No changes were made as a result of
22 this comment.

23

1 GST's comment on §215.22, Prohibited Communications, questioned
2 the substitution of "no party" after removal of the term "party
3 in interest," and whether this broadens the scope of prohibited
4 ex parte communications. Occupations Code, §2301.002(26) defines
5 "party" as: "a person or agency named or admitted as a party and
6 whose legal rights, duties, or privileges are to be determined
7 by the board after an opportunity for adjudicative hearing." In
8 light of this definition, the proposed amendments do not broaden
9 the scope of prohibited communications to persons such as
10 mediators and court reporters. There were no changes made as a
11 result of this comment.

12

13 Ferguson commented in regard to §215.24, Petitions, at
14 subsection (a)(2) that the proposed new language, that requires
15 a petition "cite the appropriate law," instead of "reference the
16 articles of the Codes or other law relied upon for relief" would
17 allow a petitioner to "drag the board" into a matter outside its
18 jurisdiction. No change is made to the amended section as
19 proposed because current and proposed §215.306, require the
20 department to make a "determination that a hearing is
21 appropriate under Occupations Code, Chapter 1201, Subchapter O;
22 Transportation Code, Chapter 502, or this chapter..."

23

1 In §215.30, Filing of Documents, GST commented as to whether
2 there might be an alternative to a certificate of service
3 required by electronic filings. The department declines to make
4 this change as the proposed amendments mirror the rules of the
5 State Office of Administrative Hearings, 1 Tex. Admin. Code,
6 §155.103(b), which provides that a party "shall" certify as to
7 delivery to verify timely service.

8

9 GST commented regarding §215.35, Reply, that elimination of the
10 requirement that a reply be sworn to by a party could lead to a
11 situation where a party is not aware of the allegations of a
12 case. The proposed amendment mirrors SOAH's requirements. No
13 changes were made as a result of this comment.

14

15 GST commented on §215.40, Continuance, regarding the removal of
16 "exceptional circumstances" and replacing the language with
17 "good cause" being problematic. The department disagrees as the
18 proposed amendment was made as "exceptional cause" would be a
19 much higher burden, often difficult to meet or understand by a
20 pro-se litigant.

21

22 GST's comment to §215.41, Presiding Officials, questioned the
23 removal of the word "impartial" in the description of the type

1 of hearing a hearing officer shall conduct and asked to whom the
2 term "chief hearing officer" refers. The rule requires that
3 hearings shall be "fair," and deleting "impartial" is proposed
4 to simplify language and delete unnecessary repetition. The term
5 "chief hearing officer" refers to the Chief Hearing Officer of
6 the Official of Administration Hearings of the department. No
7 changes were made as a result of these comments.

8

9 In §215.56, Amicus Brief, GST comments that "there should still
10 be a deadline for ... amicus briefs." The department agrees that a
11 deadline should be included to avoid unnecessary delays in
12 litigated matters when a non-party decides to inject itself into
13 the matter before the board. The department has included
14 language in the adopted section in response to GST's comments.

15

16 GST commented in §215.58, Delegation of Final Order Authority,
17 that the proposed amendments could be misinterpreted and
18 provided suggested language. The department agrees and changes
19 have been included in the adopted section to clarify when the
20 director is authorized to issue a final order in a contested
21 case.

22

23 Comments were received by GST and Ferguson on proposed

1 amendments to §215.83, License Applications. GST comments in
2 support of §215.83(c), (e), and (f) and asked what happens to
3 dealer plates when there is a buy-sell. This comment is
4 addressed in §215.87. In the event of a buy-sell, the selling
5 dealer's franchise dealer license is closed along with
6 associated metal dealer plates (unless they are associated to a
7 GDN that is not closing). The new dealer (buying dealer) must
8 apply for a new franchise dealer license and new metal dealer
9 plates. Mr. Ferguson's comments express concern about the
10 proposed amendments to §215.83(d) requiring a "complete" renewal
11 application rather than a "sufficient" renewal application. The
12 department agrees and has replaced "complete" with "sufficient"
13 throughout the section. Additionally, the adopted section
14 includes §215.83(b) which defines "sufficient."

15

16 Section 215.102, Representatives, was commented on by Ferguson.
17 The department determined that the proposed amendments to
18 §215.102 are not needed and has withdrawn the proposed
19 amendments.

20

21 GST commented on §215.104, Changes to Franchised Dealer's
22 License, regarding whether the department considers a change in
23 general manager of a franchised dealer to be a change requiring

1 a business entity amendment application under §215.104(d). A
2 change in the general manager is not critical and changes could
3 be made at the time of renewal. The department will revise Forms
4 LF604 and LF121 to match the proposed section. No changes were
5 made as a result of this comment.

6

7 GST commented in support of §215.105, Notification of License
8 Application; Protest Requirements, which now requires that a
9 protesting dealer assert how he or she meets the standing
10 requirements of §215.119.

11

12 TADA commented on amendments to §215.112, Motor Home Show
13 Limitations and Restrictions, stating that the proposed
14 amendments in §215.112(j)(1) allow a motor home dealer, on the
15 day that sales are suspended to "discuss finance options." The
16 department agrees with TADA and the change is included in the
17 adopted section to remove "and discuss finance options" from the
18 amendments.

19

20 Ferguson commented on §215.113, Manufacturer Ownership of
21 Franchised Dealer; Good Cause Extension; Dealer Development, in
22 subsection (a)(2), suggesting adding language that on showing of
23 good cause, the 30-day requirement can be waived for failure to

1 close on the buy-sell agreement. The department does not object
2 to this change and has revised the adopted section to allow for
3 the 30-day requirement to be waived for good cause, when any of
4 the three requirements are not met.

5

6 In response to TADA's comment, the department has made a minor
7 typographical change to §215.135, More Than One Location,
8 subsection (e).

9

10 The department agrees with TADA's comment on §215.139, Metal
11 Dealer's License Plate Allocations. There was a drafting error
12 on the graphic at Figure 43 TAC §215.139(c) as published. The
13 graphic in the adopted section was corrected to "five" instead
14 of "one" for the maximum metal dealer's license plates the
15 department will issue.

16

17 TADA commented on §§215.141, 215.144, and 215.147, regarding the
18 proposed amendment adding "peace officer" as a person permitted
19 to examine and copy records. TIADA also commented on §215.144,
20 expressing concern regarding the nature of records requests. The
21 department does not object to TADA and TIADA comments and the
22 language regarding peace officers inspecting records has been
23 removed from the adopted sections §§215.115, 215.141, 215.144,

1 215.146 - 215.148, and 215.178.

2

3 Ferguson commented on §215.145, Change of Dealer's Status,
4 requesting that succession following the death of a franchised
5 dealer include additional language clarifying that a
6 determination made by the department under the section is
7 separate from a board determination. The department does not
8 object to this change and the adopted section includes language
9 reflecting Occupations Code, §2301.462.

10

11 Comments received from TADA regarding §215.154, Dealer's
12 Temporary Tags, requested that the proposed deleted language
13 remain to allow a dealer's temporary tag to be used on a
14 courtesy vehicle. Additionally, TADA requested that deleted
15 language remain regarding a light truck not considered to be a
16 laden commercial vehicle when mounted with a camper unit or
17 towing a trailer for recreational purposes. The department
18 declines to make changes as the use of dealer's temporary tags
19 on courtesy cars is not allowable under Transportation Code,
20 §503.062. The exception with regard to vehicles mounted with a
21 camper or towing for recreational purposes is specific to
22 allowable uses for dealer plates, not dealer temporary tags.

23

1 The department received comments from TADA in regard to
2 §215.244, Definitions, and the repeal of §215.262, Savings
3 Claims: Discounts. TADA requested more information regarding
4 amendments to the definition of "advertisement," "person," and
5 "savings claim or discount," and suggested adding "new" motor
6 vehicle to the definition for "savings claim or discount."
7 Changes are made to the adopted §215.244 amendments to align the
8 wording of §215.262 with §215.242, General Prohibition, which
9 speaks to "a person" advertising motor vehicles. Section 215.262
10 has been combined with §215.250 as there was confusion and non-
11 compliance as a result of the contents appearing in two separate
12 sections. The amendment only changed the way violations were
13 cited internally. The definition of "savings claim or discount"
14 does not specifically mention "new" vehicles because it is a
15 broad explanation meant to cover the terms generally. Savings
16 and claim discounts are frequently advertised on used vehicles,
17 in violation of the advertising rules. The term also applies to
18 used vehicles, even in the context of a violation.

19

20 In §215.245, Availability of Motor Vehicles, TADA commented that
21 the proposed language did not track the language as set out in
22 the Texas Deceptive Trade Practices Act "DTPA." The department
23 does not object to this change and has included language which

1 tracks DTPA in the adopted section.

2

3 TADA commented in support of proposed amendments to §215.246,
4 Accuracy.

5

6 Comments received from TADA regarding §215.248, Layout,
7 requested that the proposed amendment include an Internet or an
8 online streamed advertisement via an online service. The
9 department agrees and the adopted section includes the suggested
10 language.

11

12 TADA's comments to §215.250, Dealer Price Advertising; Savings
13 Claims; Discounts, suggested changes to include "in an
14 advertisement," in subsection (a) and to revise the graphic
15 contained at §215.250(h)(2) to replace "Advertised Price" with
16 "MSRP." Ferguson commented on §215.250 expressing concern that
17 the proposed subsection (k) would appear to prohibit a dealer
18 from being able to advertise a savings claim on a vehicle where
19 the dealer had added an option not obtained from the
20 manufacturer. The department does not object and the adopted
21 section has added language "in an advertisement" to clarify that
22 the section is referring to an advertisement. Additionally, the
23 adopted graphic, Figure 43 TAC §215.250(h)(2), has been revised.

1

2 A comment received on §215.264, Payment Disclosure - Vehicle
3 Lease, subsection (h)(1) from Ferguson, suggested that the
4 Internet be an option for obtaining additional information about
5 a lease. No changes were made as a result of this comment.
6 Federal law requires a toll-free number. The Federal Trade
7 Commission has not provided an Internet option at this time.

8

9 TADA commented in regard to §215.305, Filing of Complaints;
10 Protests; and Petitions: Mediation, suggesting to adopt by rule
11 the Supreme Court's 2005 "Ethical Guidelines to Mediators."
12 These were established by the Supreme Court as guidelines and
13 not as rules or requirements and to adopt as rules would be
14 unnecessary. No changes were made as a result of this comment.

15

16 Comments received from TADA and TIADA suggested that §215.314,
17 Cease and Desist Orders, contain language from the Texas Rules
18 of Civil Procedure, Rule 680, be incorporated as guidance for
19 all parties. No changes were made as a result of this comment as
20 Occupations Code, §2301.802(b) enumerates the prerequisites for
21 cease and desist orders. Introducing additional requirements is
22 not necessary and could result in an unauthorized exercise in
23 lawmaking.

1

2 The rules to be finally adopted contain the following changes
3 from the rules as published in the June 19 and June 26, 2015,

4 *Texas Register*:

5 Subchapter A:

6 Section 215.1 is changed as a result of comments received.

7

8 Section 215.2 is changed to define "new motor vehicle."

9

10 Subchapter B:

11 Section 215.41 is restructured and renumbered.

12

13 Section 215.56 is changed as a result of comments received.

14

15 Section 215.58 is changed as a result of comments received.

16

17 Subchapter C:

18 Section 215.82 is changed to include department's longstanding
19 practice to require a plate application when replacement plates
20 are requested.

21

22 Section 215.83 is changed as a result of comments received.

23 Additionally, this section is changed to implement recent

1 changes made by Senate Bill 1307, 84th Legislature, to allow the
2 exemption for all military service members on "active duty."

3

4 Subchapter D:

5 Section 215.102 amendments have been withdrawn.

6

7 Section 215.103 has been changed to include reference to Chapter
8 2301, in place of §2301.652, for consistency with amendments to
9 §215.104 and to include Chapter 2301 provisions regarding
10 standing that apply to a service only facility, such as new
11 point, relocation, and relocation in an affected county.

12

13 Section 215.105 is changed to remove subsection (f) as it
14 repeats the information contained in subsection (a), and to add
15 "franchised" to subsection (a) because protest issues only apply
16 to franchised dealers. Section 215.105 also has been changed to
17 remove subsection (c) as the amendments as proposed
18 inadvertently created a burden on the department. This issue has
19 been litigated with the outcome that the parties, not the
20 department, have the burden to argue standing issues and to
21 demonstrate standing/no standing issues existed or need to be
22 examined. The department has determined that the current
23 language of §215.105(c) was intentionally written in passive

1 voice. The department's longstanding practice has been to err on
2 the side of sending notice, if the mapping program shown a
3 dealer is just barely out of the 15-mile radius, and then,
4 inform the dealer of the need to prove standing at SOAH.

5

6 Section 215.112 is changed as a result of comments received. In
7 addition, the department has changed references to
8 "representing" and "represent" to "participating with" and
9 "participate with" to avoid confusion because "representative"
10 is a licensed activity in Chapter 215. Further, changes were
11 made to §215.112 to change a reference to "products" in
12 subsection (j)(3) to "motor homes" because the rule is only
13 about motor homes and not about other kinds of products.

14

15 Section 215.113 is changed as a result of comment received.

16

17 Section 215.115 is changed as a result of comments received to
18 §215.141, to remove "peace officer."

19

20 Subchapter E:

21 Section 215.133 repeal has been withdrawn.

22

23 Section 215.135 has been changed to correct a drafting error as

1 a result of comment received. This section has additionally been
2 changed in subsection (a) from "owned" to "operated" because not
3 all dealers own the location property but they all operate the
4 dealership business located on the property.

5

6 Section 215.139 graphic Figure 215.139(c), has been changed in
7 response to a comment received. In addition, this section has
8 been changed to remove from the end of subsection (f)(3)B)
9 "between licensed dealers" because a wholesale motor vehicle
10 dealer may obtain motor vehicles from a member of the public or
11 from a dealer but must only sell to a dealer.

12

13 Section 215.140 has been changed to remove the proposed
14 reference to "motor vehicle" back to "vehicle" as the term
15 "motor vehicle" is incorrect in this instance.

16

17 Section 215.141 is changed in response to comments received.
18 Additionally, this section is changed for consistency with
19 changes made to §215.140 to change references of "motor vehicle"
20 to "vehicle" in subsection (b).

21

22 Section 215.144 is changed as a result of comments received.
23 Additionally, changes were made to subsection (k) for

1 consistency with changes made to §215.140 which changed
2 references of "motor vehicle" to "vehicle." Also, changes were
3 made to §215.144(h) to clarify the requirement which is enforced
4 by the department which assures that titling and registration
5 occur in a timely manner, that motor vehicle sales tax is
6 remitted, and that issues regarding liens are handled up front.

7

8 Section 215.145 is changed as a result of comments received.
9 Additionally, changes are made to §215.145 to move the last
10 sentence of subsection (c) to a new subsection (g), for
11 clarification. Also, §215.145(e) is changed to add additional
12 information regarding the requirement for the qualifying person
13 to submit a bond rider showing the qualifying person's name,
14 consistent with the department's current practice.

15

16 Section 215.146 is changed as a result of comments received to
17 §215.141, to remove "peace officer."

18

19 Section 215.147 is changed as a result of comments received to
20 remove "peace officer."

21

22 Section 215.148 is changed as a result of comments received to
23 §215.141, to remove "peace officer." Also, §215.148(b)(2) is

1 changed to correct a grammatical error; §215.148(d)(4) is
2 changed to correct sentence structure; and §215.148(h)(2) and
3 (3) are changed to add "purchasing" before "dealer" for
4 clarification.

5

6 Section 215.150 is changed for consistency with changes made to
7 §215.140 to change references of "motor vehicle" to "vehicle" in
8 subsection (a).

9

10 Section 215.154 is changed for consistency with changes made to
11 §215.140 to change references of "motor vehicle" to "vehicle" in
12 subsection (k).

13

14 Subchapter F:

15 Changes are made throughout §215.174 to reflect the department's
16 current license application requirements and procedures.

17 Additionally, changes are made to §215.174(a) to replace
18 "complete" with "sufficient" for consistency with changes made
19 to §215.83.

20

21 Section 215.178 is changed as a result of comments received to
22 §215.141, to remove "peace officer."

23

1 Subchapter G:

2 Section 215.208 is changed to correct a grammatical drafting
3 error.

4

5 Subchapter H:

6 Section 215.244 is changed as a result of comments received.

7 Additionally, §215.244(11) is changed to correct a drafting
8 error to put the industry on notice that only certain motor
9 vehicles have a Monroney sticker.

10

11 Section 215.245 is changed as a result of comments received.

12

13 Section 215.248 is changed as a result of comments received.

14

15 Section 215.250 and graphic Figures §215.250(h)(2) and (j) are
16 changed as a result of comments received.

17

18 Subchapter J:

19 Section 215.500 is changed for clarification purposes.

20

21 Section 215.503 is changed to allow the department, at its
22 discretion, to negotiate a deal that would allow a refund in
23 certain situations when an application for a license is denied.

1

2 STATUTORY AUTHORITY

3 The amendments and repeals are adopted under Transportation
4 Code, §1002.001, which provides the board of the Texas
5 Department of Motor Vehicles with the authority to adopt rules
6 that are necessary and appropriate to implement the powers and
7 the duties of the department; Occupations Code, §2301.155, which
8 requires the board of the Texas Department of Motor Vehicles to
9 adopt rules necessary or convenient to administer Occupations
10 Code, Chapter 2301; and more specifically, Occupations Code,
11 §2301.266, which authorizes the board to adopt rules applicable
12 to the issuance of duplicate licenses; Occupations Code,
13 §2301.462, which requires honoring the succession to a
14 dealership by a legal heir or devisee; and Occupations Code,
15 §2301.602, which requires the board to adopt rules to enforce
16 Chapter 2301, Subchapter M; Transportation Code, §503.002 which
17 authorizes the board to adopt rules to administer Transportation
18 Code, Chapter 503; and more specifically, Transportation Code,
19 §503.009, which authorizes the board to adopt rules for
20 procedures concerning contested cases; Transportation Code,
21 §503.061, which requires the board to adopt rules regulating the
22 issuance of dealer's license plates; and Transportation Code,
23 §503.0626 and §503.0631, which require the board to adopt rules

1 necessary to implement and manage the department's temporary tag
2 databases.

3

4 CROSS REFERENCE TO STATUTE

5 Government Code, §2001.039; Occupations Code, Chapter 2301; and

6 Transportation Code, Chapter 503.

Texas Department of Motor Vehicles
Chapter 215, Motor Vehicle Distribution

Notice of Readoption

The Texas Department of Motor Vehicles (department) files this notice of readoption of 43 TAC Chapter 215, Motor Vehicle Distribution, pursuant to 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 determined that the reasons for initially adopting some rules under Chapter 218 no longer exist and those repeals are published in the Adopted Rules section of this issue of the *Texas Register*. Additionally, the reasons for initially adopting the remaining rules in Chapter 215 continue to exist, but amendments to certain rules are necessary and are published in the Adopted Rules section of this issue of the *Texas Register*.

No comments on the proposed review were received.

This concludes the review of Chapter 215, Motor Vehicle Distribution.

**ADOPTION PUBLICATION OF
REPEAL OF 43 TAC CHAPTER 217, SUBCHAPTER I, SALVAGE VEHICLE DEALERS
AND
NEW 43 TAC CHAPTER 221, SUBCHAPTER A, §221.1, §221.2,
SUBCHAPTER B, §§221.11 - 221.20, SUBCHAPTER C, §§221.41 - 221.53,
SUBCHAPTER D, §§221.71 - 221.73, SUBCHAPTER E, §221.91 - 221.95,
AND SUBCHAPTER F, §§221.111 - 221.115, RELATING TO SALVAGE VEHICLE DEALERS,
SALVAGE POOL OPERATORS AND SALVAGE VEHICLE REBUILDERS**

Description

This order authorizes the adoption of repeal of Chapter 217, Subchapter I, Salvage Vehicle Dealers, §§217.181 - 217.192 and adoption of new Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders. Subchapters A - F.

Background

The current Chapter 217, Vehicles Titles and Registration, Subchapter I, Salvage Vehicle Dealers, is repealed and new Chapter 221, Subchapters A - F, is adopted to replace Chapter 217, Subchapter I. The new chapter will move salvage rules from Chapter 217, Vehicle Titles and Registration, to a new dedicated chapter, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, which will facilitate its use.

The adopted new Chapter 221:

- Describes the responsibilities of the department to enforce Occupations Code, Chapter 2302.
- Provides definition of terms that required defining such as "new automobile dealer," and "used automobile dealer," clarifies other definitions, and deletes unnecessary definitions.
- Clarifies the requirements for a salvage vehicle dealer license and endorsements and list the persons who are not required to obtain a salvage vehicle dealer license.
- Clarifies the requirements for licensing of a salvage vehicle agent.
- Establishes the fees for salvage vehicle dealer licenses and endorsements to the salvage vehicle dealer license and also allow the department to prorate fees to assist salvage vehicle dealers in synchronizing their license term with other licenses they may hold.
- Establishes the fee for salvage vehicle agent licenses.
- Establishes fees for salvage vehicle dealer and salvage vehicle agent license renewals.
- Clarifies the required information that must be submitted to the department on a salvage vehicle dealer license application and the attachments that a license applicant must submit to the department with an application, and confirms the requirements for processing a license application submitted by a veteran, military member or military spouse.

- Sets out the requirements if a salvage vehicle dealer opens an additional business location in the same county or a new business location in another county and establishes the requirement that a salvage vehicle dealer notify the department if the salvage vehicle dealer closes a business location. Also, establishes the requirements when a salvage vehicle dealer changes the business name or the ownership of the license holder and describes the procedures for renewal of a salvage vehicle dealer license.
- Establishes the business location requirements for a salvage vehicle dealer and provides that the salvage vehicle dealer must be in compliance with city, county and state laws. States that a salvage vehicle dealer may only operate from the location licensed by the department and provides that a salvage vehicle dealer must post its business hours and must maintain a telephone number that is answered or can receive messages during certain hours, as well as requires that a salvage vehicle dealer display a sign at the licensed business location and maintain an office at the business location. The adopted new sections prohibit an office from being located within a residence, apartment house, hotel, motel or rooming house and establishes a requirement that the salvage vehicle dealer display its license issued by the department. Additionally, requires a salvage vehicle dealer to receive a properly assigned title or other evidence of ownership when acquiring a vehicle, describes the requirements for scrapping or destroying a vehicle and references the applicable statute when a salvage vehicle dealer purchases a component part. Clarifies the procedures for selling flood-damaged vehicles. Also, establishes notification requirements for identifying salvage motor vehicles and non-repairable motor vehicles when offering such vehicles for sale and requires that purchasers acknowledge that a vehicle is a salvage motor vehicle or a non-repairable motor vehicle at the time of sale. Clarifies the procedures for selling salvage motor vehicles and non-repairable motor vehicles that will be exported from the country and proposes the requirements for selling salvage motor vehicles and non-repairable motor vehicles to casual buyers and aligns the identification requirements for these purchasers with the requirements established for purchasers of motor vehicles.
- Sets out the requirement for maintaining records and for producing those records after receipt of a request from a representative of the department, describes the record retention requirements for a salvage vehicle dealer and clarifies what records must be maintained by a salvage vehicle dealer.
- Sets out the procedures to be followed by the department when initiating a contested case proceeding against a salvage vehicle dealer, describes the procedures to be followed when the salvage vehicle dealer submits a request for hearing after the department initiates a contested case proceeding, and establishes procedures after a department decision becomes final. States the applicable law governing an appeal of a final decision reached in a contested case proceeding and describes the cases where the board has delegated final order authority.
- Additionally, the adopted new sections clarify the circumstances when the department may deny an application for a salvage vehicle dealer or a salvage vehicle agent license, lists the grounds upon which the department may revoke or suspend a salvage vehicle dealer license or impose an administrative penalty, and provides that a salvage vehicle dealer's license may be suspended, if the department receives an order issued under Family Code, §232.008. Also, provides that a person may not re-apply for a license

before one year after revocation and discusses the refund of fees when a license has been denied, suspended or revoked.

Other Comments

There are no significant fiscal implications related to the adopted repeal and new chapter.

The proposal was published in the *Texas Register* on September 4, 2015. The comment period closed on October 5, 2015. Comments were received from Texas Automobile Dealers Association (TADA) and Texas Automotive Recyclers Association (TARA) as follows:

- TADA - requested limiting the proposed endorsement for "new motor vehicle dealer endorsement" to a "non-repairable" vehicle.
- TADA - requested that a written notice stating that a vehicle is either salvage or non-repairable be made to any dealer when a salvage or non-repairable vehicle is offered for sale.
- TARA - requested clarification that "person" refers to "license holder" in definition of "salvage vehicle broker endorsement."
- TARA - requested authorizing a salvage vehicle dealer license with a used automobile dealer endorsement be authorized to rebuild, repair or reconstruct "more than five" vehicles during a calendar year.
- TARA - requested that a person who casually repairs, rebuilds, or reconstructs to be limited to "no more than five" salvage motor vehicles in a calendar year.
- TARA - requested §221.50 be reworded for clarity.

The department responded to the comments by:

- TADA's comments will be addressed in future amendments to Chapter 215, Motor Vehicle Distribution.
- clarified "person" by changing to "license holder" in §221.2(24).
- no change was made in §221.11(e) to the number of salvage vehicles a salvage vehicle dealer license with a used automobile dealer endorsement can rebuild, repair or reconstruct.
- in §221.11(f)(3), a drafting error was corrected to limit the number to "no more than five" salvage motor vehicles a person who casually repairs can repair, rebuild or reconstruct in a calendar year.
- §221.50 was revised for clarity and *Texas Register* preference.

Other changes:

- language was added to §221.1 to include salvage vehicle agent.
- minor drafting errors were corrected in §221.11 and §221.12.
- the proposed fee increase from \$95 to \$120 in §221.13 has been changed to \$95 and information added regarding the license fees for salvage vehicle dealer license.
- minor drafting error was changed in §221.15.
- information regarding acceptable identification and additional supporting documentation were added to §221.16.
- dealer or salvage vehicle agent license renewal fee of \$85 was omitted due to drafting error and has been added to §221.20, along with changes made for minor drafting errors.
- minor drafting error was corrected in §221.48.
- formatting to §221.51 for *Texas Register* preference.

- information regarding acceptable identification was added to §221.53.
- the references in §221.71 to peace officers inspecting records have been removed for consistency and a minor drafting error change.
- information regarding acceptable identification was added to §221.73.
- the references in §221.112 to peace officers inspecting records have been removed for consistency and a minor typographical error was corrected.
- minor typographical and grammatical errors have been corrected.

If the board adopts the repeal and new chapter during its November 13, 2015, open meeting, staff anticipates:

- Publication of the adoption in the December 4, 2015, issue of the *Texas Register*; and
- An effective date of the rule of December 10, 2015.



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October 5, 2015

Mr. David D. Duncan
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Building 1
Austin, Texas 78731

Sent via email: rules@txdmv.gov

Re: Proposed Rules to Chapter 221. Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders

Dear Mr. Duncan:

On behalf of the Texas Automobile Dealers Association (TADA), the following comments are submitted regarding the proposed rules as filed in the September 4, 2015, *Texas Register* regarding new 43 TAC Chapter 221 rules for salvage vehicle dealers, 40 *TexReg* 5759, et seq.

Definitions

TADA's first concern is in regards to a salvage dealer selling a new motor vehicle, even if it is a salvage unit.

The definition proposed in 43 TAC § 221.2(11) states:

New automobile dealer endorsement—An endorsement on the salvage vehicle dealer license issued by the department that allows the license holder to buy and sell salvage motor vehicles and non-repairable motor vehicles that have not been the subject of a retail sale.

A "salvage motor vehicle" is a motor vehicle that is either missing a major component part or has damage such that the cost of repairs, including parts and labor, other than for repainting and excluding sales tax on the total cost of repairs, exceeds the actual cash value (ACV) of the motor

vehicle immediately before the damage, or it comes into Texas on an out-of-state salvage motor vehicle title or similar out-of-state ownership document.¹

A “non-repairable” motor vehicle is a motor vehicle that is damaged, wrecked, or burned to the extent that the only residual value of the vehicle is as a source of parts or scrap metal or it comes into this state under a comparable ownership document that indicates that the vehicle is non-repairable.²

Since a “new motor vehicle” is one that has not been the subject of a retail sale, regardless of the mileage on the vehicle,³ and because a person may not engage in the business of buying, selling, or exchanging a new motor vehicle unless the person holds a franchised dealer’s license issued for the make of new motor vehicles being bought, sold, or exchanged or is a bona fide employee of the holder of a franchised dealer’s license,⁴ TADA is concerned that the “new automobile dealer endorsement” allows a salvage dealer to buy and sell a new motor vehicle without the appropriate franchise and license from the Texas Department of Motor Vehicles (TxDMV).

TADA agrees that a non-repairable motor vehicle is no longer a “motor vehicle”⁵ as it no longer has as its primary purpose the transport of persons or property--it can only be used for parts and scrap metal and it may not obtain a regular title or be registered in this state or be repaired, rebuilt, or reconstructed. A non-repairable vehicle may only be used as a source for used parts or scrap metal and a salvage dealer may buy and sell parts and scrap metal.⁶

In addition, a printed non-repairable vehicle title must state on its face that the motor vehicle may not be: (1) repaired, rebuilt, or reconstructed; (2) issued a title or registered in this state; (3) operated on a public highway; and, (4) used except as a source for used parts or scrap metal.⁷ As such, it is no longer a “motor vehicle” or a new motor vehicle.

A salvage vehicle owner, contrary to a non-repairable motor vehicle owner, may apply for a title after the motor vehicle has been repaired, rebuilt, or reconstructed. The title application requires a description of each major component part used to repair the motor vehicle; states the name

¹TEX. TRANSP. CODE § 501.091(15) (Vernon 2013).

²*Id.* at § 501.091(9).

³TEX. OCC. CODE § 2301.002(24) (Vernon Supp. 2014).

⁴*Id.* at § 2301.252(a).

⁵*Id.* at § 2301.002(23).

⁶TEX. TRANSP. CODE § 501.09112(b) (Vernon 2013).

⁷*Id.* at § 501.097(c).

of each person from whom the parts used in assembling the vehicle were obtained; and shows the identification number required by federal law to be affixed to or inscribed on the part.⁸

Upon receiving the completed application and paying the required fee for title, the TxDMV issues the new title on the repaired salvage vehicle with the former condition described or disclosed.⁹

A “non-repairable” vehicle may never have a title issued to it other than a non-repairable title by the TxDMV; however, a vehicle that was “salvage” may be rebuilt, reconstructed, or repaired and have a new title issued to it by the State of Texas.

If a “new motor vehicle” becomes “salvage” because it sustains damage or is missing a major component part to the extent that the cost of repairs exceeds the ACV before the damage and if this salvage new motor vehicle is sold to a salvage dealer or repairer or re-builder who re-sells it after repairing or rebuilding, a retail sale has not occurred. The salvage dealer purchases the salvage new motor vehicle for a resale purpose and only a licensed and franchised motor vehicle dealer for that line may sell a new motor vehicle in Texas.

A new motor vehicle does not become a used motor vehicle until a retail sale occurs, even if the vehicle sustains damage above its ACV.

TADA is concerned that the “new motor vehicle dealer endorsement” definition may be broader than is allowed and requests that consideration be given to limit the proposed endorsement to a “non-repairable” vehicle.

Duty to Identify Motor Vehicles Offered for Retail Sale

Proposed 43 TAC § 221.51 requires a disclosure from a salvage dealer when the salvage dealer displays or offers a salvage or non-repairable vehicle at a retail sale.

The first disclosure requirement necessitates a sign being placed on each salvage motor vehicle that is visible from the outside of the vehicle in, at minimum, two inch letters, stating the vehicle is a salvage titled vehicle that cannot be operated on a public highway until repairs are made and fees are paid.

The second disclosure requirement arises when a retail sale occurs of the salvage motor vehicle. In this instance, the salvage dealer is required to obtain the purchaser’s signature on a written 11 point font, or larger, statement whereby the purchaser acknowledges that the vehicle is titled as a salvage vehicle and that if operated on the Texas public highways, repairs must be

⁸*Id.* at § 501.100(a).

⁹*Id.* at § 501.100(b), (c).

performed, a new title must be applied for, and applicable fees must be paid.

Similar sign and acknowledgment notice requirements are also proposed for a non-repairable vehicle sold at retail except that the notice discloses that the vehicle can never be operated on a public highway, registered, or operated in this state or any other state.

If a salvage dealer conducts a retail sale of a salvage or non-repairable vehicle in Spanish or other foreign language, the notices and disclosures must be in that language.

Although the proposal requires a sign and notice on a *retail* sale, there is no similar notice requirement if a sale is made to another dealer. If a sale of a salvage vehicle or a non-repairable vehicle is made at a salvage or a non-repairable only auction, then the auction presumably discloses which vehicles are salvage and which are non-repairable at the auction.

The auction is presumed to distinguish between salvage and non-repairable vehicles as the value of a salvage vehicle and a non-repairable vehicle are substantial—salvage may be repaired and re-titled and a non-repairable has only parts value; therefore, a notice as to which vehicles are salvage and which vehicles are non-repairable should be given at any auction if both salvage and non-repairable vehicles are displayed for sale.

If a salvage or non-repairable vehicle is offered for sale to another dealer, TADA is concerned that a salvage dealer will assume there is no requirement to disclose the condition of the vehicle to another dealer since the rule only requires notices on a “retail” sale.

TADA is discussing with Mr. Steve Bresnen, who has been working with the TxDMV on the proposal, that a written notice that a vehicle is either salvage or non-repairable be made to any dealer when a salvage or non-repairable vehicle is offered for sale. Notifying another dealer of the salvage or non-repairable status allows the buyer to accurately value the vehicle and satisfies disclosure requirements.

TADA appreciates the opportunity to comment on the proposal and looks forward to continue to discuss the above concerns.

Sincerely,



Karen Phillips
General Counsel/EVP

c: Mr. Steve Bresnen

David D. Duncan, General Counsel
Texas Department of Motor Vehicles
4000 Jackson Ave., Building 1
Austin, Texas 78731

Submitted electronically at rules@txdmv.gov

Re: Proposed Repeal of Texas Administrative Code, Chapter 217, Subchapter I, Salvage Vehicle Dealers; Proposed New Texas Administrative Code, Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators & Salvage Vehicle Rebuilders

Dear Mr. Duncan:

Texas Automotive Recyclers Association (TARA) is the statewide organization of professional automotive recyclers and the state chapter of the international Automotive Recyclers Association. Since 1965, TARA has been representing an industry dedicated to safe and environmentally responsible removal, reuse and disposal of automotive parts and inoperable motor vehicles. Although sometimes known as auto salvage dealers or even junkyards, our members are professional automotive recyclers that deal in the recycling of automobiles, light & heavy-duty trucks, buses, and motorcycles. TARA members are licensed as Used Automotive Parts Recyclers by the Texas Department of Licensing & Regulation; additionally, most recyclers hold salvage dealer licenses and used car dealer licenses issued by the Texas Department of Motor Vehicles.

TARA appreciates the opportunity to provide comments on the proposed revisions to rules relating to salvage vehicle dealers and salvage pool operators. The association had provided informal comments early in the process of rule development and we appreciate that many of the suggestions were incorporated in the published draft. Below are a few additional recommendations as well as request for clarification:

- §221.2(24)(B) - Request clarification that “person” refers to “license holder”
- §221.11(e) - Revise to read “more than 5”
- §221.11(f)(3) - Revise to read “no more than 5”
- §221.50(b) - Suggest rewording this section for clarity

Should you have any questions please contact ctredway@austin.rr.com or 512.751.0743.

Sincerely,

CJ Tredway, Government Affairs Consultant
Texas Automotive Recyclers Association

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION
REPEAL OF 43 TAC CHAPTER 217,
SUBCHAPTER I, SALVAGE VEHICLE DEALERS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt repeal of Chapter 217, Subchapter I, Salvage Vehicle Dealers, §217.181 through and inclusive of §217.192.

The preamble and repeals 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 repeals are adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

William P. Harbeson, Director
Enforcement Division

Order Number: _____

Date Passed: November 13, 2015

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts the
3 repeal of Chapter 217, Subchapter I, Salvage Vehicle Dealers,
4 §217.181, Purpose and Scope; §217.182, Definitions; §217.183,
5 Classification of Salvage Vehicle Dealer Licenses; §217.184,
6 Salvage Vehicle Dealer License; §217.185, Salvage Vehicle Agent
7 License; §217.186, Investigation, Report by the Department, and
8 Issuance of License; §217.187, Place of Business; §217.188,
9 Change of Licensee's Status; §217.189, License Renewal;
10 §217.190, License Duties; §217.191, Record of Purchases, Sales,
11 and Inventory; and §217.192, Administrative Sanctions and
12 Procedures.

13

14 EXPLANATION OF ADOPTED REPEAL

15 The department adopts the repeal of Chapter 217, Subchapter I,
16 Salvage Vehicle Dealers. Simultaneously, the department is
17 adopting new Chapter 221, Salvage Vehicle Dealers, Salvage Pool
18 Operators and Salvage Vehicle Rebuilders, which replaces Chapter
19 217, Subchapter I.

20

21 COMMENTS

22 No comments on the proposed repeal were received.

23

1 STATUTORY AUTHORITY

2 The repeal is adopted under Transportation Code, §1002.001,
3 which provides the board of the Department of Motor Vehicles
4 with the authority to adopt rules that are necessary and
5 appropriate to implement the powers and duties of the
6 department.

7

8 CROSS REFERENCE TO STATUTE

9 No other code, article, or statute is affected by this adoption.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION
NEW 43 TAC CHAPTER 221,
RELATING TO SALVAGE VEHICLE DEALERS,
SALVAGE POOL OPERATORS AND SALVAGE VEHICLE REBUILDERS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt new Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, to include Subchapter A, General Provisions: §221.1, Purpose and Scope; §221.2, Definitions; Subchapter B, Licensing: §221.11, License and Endorsement Required; §221.12, Salvage Vehicle Agent; §221.13, License Term and Fees; §221.14, License Applications; Generally; §221.15, Required License Application Information; §221.16, Required Attachments to the License Application; §221.17, License Processing for Military Service Members, Spouses, and Veterans; §221.18, Additional, New, or Closed Location; §221.19, Change of License Holder's Name or Ownership; §221.20, License Renewal; Subchapter C, Licensed Operations: §221.41, Location Requirements; §221.42, Operations at Licensed Business Location; §221.43, Business Hours; §221.44, Business Sign Requirements; §221.45, Business Office; §221.46, Display of License; §221.47, Evidence of Ownership; §221.48, Scrapped or Destroyed Motor Vehicle; §221.49, Unique Inventory Number; §221.50, Restrictions on Sales of Flood Damaged Vehicles; §221.51, Duty to Identify Motor Vehicles Offered for Sale; §221.52, Export-only Sales; §221.53, Casual Sales; Subchapter D, Records: §221.71, Records; Generally; §221.72, Record Retention; §221.73, Content of Records; Subchapter E, Administrative Procedures: §221.91, Notice of Department Decision; §221.92, Notice of Hearing; §221.93, Final Decisions and Orders; Motions for Rehearing; §221.94, Judicial Review of Final Order; §221.95, Delegation of Final Order Authority; Subchapter F, Administrative Sanctions: §221.111, Denial of License; §221.112, Suspension, Revocation, and Administrative Penalties; §221.113, Suspension or Refusal to Renew Due to Failure to Pay Court-ordered Child Support; §221.114, Re-application after Revocation of License; and §221.115, Refund of Fees.

The preamble and new chapter 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 new chapter is adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

William P. Harbeson, Director
Enforcement Division

Order Number: _____

Date Passed: November 13, 2015

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 1 of 11

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts new
3 43 TAC Chapter 221, Salvage Vehicle Dealers, Salvage Pool
4 Operators and Salvage Vehicle Rebuilders, which includes new
5 Subchapter A, General Provisions: §221.1, Purpose and Scope;
6 §221.2, Definitions; Subchapter B, Licensing: §221.11, License
7 and Endorsement Required; §221.12, Salvage Vehicle Agent;
8 §221.13, License Term and Fees; §221.14, License Applications;
9 Generally; §221.15, Required License Application Information;
10 §221.16, Required Attachments to the License Application;
11 §221.17, License Processing for Military Service Members,
12 Spouses and Veterans; §221.18, Additional, New, or Closed
13 Location; §221.19, Change of License Holder's Name or Ownership;
14 §221.20, License Renewal; Subchapter C, Licensed Operations:
15 §221.41, Location Requirements; §221.42, Operations at Licensed
16 Business Location; §221.43, Business Hours; §221.44, Business
17 Sign Requirements; §221.45, Business Office; §221.46, Display of
18 License; §221.47, Evidence of Ownership; §221.48, Scrapped or
19 Destroyed Motor Vehicle; §221.49, Unique Inventory Number;
20 §221.50, Restrictions on Sales of Flood Damaged Vehicles;
21 §221.51, Duty to Identify Motor Vehicles Offered for Sale;
22 §221.52, Export-only Sales; §221.53, Casual Sales; Subchapter D,
23 Records: §221.71, Records; Generally; §221.72, Record Retention;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 2 of 11

1 §221.73, Content of Records; Subchapter E, Administrative
2 Procedures: §221.91, Notice of Department Decision; §221.92,
3 Notice of Hearing; §221.93, Final Decisions and Orders; Motions
4 for Rehearing; §221.94, Judicial Review of Final Order; §221.95,
5 Delegation of Final Order Authority; Subchapter F,
6 Administrative Sanctions: §221.111, Denial of License; §221.112,
7 Suspension, Revocation and Administrative Penalties; §221.113,
8 Suspension or Refusal to Renew Due to Failure to Pay Court-
9 ordered Child Support; §221.114, Re-application After Revocation
10 of License; and, §221.115, Refund of Fees. New §§221.1, 221.2,
11 221.11 - 221.13, 221.15, 221.16, 221.20, 221.48, 221.50, 221.51,
12 221.53, 221.71, and 221.112 are adopted with changes to the
13 proposed text as published in the September 4, 2015, issue of
14 the *Texas Register* (40 TexReg 5759) and will be republished.

15

16 EXPLANATION OF ADOPTED NEW CHAPTER

17 The existing Chapter 217, Vehicles Titles and Registration,
18 Subchapter I, Salvage Vehicle Dealers, is repealed
19 simultaneously with adoption of new Chapter 221, Subchapters A -
20 F. The new chapter moves salvage rules from Chapter 217, Vehicle
21 Titles and Registration, to a new dedicated chapter, Salvage
22 Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle
23 Rebuilders, which will facilitate its use.

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1

2 New §221.1 describes generally the responsibilities of the
3 department to enforce Occupations Code, Chapter 2302, and
4 provides an overview of the new chapter and its content. New
5 §221.2 provides the definition of terms that require defining,
6 such as "new automobile dealer," and "used automobile dealer,"
7 clarifies other definitions, and deletes unnecessary
8 definitions.

9

10 New §221.11 clarifies the requirements for a salvage vehicle
11 dealer license and endorsements, and lists the persons that are
12 not required to obtain a salvage vehicle dealer license. New
13 §221.12 clarifies the requirements for licensing of a salvage
14 vehicle agent. New §221.13 sets out the fee for salvage vehicle
15 dealer licenses and endorsements to the salvage vehicle dealer
16 license. This new section also allows the department to prorate
17 fees to assist salvage vehicle dealers in synchronizing their
18 license term with other licenses they may hold. New §221.14
19 clarifies the required information that must be submitted to the
20 department with a salvage vehicle dealer license application.
21 New §221.15 provides information required on salvage vehicle
22 dealer applications. New §221.16 clarifies the attachments that
23 a license applicant must submit to the department with an

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 application. New §221.17 confirms the requirements for
2 processing a license application submitted by a veteran,
3 military member or military spouse. New §221.18 clarifies the
4 requirements if a salvage vehicle dealer opens an additional
5 business location in the same county, or a new business location
6 in another county. This new section also establishes the
7 requirement that a salvage vehicle dealer notify the department
8 if the salvage vehicle dealer closes a business location. New
9 §221.19 clarifies the requirements when a salvage vehicle dealer
10 changes the business name or the ownership of the license
11 holder. New §221.20 describes the procedures for renewal of a
12 salvage vehicle dealer license and salvage vehicle agent
13 license.

14

15 New §221.41 sets out the business location requirements for a
16 salvage vehicle dealer and provides that the salvage vehicle
17 dealer must be in compliance with city, county and state laws.
18 New §221.42 clarifies that a salvage vehicle dealer may only
19 operate from the location licensed by the department. New
20 §221.43 provides that a salvage vehicle dealer must post its
21 business hours and must maintain a telephone number that is
22 answered or can receive messages during certain hours. New
23 §221.44 requires that a salvage vehicle dealer display a sign at

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 the licensed business location. New §221.45 requires that the
2 salvage vehicle dealer maintain an office at the business
3 location and prohibits the office from being located within a
4 residence, apartment house, hotel, motel or rooming house. New
5 §221.46 establishes a requirement that the salvage vehicle
6 dealer display its license issued by the department. New §221.47
7 requires a salvage vehicle dealer to receive a properly assigned
8 title or other evidence of ownership when acquiring a vehicle.
9 New §221.48 describes the requirements for scrapping or
10 destroying a vehicle. New §221.49 makes reference to the
11 applicable statute when a salvage vehicle dealer purchases a
12 component part. New §221.50 clarifies the procedures for selling
13 flood-damaged vehicles. New §221.51 establishes notification
14 requirements for identifying salvage motor vehicles and non-
15 repairable motor vehicles when offering such vehicles for retail
16 sale. This new section also establishes a requirement that
17 purchasers acknowledge that a vehicle is a salvage motor vehicle
18 or a non-repairable motor vehicle at the time of sale. New
19 §221.52 clarifies the procedures for selling salvage motor
20 vehicles and non-repairable motor vehicles that will be exported
21 from the country. New §221.53 clarifies the requirements for
22 selling salvage motor vehicles and non-repairable motor vehicles
23 to casual buyers. The identification requirements for these

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 purchasers is aligned with the requirements established for
2 purchasers of motor vehicles.

3

4 New §221.71 clarifies the requirement for maintaining records
5 and for producing those records after receipt of a request from
6 a representative of the department. New §221.72 describes the
7 record retention requirements for a salvage vehicle dealer. New
8 §221.73 clarifies what records must be maintained by a salvage
9 vehicle dealer.

10

11 New §221.91 sets out the procedures to be followed by the
12 department when initiating a contested case proceeding against a
13 salvage vehicle dealer. New §221.92 describes the procedures to
14 be followed when the salvage vehicle dealer submits a request
15 for hearing after the department initiates a contested case
16 proceeding. New §221.93 establishes procedures after a
17 department decision becomes final. New §221.94 makes reference
18 to the applicable law governing an appeal of a final decision
19 reached in a contested case proceeding. New §221.95 describes
20 the cases where the board has delegated authority to issue a
21 final order.

22

23 New §221.111 clarifies the circumstances when the department may

1 deny an application for a salvage vehicle dealer or a salvage
2 vehicle agent license. New §221.112 lists the grounds upon which
3 the department may revoke or suspend a salvage vehicle dealer
4 license or impose an administrative penalty. New §221.113
5 provides that a salvage vehicle dealer's license may be
6 suspended if the department receives an order issued under
7 Family Code, §232.008. New §221.114 provides that a person may
8 not re-apply for a license before one year after revocation. New
9 §221.115 discusses the refund of fees when a license has been
10 denied, suspended or revoked.

11

12 COMMENTS

13 Comments were received from Texas Automobile Dealers Association
14 (TADA) and Texas Automotive Recyclers Association (TARA).

15

16 TADA COMMENTS:

17 In §221.2(11), TADA expressed concern that the "new motor
18 vehicle dealer endorsement" definition may be too broad and
19 requested limiting the proposed endorsement to a "non-
20 repairable" vehicle. TADA also commented in regard to §221.51,
21 requesting that a written notice stating that a vehicle is
22 either salvage or non-repairable be made to any dealer when a
23 salvage or non-repairable vehicle is offered for sale.

1

2 RESPONSE:

3 The department will address both of TADA's comments in future
4 amendments to Chapter 215, Motor Vehicle Distribution.

5

6 TARA COMMENT:

7 In §221.2(24)(B), TARA requested clarification that "person"
8 refers to "license holder."

9 RESPONSE:

10 The department does not object to this clarification and has
11 amended the adopted §221.2(24), to change "person" to "license
12 holder" for clarification.

13

14 TARA COMMENT:

15 TARA requested that §221.11(e) be revised to read "more than 5,"
16 and §221.11(f)(3) be revised to read "no more than 5."

17 RESPONSE:

18 The restriction imposed by §221.11(e) remains to limit the
19 number of vehicles that may be rebuilt under the used automobile
20 dealer endorsement. If a salvage vehicle dealer desires to
21 rebuild more than five salvage vehicles during a calendar year,
22 the salvage vehicle dealer should secure a salvage vehicle
23 rebuilder endorsement. The department agrees with TARA that

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 proposed §221.11(f)(3) was published with a drafting error and
2 the adopted rule has been amended to read "no more than five
3 (5)."

4

5 TARA COMMENT:

6 TARA also commented that §221.50(b) should be reworded for
7 clarity.

8 RESPONSE:

9 The department does not object to the clarification and has
10 rewritten §221.50, as adopted, to provide clarity.

11

12 The rules to be finally adopted contain the following changes
13 from the rules as published in the September 4, 2015, issue of
14 the *Texas Register*:

15 Subchapter A:

16 §221.1 is changed to include salvage vehicle agent.

17 §221.2(24) is changed as a result of a comment received.

18

19 Subchapter B:

20 §221.11(e) is changed because of a drafting error. A change has
21 not been made as a result of the comment received.

22 §221.11(f)(1) is changed because of a drafting error.

23 §221.11(f)(3) is changed because of a drafting error and as a

1 result of a comment received.

2 §221.12 is changed as a result of minor drafting error.

3 §221.13 is changed to include the fee for salvage vehicle dealer
4 license and to keep the current fees for salvage vehicle dealer
5 licenses and endorsements at \$95.

6 §221.15 is changed because of a drafting error.

7 §221.16 is changed to add acceptable identification and add
8 additional supporting documents.

9 §221.20 is changed to include the renewal fee for salvage
10 vehicle dealer and salvage vehicle agent licenses, along with
11 minor drafting error changes.

12

13 Subchapter C:

14 §221.48 is changed to correct a minor drafting error.

15 §221.50 is changed as a result of a comment received.

16 §221.51 is changed because of a drafting error and for *Texas*
17 *Register* preference.

18 §221.53 is changed to add acceptable identification.

19

20 Subchapter D:

21 §221.71 is changed because of a drafting error and to remove
22 reference to peace officers inspection of records.

23 §221.73 is changed to add acceptable identification.

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 11 of 11

1

2 Subchapter F:

3 §221.112 is changed because of a minor typographical error and
4 to remove reference to peace officers inspection of records.

5

6 STATUTORY AUTHORITY

7 The new chapter is adopted under Transportation Code, §1002.001,
8 which provides the board of the Texas Department of Motor
9 Vehicles (board) with the authority to adopt rules that are
10 necessary and appropriate to implement the powers and the duties
11 of the department; Occupations Code, §2302.051, which authorizes
12 the board to adopt rules necessary to administer Chapter 2302;
13 and more specifically, Occupations Code, §2302.108, which
14 authorizes the board to adopt disciplinary rules for licensees;
15 and Occupations Code, §2302.354, which authorizes the department
16 to impose an administrative penalty against a person licensed
17 under Chapter 2302 who violates that chapter or a rule or order
18 adopted under that chapter.

19

20 CROSS REFERENCE TO STATUTE

21 Occupations Code, Chapter 2302; and Transportation Code, Chapter
22 1002.

1 CHAPTER 221. SALVAGE VEHICLE DEALERS, SALVAGE POOL

2 OPERATORS AND SALVAGE VEHICLE REBUILDERS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 §221.1. Purpose and Scope.

5 Transportation Code, §1001.002, provides that the department
6 shall administer and enforce Occupations Code, Chapter 2302.
7 Chapter 2302 provides that a person may not act as a salvage
8 vehicle dealer, salvage vehicle agent, or rebuilder, including
9 storing or displaying vehicles as an agent or escrow agent of an
10 insurance company, unless the department issues that person a
11 license. Chapter 2302 further describes types of salvage
12 business activities that require an endorsement or endorsements
13 on the salvage vehicle dealer license for that person to engage
14 in those activities. This chapter describes the procedures by
15 which a person obtains a salvage vehicle dealer license and the
16 endorsement(s) necessary to engage in the business activities by
17 the salvage vehicle dealer; the procedures to obtain a salvage
18 vehicle agent license; and the rules governing how these license
19 holders must operate, and the procedures by which the department
20 will administer and enforce Occupations Code, Chapter 2302 and
21 this chapter.

22

23 §221.2. Definitions.

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

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

4 (1) Board--The Board of the Texas Department of Motor
5 Vehicles.

6 (2) Casual sale--A sale as defined by Transportation
7 Code, §501.091.

8 (3) Component part--As defined by Occupations Code,
9 §2302.251.

10 (4) Corporation--A business entity, including a
11 corporation, or limited liability company, but not a sole
12 proprietorship or general partnership, which has filed a
13 certificate of formation or registration with the Texas
14 Secretary of State.

15 (5) Department--The Texas Department of Motor
16 Vehicles.

17 (6) Final order authority--The person with authority
18 under Occupations Code, Chapter 2302, or board rules to issue a
19 final order.

20 (7) License holder--A person that holds a salvage
21 vehicle dealer license issued by the department endorsed in one
22 or more of the classifications listed in Occupations Code,
23 §2302.103.

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (8) Major component part--As defined by Transportation
2 Code, §501.091.

3 (9) Metal recycler--As defined by Transportation Code,
4 §501.091.

5 (10) Minor component part--As defined by Occupations
6 Code, §2302.251.

7 (11) New automobile dealer endorsement--An endorsement
8 on the salvage vehicle dealer license issued by the department
9 that allows the license holder to buy and sell salvage motor
10 vehicles and non-repairable motor vehicles that have not been
11 the subject of a retail sale.

12 (12) Non-repairable motor vehicle--As defined by
13 Transportation Code, §501.091.

14 (13) Non-repairable record of title--As defined by
15 Transportation Code, §501.091.

16 (14) Non-repairable vehicle title--As defined by
17 Transportation Code, §501.091.

18 (15) Out-of-state buyer--As defined by Transportation
19 Code, §501.091.

20 (16) Out-of-state ownership document--As defined by
21 Transportation Code, §501.091.

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (17) Person--A natural person, partnership,
2 corporation, trust, association, estate, or any other legal
3 entity.

4 (18) Public highway--As defined by Transportation
5 Code, §502.001.

6 (19) Retail sale--As defined by Occupations Code,
7 §2301.002.

8 (20) Salvage motor vehicle--As defined by
9 Transportation Code, §501.091.

10 (21) Salvage pool operator endorsement--An endorsement
11 on the salvage dealer license that allows a person to engage in
12 the business of selling non-repairable motor vehicles or salvage
13 motor vehicles at auction, including wholesale auction, or
14 otherwise.

15 (22) Salvage record of title--As defined by
16 Transportation Code, §501.091.

17 (23) Salvage vehicle agent--As defined by Occupations
18 Code, §2302.001.

19 (24) Salvage vehicle broker endorsement--An
20 endorsement on the salvage vehicle dealer license issued by the
21 department to a license holder, other than a salvage vehicle
22 dealer holding a used automobile dealer endorsement, new
23 automobile dealer endorsement, salvage vehicle rebuilder

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 endorsement, or a salvage pool operator endorsement, that allows
2 the license holder to:

3 (A) offer to sell or buy, or negotiate to sell or
4 buy, salvage motor vehicles or non-repairable motor vehicles
5 owned by a license holder and to be purchased or sold by another
6 license holder; or

7 (B) act as the agent or representative of a
8 license holder in performing an act described by subparagraph
9 (A) of this paragraph.

10 (25) Salvage vehicle dealer--As defined by
11 Transportation Code, §501.091.

12 (26) Salvage vehicle rebuilder--Defined as
13 "rebuilder," in Transportation Code, §501.091.

14 (27) Salvage vehicle rebuilder endorsement--An
15 endorsement on the salvage dealer license issued by the
16 department that allows the license holder to acquire and repair,
17 rebuild, or reconstruct for operation on a public highway more
18 than five (5) salvage motor vehicles in a calendar year.

19 (28) Salvage vehicle title--As defined by
20 Transportation Code, §501.091.

21 (29) Used automobile dealer endorsement--An
22 endorsement on the salvage vehicle dealer license issued by the
23 department that allows the license holder to buy or sell salvage

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 6 of 50

1 motor vehicles and non-repairable motor vehicles that have been
2 the subject of a retail sale.

3 (30) Used part--As defined by Transportation Code,
4 §501.091.

5

1 SUBCHAPTER B. LICENSING

2 §221.11. License and Endorsement Required.

3 (a) The department issues a salvage vehicle dealer license
4 with one or more endorsements to that license according to the
5 type of activities intended to be engaged in by the applicant.

6 (b) A salvage vehicle dealer license may not be issued by
7 the department without at least one of the following
8 endorsements to that salvage vehicle dealer license:

9 (1) new automobile dealer endorsement;

10 (2) used automobile dealer endorsement;

11 (3) salvage pool operator endorsement;

12 (4) salvage vehicle broker endorsement; or

13 (5) salvage vehicle rebuilder endorsement.

14 (c) A license holder may not aid or abet another person in
15 acting as a salvage vehicle dealer unless that other person is a
16 license holder of endorsement(s) issued by the department
17 allowing the business activity or activities.

18 (d) A person may not engage in the business of buying,
19 selling or exchanging motor vehicles that can be titled to
20 operate on public highways, including selling a salvage motor
21 vehicle that has been rebuilt, repaired or reconstructed, unless
22 the person also holds a general distinguishing number issued by
23 the department under Transportation Code, Chapter 503.

1 (e) A person holding a salvage vehicle dealer license with
2 a used automobile dealer endorsement may rebuild, repair or
3 reconstruct no more than five (5) salvage motor vehicles during
4 a calendar year. The person may sell those rebuilt vehicles,
5 provided the salvage vehicle dealer also holds a general
6 distinguishing number issued by the department under
7 Transportation Code, Chapter 503.

8 (f) The provisions of this subchapter do not apply to:

9 (1) a person who purchases no more than five (5) non-
10 repairable or salvage motor vehicles at casual sale in a
11 calendar year from:

12 (A) a salvage vehicle dealer;

13 (B) a salvage pool operator; or

14 (C) an insurance company;

15 (2) a metal recycler, unless a motor vehicle is sold,
16 transferred, released, or delivered to the metal recycler for
17 the purpose of reuse or resale as a motor vehicle, or as a
18 source of used parts, and is used for that purpose;

19 (3) a person who casually repairs, rebuilds, or
20 reconstructs no more than five (5) salvage motor vehicles in the
21 same calendar year;

1 (4) a person who is a non-United States resident who
2 purchases non-repairable or salvage motor vehicles for export
3 only;

4 (5) an agency of the United States, an agency of this
5 state, or a local government;

6 (6) a financial institution or other secured party
7 that holds a security interest in a motor vehicle and is selling
8 that motor vehicle in the manner provided by law for the forced
9 sale of a motor vehicle;

10 (7) a receiver, trustee, administrator, executor,
11 guardian, or other person appointed by or acting pursuant to the
12 order of a court;

13 (8) a person selling an antique passenger car or truck
14 that is at least 25 years old or a collector selling a special
15 interest motor vehicle as defined in Transportation Code,
16 §683.077, if the special interest vehicle is at least 12 years
17 old; and

18 (9) a licensed auctioneer who, as a bid caller, sells
19 or offers to sell property to the highest bidder at a bona fide
20 auction under the following conditions:

21 (A) neither legal nor equitable title passes to
22 the auctioneer;

1 (B) the auction is not held for the purpose of
2 avoiding a provision of Occupations Code, Chapter 2302, or this
3 subchapter; and

4 (C) the auction is conducted of motor vehicles
5 owned, legally or equitably, by a person who holds a salvage
6 vehicle dealer's license and the auction is conducted at their
7 licensed location or at a location approved by the department.

8

9 §221.12. Salvage Vehicle Agent.

10 (a) A person may only act as a salvage vehicle agent if the
11 person holds a license issued by the department and is acting
12 under the authorization of a salvage vehicle dealer holding a
13 current license issued by the department.

14 (b) The holder of a salvage vehicle dealer license issued
15 by the department may authorize no more than five (5) persons to
16 operate as salvage vehicle agents under the dealer's license.

17 (c) A salvage vehicle agent may acquire, sell, or otherwise
18 deal in non-repairable motor vehicles or salvage motor vehicles
19 in this state as directed by the salvage vehicle dealer under
20 whose license the person operates and subject to the authority
21 granted by the department to the salvage vehicle dealer under
22 whose license the salvage vehicle agent operates.

1 (d) To be authorized to act as a salvage vehicle agent for
2 a salvage vehicle dealer, a person must submit a signed
3 application on a form prescribed by the department and the
4 applicable license fee.

5 (e) If the license of the salvage vehicle dealer
6 authorizing the salvage vehicle agent is canceled or revoked,
7 the salvage vehicle agent's license shall be canceled after
8 notice and opportunity for hearing, effective on the date the
9 salvage vehicle dealer's license is canceled or revoked.

10 (f) A salvage vehicle dealer shall notify the department in
11 writing within five days after the salvage vehicle dealer
12 terminates the authority of the salvage vehicle agent to operate
13 under the salvage vehicle dealer's license.

14

15 §221.13. License Term and Fees.

16 (a) The term of a salvage vehicle dealer license, together
17 with all endorsements on that license issued by the department
18 under Occupations Code, Chapter 2302, and this chapter, is 12
19 months. The fee for a salvage vehicle dealer license is \$95. The
20 fee for each endorsement is \$95 for the license term. The entire
21 amount of the fee is due at the time of application for the
22 license or at the time the license is renewed.

1 (b) The fee for a salvage vehicle agent license is \$95 for
2 the license term of the salvage vehicle dealer authorizing the
3 salvage vehicle agent.

4 (c) The department may prorate the fee for an endorsement
5 added to an existing salvage vehicle dealer license so that the
6 endorsement expires on the same date as the salvage vehicle
7 dealer license.

8 (d) The department may prorate the fee for a salvage
9 vehicle dealer license to allow the salvage vehicle dealer
10 license to expire on the same day as another license issued by
11 the department under Occupations Code, Chapter 2301; Chapter
12 2302; or Transportation Code, Chapter 503.

13

14 §221.14. License Applications Generally.

15 (a) A salvage vehicle dealer license may be issued for
16 multiple locations within a single county. A separate license
17 and fee is required for a business location or locations located
18 in another county.

19 (b) A license applicant must submit a signed application on
20 a form prescribed by the department, provide any required
21 attachments, and remit the required fees at the time of
22 submission of the application.

23

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 §221.15. Required License Application Information.

2 The following information must be provided on each salvage
3 vehicle dealer application:

4 (1) the full legal name of the applicant;

5 (2) the endorsement or endorsements that are being
6 applied for;

7 (3) the full business address, including number,
8 street, municipality, county, and zip code for each location
9 where the applicant will conduct business under the license if
10 each location is in the same county;

11 (4) the business telephone number and email address;

12 (5) the mailing address;

13 (6) a statement acknowledging that the department will
14 consider the applicant's designated mailing address the
15 applicant's last known address for all department communication,
16 including service of process under Subchapter E of this chapter
17 (relating to Administrative Procedures). The designated mailing
18 address will be considered applicant's last known address until
19 such time that the mailing address is changed in the licensing
20 records of the department after the license holder submits an
21 amendment to change the license holder's mailing address;

22 (7) all assumed names as registered with the secretary
23 of state or county clerk, as applicable;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (8) if applying as a sole proprietor, the social
2 security number, address and telephone number for the sole
3 proprietor;

4 (9) if applying as a general partnership, the social
5 security number, address and telephone number for each of the
6 general partners;

7 (10) if applying as a limited partnership, limited
8 liability company, or corporation, the full name, social
9 security number, address and telephone number for each member of
10 the limited liability company, each partner, and each officer of
11 the limited partnership or limited liability company;

12 (11) the state sales tax number;

13 (12) the National Motor Vehicle Title Information
14 System (NMVTIS) number evidencing that the applicant is
15 registered with NMVTIS;

16 (13) a statement indicating whether the applicant has
17 previously applied for a license under this chapter or the
18 salvage vehicle dealer licensing laws of another jurisdiction,
19 the result of the previous application, and whether the
20 applicant has ever been the holder of a license issued by the
21 department or another jurisdiction that was revoked, suspended,
22 or subject of an order issued by the board or by another

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 jurisdiction to pay an administrative penalty that remains
2 unpaid;

3 (14) a statement indicating whether the applicant is
4 owned, operated, managed, or otherwise controlled by or
5 affiliated with a person, including a family member, corporate
6 officer, entity or shareholder that was the holder of a license
7 issued by the department or by another jurisdiction that was
8 revoked, suspended, or subject of an order issued by the board
9 or by another jurisdiction to pay an administrative penalty that
10 remains unpaid;

11 (15) a statement indicating whether the applicant, any
12 owner, corporate officer, partner or director has ever been
13 convicted of a felony, and, if so, whether it has been at least
14 three years since the termination of the sentence, parole,
15 mandatory supervision, or probation for the felony conviction;

16 (16) a statement that the applicant at the time of
17 submitting the application is in compliance, and, after issuance
18 of a license, will remain in compliance, with all ordinances and
19 rules of the municipality or county of each location where the
20 applicant will conduct business; and

21 (17) an acknowledgement that the applicant understands
22 and is and will remain in compliance with all state and federal
23 laws relating to the licensed activity.

1

2 §221.16. Required Attachments to the License Application.

3 (a) If the applicant is a sole proprietor or general

4 partnership, in addition to the information required by §221.15

5 of this title (relating to Required License Application

6 Information), the applicant must submit a legible copy of one of

7 the following types of identification that is valid and active

8 at the time of application for the sole proprietor and each of

9 the general partners' current:

10 (1) driver's license, Department of Public Safety

11 identification, or state identification certificate issued by a

12 state or territory of the United States;

13 (2) United States or foreign passport;

14 (3) United States military identification card;

15 (4) North Atlantic Treaty Organization identification

16 or identification issued under a Status of Forces Agreement; or

17 (5) United States Department of Homeland Security,

18 United States Citizenship and Immigration Services, or United

19 States Department of State Identification document.

20 (b) If the applicant is a limited partnership, limited

21 liability company, or a corporation, the applicant must submit a

22 legible copy of one of the following current types of

23 identification that is valid and active at the time of

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 application for each partner of the limited partnership, member
2 of the limited liability company, and for each officer of the
3 corporation:

4 (1) driver's license, Department of Public Safety
5 identification, or state identification certificate issued by a
6 state or territory of the United States;

7 (2) United States or foreign passport;

8 (3) United States military identification card;

9 (4) North Atlantic Treaty Organization identification
10 or identification issued under a Status of Forces Agreement; or

11 (5) United States Department of Homeland Security,
12 United States Citizenship and Immigration Services, or United
13 States Department of State Identification document.

14 (c) If applicant is a corporation, the applicant must
15 submit a copy of the certificate of incorporation issued by the
16 secretary of state or a certificate issued by the jurisdiction
17 where the applicant is incorporated, and a verification that, at
18 the time the application is submitted, all business franchise
19 taxes of the corporation have been paid.

20 (d) If applicant is a limited partnership, the applicant
21 must submit a copy of the certificate of partnership issued by
22 the secretary of state or a certificate issued by the
23 jurisdiction where the applicant is formed, and verification

1 that, at the time the application is submitted, all business
2 franchise taxes of the limited partnership have been paid.

3 (e) Upon request by the department, the applicant shall
4 submit documents demonstrating that the applicant owns the real
5 property on which the business is situated or has a written
6 lease for the property that has a term of not less than the term
7 of the license.

8 (f) If the applicant is a sole proprietor or general
9 partnership, in addition to the information required by §221.15,
10 the applicant must submit a legible copy of the Assumed Name
11 Certificate (DBA) issued by the county clerk in which the
12 business is located.

13 (g) If the applicant is a limited partnership, limited
14 liability company, or a corporation, the applicant must submit a
15 legible copy of the Assumed Name Certificate (DBA) as registered
16 with the Texas Secretary of State's office.

17 (h) If the applicant is a sole proprietor or general
18 partnership, in addition to the information required by §221.15,
19 the applicant must submit a legible copy of the Texas Sales and
20 Use Tax Permit.

21 (i) If the applicant is a limited partnership, limited
22 liability company, or a corporation, the applicant must submit a
23 legible copy of the Texas Sales and Use Tax Permit.

1

2 §221.17. License Processing for Military Service Members,
3 Spouses, and Veterans.

4 The department will process a license, amendment, or renewal
5 application submitted for licensing of a military service
6 member, military spouse, or military veteran in accordance with
7 Occupations Code, Chapter 55.

8

9 §221.18. Additional, New, or Closed Location.

10 (a) If the license holder intends to conduct business at
11 more than one location within the same county, the applicant
12 must:

13 (1) notify the department no later than 10 days before
14 opening the additional location to amend the license to add an
15 additional location;

16 (2) acknowledge that the additional location, at the
17 time of submitting the amendment, is and will remain in
18 compliance with all ordinances and rules of the municipality or
19 county for the additional location and board rules; and

20 (3) obtain approval from the department before
21 conducting business at the additional location.

1 (b) If the license holder intends to relocate its business
2 to a new location within the same county, the license holder
3 must:

4 (1) notify the department no later than 10 days before
5 opening the new location to amend the license to add a new
6 location and remove the existing location from the department's
7 records;

8 (2) acknowledge that the new location, at the time of
9 submitting the amendment, is and will remain in compliance with
10 all ordinances and rules of the municipality or county for the
11 new location and board rules; and

12 (3) obtain approval from the department before
13 conducting business at the new location.

14 (c) A license holder must notify the department in writing
15 within 10 days of the closing of a business location.

16

17 §221.19. Change of License Holder's Name or Ownership.

18 (a) A license holder shall notify the department to amend
19 its license within 10 days of a change in the license holder's
20 business name. Upon submission of an amendment to change the
21 business name, the department shall reflect the new business
22 name in the department's records. The dealer shall retain the
23 same salvage vehicle dealer license number except if the

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 business name change is the result of a change in the type of
2 entity being licensed, such as a sole proprietorship becoming a
3 corporation, or if the ownership of the business changes as
4 discussed in subsection (c) of this section.

5 (b) A salvage vehicle dealer shall notify the department by
6 submitting a request for license amendment 10 days prior to a
7 change of ownership.

8 (c) Upon notification of a change of more than 50% of the
9 ownership, the department shall:

10 (1) cancel the existing license and any salvage dealer
11 agent licenses authorized by the salvage vehicle dealer; and

12 (2) require that an original application and required
13 fees be submitted by the new owner(s). Any of the new owners'
14 salvage vehicle agents must also apply for a new license and
15 submit the applicable fees.

16

17 §221.20. License Renewal.

18 (a) A salvage vehicle dealer license together with its
19 endorsements and any salvage vehicle agent licenses expire on
20 the anniversary of the date of issuance of the salvage vehicle
21 dealer license.

22 (b) The salvage vehicle dealer license, together with any
23 endorsements and any salvage vehicle agent licenses, may be

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 renewed for an additional period of 12 months upon timely
2 submission of a renewal application on a form approved by the
3 department with all required information and attachments, if
4 applicable, and the required fees. A renewal application is
5 considered "timely" submitted if the renewal application with
6 all required information and attachments, if applicable, and
7 required fee are received by the department on or before the
8 expiration date of the existing license.

9 (c) The department will send an expiration notice to a
10 salvage vehicle dealer's mailing address at least 30 days before
11 expiration of a license. The expiration notice for salvage
12 vehicle agent licenses will be sent to the authorizing salvage
13 vehicle dealer's mailing address.

14 (d) Failure by the department to send written notice under
15 this section does not relieve a license holder from timely
16 renewing a license.

17 (e) The renewal fee for salvage vehicle dealer or salvage
18 vehicle agent license is \$85.

19 (f) A license holder may renew an expired license by
20 submitting a renewal application and paying a late renewal fee
21 of \$60 for each endorsement in addition to the renewal fee, if
22 ninety or fewer days have elapsed since the license expired.

1 (g) A license holder may renew an expired license by
2 submitting a renewal application and paying a late renewal fee
3 of \$95 for each endorsement, in addition to the renewal fee, if
4 more than 90 days but less than one year has elapsed since the
5 license expired.

6 (h) If a license has been expired for a period of one year
7 or longer and the department is not in receipt of a renewal
8 application with all required information and attachments and
9 the renewal fees for each endorsement, the license holder must
10 apply for a new license in the same manner as an applicant for
11 an initial license.

12 (i) If the department is not in receipt of a renewal
13 application with all required information and attachments and
14 the applicable renewal fee prior to the cancellation date of the
15 license, a salvage vehicle dealer and any salvage vehicle agents
16 may not engage in the activities that require the license until
17 the license has been renewed by the department.

18

1 SUBCHAPTER C. LICENSED OPERATIONS

2 §221.41. Location Requirements.

3 A salvage dealer holding the new automobile dealer endorsement,
4 used automobile dealer endorsement, salvage vehicle rebuilder
5 endorsement or salvage pool operator endorsement must meet the
6 following requirements at each licensed business location and
7 must maintain the following requirements during the entire term
8 of the license.

9 (1) If the licensed business location is not owned by
10 the license holder, the license holder must maintain a lease
11 that extends through the period for which the license will be
12 issued. That lease agreement must be on an executed lease
13 contract containing at a minimum:

14 (A) the names of the lessor and lessee;

15 (B) the period of time for which the lease is
16 valid; and

17 (C) the street address or legal description of
18 the property, provided that if only a legal description of the
19 property is provided, the license holder must attach a statement
20 that the property description in the lease agreement is the
21 street address identified on the application.

22 (2) Any business location requirement in this
23 subchapter are in addition to any requirements by city

1 ordinance, county rule, or state law.

2

3 §221.42. Operations at Licensed Business Location.

4 A salvage vehicle dealer may not sell or offer to sell salvage

5 motor vehicles or non-repairable motor vehicles from any

6 location other than the business location that has been approved

7 by the department.

8

9 §221.43. Business Hours.

10 (a) The business hours must be posted at the main entrance

11 of the business's office that is accessible to the public.

12 (b) The license holder or a bona fide employee of the

13 license holder shall be at the licensed business location during

14 the posted business hours for the purpose of operating the

15 salvage business and allowing the inspection of the business

16 location and records.

17 (c) If the license holder or a bona fide employee of the

18 license holder is not available to conduct business during the

19 posted business hours due to special circumstances or

20 emergencies, a separate sign must be posted indicating the date

21 and time the license holder or bona fide employee of the license

22 holder will resume operations.

1 (d) Regardless of the license holder's business hours, the
2 licensee's telephone must be answered from 8:00 a.m. to 5:00
3 p.m. weekdays by a bona fide employee, answering service, or
4 answering machine.

5

6 §221.44. Business Sign Requirements.

7 (a) The license holder must display a permanent sign with
8 letters at least six inches in height showing the license
9 holder's business name or assumed name as reflected on the
10 license holder's license issued by the department.

11 (b) The sign must be permanently mounted at the address
12 listed on the license.

13

14 §221.45. Business Office.

15 (a) The license holder's office must be located at the
16 license location in a building with connecting exterior walls on
17 all sides.

18 (b) A license holder's office structure must comply with
19 all applicable local zoning ordinances and deed restrictions.

20 (c) A license holder's office may not be located within a
21 residence, apartment house or building, hotel, motel, or rooming
22 house.

1 (d) A portable-type office structure may qualify as a
2 business office only if the structure meets the requirements of
3 this section and is not a readily moveable trailer or other
4 vehicle.

5

6 §221.46. Display of License.

7 A license holder must display at its business location the
8 original or copy of the license issued by the department at all
9 times in a manner that makes the license easily readable by the
10 public and is displayed in a conspicuous place at each licensed
11 business location for which the license is issued.

12

13 §221.47. Evidence of Ownership.

14 A salvage vehicle dealer must receive a properly assigned
15 salvage vehicle title, salvage record of title, non-repairable
16 vehicle title, non-repairable record of title, or out-of-state
17 ownership document, as applicable, when acquiring a non-
18 repairable motor vehicle or salvage motor vehicle.

19

20 §221.48. Scrapped or Destroyed Motor Vehicle.

21 (a) Within 30 days after a salvage vehicle dealer acquires
22 a non-repairable motor vehicle or salvage motor vehicle for the

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 purpose of scrapping or destroying the motor vehicle, the
2 salvage vehicle dealer shall:

3 (1) submit to the department a report on a form
4 prescribed by the department stating that the motor vehicle will
5 be scrapped or destroyed and certifying that all license plates
6 and registration stickers have been removed from the motor
7 vehicle; and

8 (2) surrender to the department the properly assigned
9 ownership document.

10 (b) Not later than 60 days after the motor vehicle is
11 scrapped or destroyed, the salvage vehicle dealer shall report
12 to the department that the motor vehicle has been scrapped or
13 destroyed.

14 (c) A salvage vehicle dealer shall maintain records of each
15 motor vehicle that is scrapped or destroyed, as provided by
16 Subchapter D of this chapter (relating to Records).

17 (d) License plates and registration stickers of vehicles
18 that will be scrapped or destroyed shall be stored by the
19 salvage vehicle dealer in a secure location until the department
20 acknowledges receipt of the report required by subsection (a) of
21 this section.

22 (e) The salvage vehicle dealer shall destroy the license
23 plates and registration stickers to the vehicles reported under

1 subsection (a) of this section upon receipt of the acknowledged
2 report from the department.

3 (f) A vehicle reported to the department under subsection
4 (a) of this section is considered a non-repairable vehicle
5 effective the date of the report.

6

7 §221.49. Unique Inventory Number.

8 Occupations Code, §2302.255, sets out the requirements for a
9 salvage vehicle dealer when the salvage vehicle dealer purchases
10 or takes delivery of a component part.

11

12 §221.50. Restrictions on Sales of Flood Damaged Vehicles.

13 (a) A motor vehicle that is classified as a non-repairable
14 motor vehicle or salvage motor vehicle based solely on flood
15 damage may be sold or transferred only as provided by this
16 section.

17 (b) A salvage vehicle dealer may sell, transfer, or release
18 a non-repairable motor vehicle or salvage motor vehicle to
19 anyone if a non-repairable or salvage vehicle title or a
20 comparable out-of-state ownership document has been issued for
21 the motor vehicle provided a written disclosure has been made
22 that the vehicle has been classified as a non-repairable motor
23 vehicle or salvage motor vehicle based solely on flood damage.

1 (c) If a non-repairable or salvage vehicle title or a
2 comparable out-of-state ownership document has not been issued
3 for the motor vehicle, a salvage vehicle dealer may only sell,
4 transfer, or release a non-repairable motor vehicle or salvage
5 motor vehicle to:

6 (1) an insurance company;

7 (2) a governmental entity;

8 (3) a licensed salvage vehicle dealer;

9 (4) an out-of-state buyer;

10 (5) a metal recycler; or

11 (6) a used automotive parts recycler,

12 provided a written disclosure has been made that the vehicle has
13 been classified as a non-repairable motor vehicle or salvage
14 motor vehicle based solely on flood damage.

15

16 §221.51. Duty to Identify Motor Vehicles Offered for Retail

17 Sale.

18 (a) A salvage vehicle dealer shall place a sign on each
19 salvage motor vehicle it displays or offers for retail sale
20 that:

21 (1) is visible from outside of the salvage motor
22 vehicle;

23 (2) contains lettering that is two inches or more in

1 height identifying the vehicle is a salvage motor vehicle; and

2 (3) states as follows: *"This is a salvage titled*
3 *vehicle that cannot be operated on a public highway. If the*
4 *salvaged vehicle is to be registered in Texas, the purchaser*
5 *must apply to a county tax assessor-collector's office,*
6 *surrender the salvage title, submit the required information on*
7 *repairs that have been made to the vehicle and pay the*
8 *applicable fees before the vehicle may be titled and/or*
9 *registered to operate on the public highway."*

10 (b) Upon the retail sale of a salvage motor vehicle, a
11 salvage vehicle dealer shall obtain the purchaser's signature to
12 a disclosure written in eleven point or larger font that states
13 as follows: *"I, (name of purchaser), acknowledge that at the*
14 *time of purchase, I am aware that: the vehicle is titled on a*
15 *salvage title; if I intend to operate the vehicle on a public*
16 *highway in Texas, I am responsible for applying for a title for*
17 *this salvage vehicle through a Texas county tax assessor-*
18 *collector's office accompanied by the required forms showing*
19 *that repairs have been made to the vehicle; I am responsible for*
20 *paying the applicable fees; and, I may not drive this salvage*
21 *vehicle on a public highway until after a titled branded rebuilt*
22 *salvage and registration have been issued."*

23 (c) A salvage vehicle dealer shall place a sign on each

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 32 of 50

1 non-repairable motor vehicle it displays or offers for retail
2 sale that:

3 (1) is visible from outside of the non-repairable
4 motor vehicle;

5 (2) contains lettering that is two inches or more in
6 height; and

7 (3) states as follows: *"This is a non-repairable
8 titled motor vehicle that can never be operated on a public
9 highway of this state or any other state."*

10 (d) Upon the retail sale of a non-repairable motor vehicle,
11 a salvage vehicle dealer shall obtain the purchaser's signature
12 to a disclosure statement written in eleven point or larger font
13 that states as follows: *"I, (name of purchaser), acknowledge
14 that at the time of purchase, I am aware that the vehicle is a
15 non-repairable vehicle; this vehicle will never be able to
16 operate on a public highway of this state or any other state and
17 will never be registered to operate on a public highway of this
18 state or any other state; and, before selling this non-
19 repairable vehicle I must have the non-repairable vehicle titled
20 in my name."*

21 (e) A salvage vehicle dealer shall maintain a copy of the
22 written disclosures required by this section as part of its
23 records of sales in accordance with §221.73 of this title

1 (relating to Content of Records).

2 (f) The notice requirements of subsections (a) and (c) can
3 be met if the salvage vehicle dealer displays a single notice or
4 notices if all of the vehicles being offered for retail sale by
5 the salvage vehicle dealer are salvage motor vehicles or non-
6 repairable motor vehicles.

7 (g) If the salvage vehicle dealer conducts a retail sale of
8 a salvage motor vehicle or a non-repairable motor vehicle in
9 Spanish or other foreign language, the notices and disclosures
10 required by this section shall be in that language.

11

12 §221.52. Export-only Sales.

13 (a) A license holder may sell a non-repairable motor
14 vehicle or a salvage motor vehicle to a person who resides in a
15 jurisdiction outside the United States only as provided by
16 Transportation Code, §501.099.

17 (b) A license holder may accept any of the following types
18 of government-issued photo identification documents to establish
19 that the purchaser resides outside the United States:

20 (1) passport;

21 (2) driver's license;

22 (3) consular identity document;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (4) national identification certificate or identity
2 document; or

3 (5) other photo identification card issued by the
4 jurisdiction where the purchaser resides that contains the name,
5 address, and date of birth of the purchaser.

6 (c) A legible copy of the photo identification document
7 must be maintained in the records of the license holder for a
8 period of 48 months after the sale of a salvage motor vehicle or
9 a non-repairable motor vehicle for "export-only."

10 (d) The limitation on the number of casual sales that may
11 be made to a person under §221.53 of this title (relating to
12 Casual Sales) does not apply to sales to a person who resides in
13 a jurisdiction outside the United States and who purchases
14 salvage motor vehicles and non-repairable motor vehicles for
15 "export-only."

16

17 §221.53. Casual Sales.

18 (a) A license holder may not make more than five (5) casual
19 sales of salvage motor vehicles or non-repairable motor vehicles
20 during a calendar year to the same person.

21 (b) A license holder must maintain records of each casual
22 sale made during the previous 36 months, as provided by §221.72

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 of this title (relating to Record Retention). Such records must
2 contain the following information regarding each casual sale:

3 (1) the complete name, address and phone number of the
4 purchaser;

5 (2) a copy of one of the following current photo
6 identification documents for the purchaser:

7 (A) driver's license, Department of Public Safety
8 identification, or state identification certificate issued by a
9 state or territory of the United States;

10 (B) United States or foreign passport;

11 (C) United States military identification card;

12 (D) North Atlantic Treaty Organization
13 identification or identification issued under a Status of Forces
14 Agreement; or

15 (E) United States Department of Homeland
16 Security, United States Citizenship and Immigration Services, or
17 United States Department of State Identification document; and

18 (3) the year, make, model, color and vehicle
19 identification number for the salvage motor vehicle or non-
20 repairable motor vehicle.

21 (c) A person that purchases a salvage motor vehicle or a
22 non-repairable motor vehicle through a casual sale may not sell
23 that salvage motor vehicle or non-repairable motor vehicle until

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 36 of 50

- 1 the salvage vehicle title, salvage record or title, non-
- 2 repairable vehicle title or non-repairable record of title, as
- 3 applicable, is in the person's name.
- 4

1 SUBCHAPTER D. RECORDS

2 §221.71. Records; Generally.

3 (a) A salvage vehicle dealer shall maintain a record of
4 each salvage motor vehicle and non-repairable motor vehicle
5 purchased, sold or exchanged by the salvage vehicle dealer.6 (b) A salvage vehicle dealer's records must be maintained
7 on the licensed business location.8 (c) Any records required to be maintained by a license
9 holder may be maintained in an electronic format if the record
10 can be reviewed and printed at the licensed business location
11 upon request by a representative of the department at the time
12 the requestor is at the business location.13 (d) A salvage vehicle dealer must make records available
14 for review and copying upon request by a representative of the
15 department. A request for records may be made by the department
16 in person, by mail or by electronic document transfer.17 (e) Upon receipt of a request for review of records sent by
18 mail or electronic document transfer from the department, a
19 salvage vehicle dealer must produce copies of specified records
20 to the requestor within 10 calendar days of receipt of the
21 request by mail or electronic document transfer.22 (f) Occupations Code, §2302.254, establishes the
23 requirements that a salvage vehicle dealer maintain a record of

1 an inventory of component parts purchased by or delivered to the
2 salvage vehicle dealer.

3

4 §221.72. Record Retention.

5 (a) A salvage vehicle dealer must retain on the licensed
6 business location, or have electronic access on the licensed
7 business location of records stored electronically, a complete
8 record of all purchases and sales of salvage motor vehicles and
9 non-repairable motor vehicles for a minimum period of 36 months
10 from the date of the transaction.

11 (b) A salvage vehicle dealer shall maintain on the licensed
12 business location a record of each vehicle that is scrapped or
13 destroyed, and a photocopy of the front and back of all salvage
14 vehicle titles and non-repairable vehicle titles, or a photocopy
15 or electronic copy of all salvage records of title, and non-
16 repairable records of title, and, if applicable, a photocopy of
17 any out-of-state evidence of ownership surrendered to the
18 department, until the fourth anniversary of the date the report
19 was acknowledged as received by the department.

20

21 §221.73. Content of Records.

22 (a) The records of a salvage vehicle dealer for purchases
23 and sales shall include:

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (1) the date of purchase of the salvage motor vehicle,
2 or non-repairable motor vehicle;

3 (2) the name and address of the person that sold the
4 salvage motor vehicle or non-repairable motor vehicle to the
5 salvage vehicle dealer;

6 (3) if the person that sold the salvage motor vehicle
7 or non-repairable motor vehicle to the salvage motor vehicle
8 dealer is not an insurance company or a salvage pool operator, a
9 photocopy of one of the following current photo identification
10 documents of the person that sold the salvage motor vehicle or
11 non-repairable motor vehicle to the salvage vehicle dealer:

12 (A) driver's license, Department of Public Safety
13 identification, or state identification certificate issued by a
14 state or territory of the United States;

15 (B) United States or foreign passport;

16 (C) United States military identification card;

17 (D) North Atlantic Treaty Organization
18 identification or identification issued under a Status of Forces
19 Agreement; or

20 (E) United States Department of Homeland
21 Security, United States Citizenship and Immigration Services, or
22 United States Department of State Identification document;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (4) a description of the salvage motor vehicle or non-
2 repairable motor vehicle, including the model, year, make, and
3 vehicle identification number, if applicable;

4 (5) the ownership document number and state of
5 issuance of the salvage motor vehicle or non-repairable motor
6 vehicle ownership document, if applicable;

7 (6) a copy of the salvage record of title or non-
8 repairable record of title, if applicable, or a copy of the
9 front and back of the ownership document for the salvage motor
10 vehicle or non-repairable motor vehicle;

11 (7) a copy of the form if the ownership document has
12 been surrendered to the department; and

13 (8) any evidence indicating that the motor vehicle was
14 scrapped or destroyed.

15 (b) If the salvage motor vehicle has been rebuilt,
16 repaired, or reconstructed by the salvage vehicle dealer the
17 salvage vehicle dealer's records must also include a form
18 prescribed by the department for "Rebuilt Vehicle Statement,"
19 listing all repairs made to the motor vehicle, and, when
20 required to be completed, a form prescribed by the department
21 for "Component Part(s) Bill of Sale."

22

1 SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

2 §221.91. Notice of Department Decision.

3 (a) Upon a determination that an application for a license
4 issued under Occupations Code, Chapter 2302, and this chapter
5 should be denied, or that a license be revoked or suspended, or
6 that administrative sanctions should be imposed based on alleged
7 violations of Occupations Code, Chapter 2302, or this chapter,
8 the department shall issue and mail, by certified mail, a Notice
9 of Department Decision to the applicant's, license holder's or
10 person's last known mailing address, as reflected in the
11 department's licensing records.

12 (b) The Notice of Department Decision includes a statement:

13 (1) that describes the department decision and its
14 effective date;

15 (2) that describes each alleged violation;

16 (3) that describes each administrative sanction being
17 proposed;

18 (4) which sets out the legal basis for each
19 administrative sanction;

20 (5) informing the license applicant, license holder or
21 other person of the right to request a hearing;

22 (6) setting forth the procedures for requesting a
23 hearing, including the period during which a request for a

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 hearing must be received by the department; and

2 (7) informing the license applicant, license holder,
3 or other person that the proposed decision and administrative
4 sanctions in the Notice of Department Decision will become final
5 on the date specified if the license applicant, license holder,
6 or other person fails to timely request a hearing.

7 (c) A request for an administrative hearing under this
8 section must be made in writing and received by the department
9 within 26 days of the date the Notice of Department Decision is
10 mailed by the department.

11 (d) If the license applicant, license holder, or person
12 does not make a timely request for hearing or enter into a
13 settlement agreement before the 27th day after the date the
14 Notice of Department Decision is mailed, the matter becomes
15 final in accordance with the Government Code, Chapter 2001.

16
17 §221.92. Notice of Hearing.

18 (a) If a request for administrative hearing is timely
19 received, the department shall set a hearing with the State
20 Office of Administrative Hearings and give notice to the license
21 applicant, license holder or other person of the date, time and
22 location where the hearing will be held.

23 (b) The hearing shall be conducted under the provisions set

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 forth in this chapter and by an administrative law judge of the
2 State Office of Administrative Hearings.

3

4 §221.93. Final Decisions and Orders; Motions for Rehearing.

5 (a) If a department decision becomes final under a Notice
6 of Department Decision issued under §221.91 of this title
7 (relating to Notice of Department Decision), the matter will be
8 forwarded to the final order authority for issuance of a final
9 order incorporating the decisions, findings and administrative
10 sanctions imposed by the Notice of Department Decision. The
11 department will send a copy of the final order to the license
12 applicant, license holder, or other person.

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

17

18 §221.94. Judicial Review of Final Order.

19 The provisions of Government Code, Chapter 2001, Subchapter G,
20 govern the appeal of a final order issued under this subchapter.

21

22 §221.95. Delegation of Final Order Authority.

23 (a) In accordance with Transportation Code, §1003.005(b),

1 in cases brought under Occupations Code, Chapter 2302, the
2 director of the division that regulates the distribution and
3 sale of motor vehicles is authorized to issue a final order in a
4 case without a decision on the merits, including, but not
5 limited to a case resolved:

6 (1) by settlement;

7 (2) by agreed order;

8 (3) by withdrawal of the complaint;

9 (4) by dismissal for want of prosecution;

10 (5) by dismissal for want of jurisdiction;

11 (6) by summary judgment or summary disposition;

12 (7) by default judgment; or

13 (8) when a party waives opportunity for a hearing.

14 (b) In contested cases in which the board has delegated
15 final order authority under subsection (a) of this section, a
16 motion for rehearing shall be filed with and decided by the
17 final order authority delegate.

18

1 SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

2 §221.111. Denial of License.

3 (a) The department shall deny issuance of a salvage vehicle
4 dealer license or a salvage vehicle agent license, if:5 (1) all the information required on the application is
6 not complete;7 (2) the applicant or any of its owners, officers, or
8 directors made a false statement or material misrepresentation
9 or a material omission on the application;10 (3) the applicant or any of its owners, officers, or
11 directors have been convicted of a felony for which less than
12 three (3) years have elapsed since the termination of the
13 sentence, parole, mandatory supervision, or probation;14 (4) the applicant's or any of its owners', officers',
15 or directors' previous salvage vehicle dealer or salvage vehicle
16 agent license was revoked and the first anniversary of the date
17 of revocation has not occurred;18 (5) the applicant is an immediate family member, such
19 as a spouse, child, parent, grandparent, niece, nephew, uncle,
20 or aunt, of a previously licensed salvage vehicle dealer whose
21 license has been revoked, and the business location is the same
22 as the location of the revoked salvage vehicle dealer; or

1 (6) the applicant, owner, officer or director is
2 delinquent in any court ordered obligation to pay child support.

3 (b) If the application is denied, the applicant may request
4 an administrative hearing in the manner specified in §221.91 of
5 this title (relating to Notice of Department Decision).

6

7 §221.112. Suspension, Revocation and Administrative Penalties.

8 The department may suspend or revoke a license or impose an
9 administrative penalty if the license holder:

10 (1) fails to maintain the qualifications for a
11 license;

12 (2) violates any law relating to the purchase, sale,
13 exchange, storage of salvage motor vehicles and non-repairable
14 motor vehicles;

15 (3) wilfully defrauds a purchaser;

16 (4) fails to maintain purchase, sales, and inventory
17 records as required by Occupations Code, Chapter 2302, or this
18 chapter;

19 (5) refuses to permit, or fails to comply with a
20 request by the department to examine, during normal business
21 hours, the license holder's records as required by Occupations
22 Code, Chapter 2302 or this chapter;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (6) engages in business without the required
2 endorsement;

3 (7) engages in business as a salvage vehicle dealer at
4 a location for which a license has not been issued by the
5 department;

6 (8) fails to notify the department of a change of
7 address or location within 10 days of such change by requesting
8 and obtaining from the department an amendment to the salvage
9 vehicle dealer's license;

10 (9) fails to notify the department of a change of the
11 salvage vehicle dealer's name or salvage vehicle dealer's
12 ownership within 10 days of such change by requesting and
13 obtaining from the department an amendment to the salvage
14 vehicle dealer's license;

15 (10) fails to notify the department of the termination
16 of a salvage vehicle agent within 10 days after such
17 termination;

18 (11) fails to remain regularly and actively engaged in
19 the business for which the salvage vehicle dealer license is
20 issued;

21 (12) sells more than five (5) non-repairable motor
22 vehicles or salvage motor vehicles to the same person in a
23 casual sale during a calendar year;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

Page 48 of 50

1 (13) violates any of the provision of Occupations
2 Code, Chapter 2302, Transportation Code, Chapters 501, 502, or
3 503, or any board rule or order promulgated under those
4 statutes;

5 (14) uses or allows use of the salvage vehicle
6 dealer's or salvage vehicle agent's license or business location
7 for the purpose of the license holder or another person avoiding
8 Occupations Code, Chapter 2302, Transportation Code, Chapters
9 501, 502 or 503, or any board rule or order promulgated under
10 those statutes;

11 (15) violates any law, ordinance, rule or regulation
12 governing the purchase, sale, exchange or storage of salvage
13 motor vehicles, and non-repairable motor vehicles;

14 (16) sells or offers for sale non-repairable motor
15 vehicles or salvage motor vehicles from any location other than
16 a licensed salvage vehicle dealer's business location that has
17 been approved by the department;

18 (17) is convicted of a felony after initial issuance
19 or renewal of the salvage vehicle dealer or salvage vehicle
20 agent license, or less than three (3) years have elapsed since
21 the termination of the sentence, parole, mandatory supervision,
22 or probation for a felony conviction of the license holder;

Texas Department of Motor Vehicles
Chapter 221, Salvage Vehicle Dealers, Salvage
Pool Operators and Salvage Vehicle Rebuilders

1 (18) makes a false statement, material
2 misrepresentation, or material omission in any application or
3 other information filed with the department;

4 (19) fails to timely remit payment for administrative
5 penalties imposed by the department under Occupations Code,
6 §2302.354 and this section;

7 (20) engages in business without a license required
8 under Occupations Code, Chapters 2301, or Transportation Code,
9 Chapter 503;

10 (21) operates a salvage motor vehicle or a non-
11 repairable motor vehicle on the public highways or allows
12 another person to operate a salvage motor vehicle or a non-
13 repairable motor vehicle on public highways;

14 (22) dismantles a salvage motor vehicle or non-
15 repairable motor vehicle; or

16 (23) deals in used automotive parts as more than an
17 incidental part of the salvage vehicle dealer's primary
18 business.

19

20 §221.113. Suspension or Refusal to Renew Due to Failure to Pay
21 Court-ordered Child Support.

22 (a) On receipt of a final order suspending a license,
23 issued under Family Code, §232.008, the department will suspend

1 or refuse to renew a salvage vehicle dealer's or salvage vehicle
2 agent's license issued under this chapter.

3 (b) The department will charge an administrative fee of \$50
4 to reinstate the salvage vehicle dealer's or salvage vehicle
5 agent's license who was the subject of an order suspending the
6 license under this section.

7

8 §221.114. Re-application after Revocation of License.

9 A person whose license is revoked may not apply for a new
10 license before the first anniversary of the date of the
11 revocation.

12

13 §221.115. Refund of Fees.

14 The department will not refund fees paid if a license is denied,
15 suspended or revoked.

ADOPTION PUBLICATION OF AMENDMENTS TO
43 TAC SECTIONS, 219.1, 219.2, 219.10 - 219.14, 219.31, 219.41 - 219.43, 219.45,
219.61 - 219.63, 219.102, 219.121, AND 219.125,
RELATING TO OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

Description

This order authorizes the adoption of amendments to §§219.1, 219.2, 219.10 - 219.14, 219.31, 219.41 - 219.43, 219.45, 219.61 - 219.63, 219.102, 219.121, and 219.125.

Background

The adopted amendments:

- Amend the definition of the term “nondivisible load” to be consistent with the federal definition because Texas must comply with certain federal size and weight laws and regulations to receive federal highway funding. Other conforming amendments are proposed regarding the terms “nondivisible load” and “nondivisible vehicle.” Further, amendments are proposed to expressly say the annual envelope permit and certain single-trip permits under Transportation Code, §623.071 may not be used for containers loaded with divisible cargo because these permits are only allowed for nondivisible loads.
- Reflect the role of the Texas Department of Transportation (“TxDOT”) regarding permits. For example, TxDOT is responsible for performing the bridge analysis regarding load-restricted bridges.
- Expressly authorize the operator to provide a TxDMV inspector or a peace officer with an electronic copy of certain permits on a wireless communications device, upon request. The industry requested this authority because it is not always easy for their drivers to obtain a hard copy of the permit, especially when the driver is operating in a rural part of Texas.
- Replace the definition of the word “knowingly” in Chapter 219 with the definition from TxDMV’s Chapter 218 (Motor Carriers) rule, since the same statute governs the administrative penalties in both Chapters 218 and 219.
- Allow more flexibility regarding settlement agreements for administrative enforcement of violations of size and weight laws and rules.
- Clarify that a permitted vehicle or combination of vehicles may not exceed the manufacturer’s rated tire carrying capacity, unless expressly authorized in the language on the permit.
- Clarify the weight requirements for trunnion axles, add requirements regarding trunnion axles, and clarify that there is an authorized weight per axle for trunnion axles.
- Delete an unnecessary graphic regarding the trunnion axle configuration because the requirements are spelled out in the rule language.

- Clarify that the permit authorizes the permitted vehicle to move oversize and overweight hauling equipment to pick up a permitted load, as well as on the return trip after dropping off the permitted load.
- Clarify that the permit authorizes the permitted vehicle to transport a load on the way to pick up a permitted load and after dropping off a permitted load, as long as the load does not exceed legal size and weight limits and as long as the transport complies with the permit.
- Clarify certain requirements and purposes, such as the purpose of the height pole.
- Clarify that counties also impose curfew restrictions; however, only the curfew restrictions listed on the permit apply to the permit.
- Clarify certain rules to say that routes must be inspected for the movement of both the vehicle and the load to make sure both the vehicle and load can safely negotiate the route.
- Delete language and exemptions that are inconsistent with the statutes. For example, one amendment deletes the exemption from the vehicle supervision fee for single and multiple box culverts because the statute does not authorize this exemption.
- Delete unnecessary requirements, such as the requirement for the applicant to provide TxDMV with a copy of the signed contract regarding a proposed superheavy permit.
- Increase the maximum width from nine feet to ten feet for pipe boxes regarding the single-trip permit. Pipe boxes are now being built slightly wider than nine feet.
- Delete outdated language, such as the specific limits on the overall width of houses and storage tanks regarding the single-trip permit.
- Implement the new annual overlength permit, as authorized by Senate Bill 562, 84th Regular Session, 2015. This permit allows an applicant to obtain the current 30-day/60-day/90-day overlength permit for a one-year period at a price that is consistent with the one-year timeframe.
- Modify the language regarding the fee for the annual timber permit, since Senate Bill 1171, 84th Regular Session, 2015, reduced the permit fee from \$1,500 to \$900.
- Delete language that repeats language found in other parts of Chapter 219, in statute, and in the TxDMV records retention schedule.
- Make the rules consistent with current practice, current terminology, other TxDMV rules, and current statutes.
- Reorganize portions of Chapter 219 for clarity.
- Renumber portions of the rules due to deletions and additions.

Other Comments

There are minimal fiscal implications related to the adopted amendments. The adopted amendments delete an exemption from the vehicle supervision fee for single and multiple box culverts because Transportation Code, §623.078 does not authorize the exemption. The department may collect more money due to this deletion.

The department received the following responses regarding the proposed amendments:

- Verbal questions from the Texas Trucking Association (TXTA).
- Written requests from TxDOT to modify certain language regarding TxDOT authority regarding permits. The department agreed to modify language in response to TxDOT's requests.
- A written comment from Larry Cernosek with Cernosek Wrecker/Deer Park Paint & Body, stating he didn't see the overweight and overlength exemptions in Chapter 219 for tow trucks hauling vehicles from the scene of an accident or after a breakdown. However, these exemptions are currently included in Transportation Code, §§621.205(b), 622.902(6), and 622.954, so there is no need to repeat the language from the statutes in Chapter 219.

Transportation Code, §623.145 and §623.195 require the Board of the Texas Department of Motor Vehicles (board) to consult with the Texas Transportation Commission prior to the adoption of certain rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles. Department staff provided the TxDOT staff with a copy of this Chapter 219 rule package. The Texas Transportation Commission considered the rule package during its open meeting on September 24, 2015. The Texas Transportation Commission issued a Minute Order on September 24, 2015, to document compliance with Transportation Code, §623.145 and §623.195.

The Texas Transportation Commission Minute Order, as well as copies of the written responses to this rule package, are attached.

If the board adopts the amendments during its November 13, 2015, open meeting, staff anticipates:

- Publication of the adoption in the December 4, 2015, issue of the *Texas Register*.
- An effective date of December 10, 2015, for the amendments.

Jennings, Linda

From: Becky Blewett <Becky.Blewett@txdot.gov>
Sent: Wednesday, September 16, 2015 3:02 PM
To: Aucoin, Aline
Subject: RE: 219 rules

Yes we do want the change on page 65.

From: Becky Blewett
Sent: Wednesday, September 16, 2015 3:00 PM
To: 'Aucoin, Aline'
Subject: RE: 219 rules

Thank you so much for your quick response. It is always great to work with you.
Becky

From: Aucoin, Aline [<mailto:Aline.Aucoin@txdmv.gov>]
Sent: Wednesday, September 16, 2015 2:58 PM
To: Becky Blewett
Subject: RE: 219 rules

Becky,

I attached the actual rule document, but I also responded to each point in your e-mail below.

Aline Aucoin
Associate General Counsel
Texas Department of Motor Vehicles
Phone: (512) 465-4206
E-mail: Aline.Aucoin@txdmv.gov

From: Becky Blewett [<mailto:Becky.Blewett@txdot.gov>]
Sent: Wednesday, September 16, 2015 9:38 AM
To: Aucoin, Aline <Aline.Aucoin@txdmv.gov>
Subject: 219 rules

Our engineers have finished their review and we have just a few issues. They added comments to your document so I just went through and added my comments on to theirs.

Basically we have three issues.

Pg 22-23

We are concerned with the use of "approval" in reference to the non-TxDOT engineer and would prefer that to say "recommendation" or "review".

TxDMV Response: Since you pointed out that 43 TAC §28.80 uses the word "analysis," we modified the draft language to use the word "analysis" as follows:

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted [~~load restricted~~] bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT, [~~the department,~~] based on an analysis of the bridge performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval by TxDOT.

(D) The department may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

Pg 23

Tire weight – we are concerned with who is approving the over tire weight? I glanced through the rules and did not see another reference and wasn't sure if that was TxDOT or DMV that made a call on tires.

TxDMV Response: We modified the draft language as follows:

(E) A permitted vehicle or combination of vehicles [An overdimensional load] may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

Pg 30

Concerned with the removal of the outside lane requirement for overwide vehicles. We would approve an exception if required under the specific permit routing than just a removal of the requirement. Even with the escort vehicles involved we are concerned that there will be no enforcement to keep them in the outside lane.

TxDMV Response: We modified the draft language as follows:

(h) Requirements for overwidth loads.

(1) Unless stated otherwise on the permit, an [An]
overwidth load must travel in the outside traffic lane on multi-lane
highways, when the width of the load exceeds 12 feet.

Does TxDOT want this same change to Section 219.13(e)(2)(D) on page 65, which is proposed to be deleted?

~~[-(D) The permitted vehicle must travel in the outside traffic lane on
multi-lane highways, when the width of the load exceeds 12 feet.]~~

I discussed everything with our chairman this morning and it is on the agenda for our commission meeting next week. However he wants me to try to get these issues resolved as soon as possible so that we can say we have worked out our issues with you.

Becky

Jennings, Linda

Subject: FW: Tx Dept. Of M V Oversize, Overweight Vehicles

From: Larry Cernosek [<mailto:lcwrecker@comcast.net>]
Sent: Tuesday, October 20, 2015 7:44 AM
To: Duncan, David
Subject: RE: Tx Dept. Of M V Oversize, Overweight Vehicles

Yes.

Larry Cernosek
Cernosek Wrecker/Deer Park Paint & Body
4527 Red Bluff
Pasadena, TX 77503
Office - 281-930-1539
Fax - 281-930-9904
Cell - 281-808-7835
Email - lcwrecker@comcast.net
——Original Message——

From: Duncan, David
Date: 10/19/2015 2:57:18 PM
To: Larry Cernosek
Cc: Archer, Jimmy; Aucoin, Aline
Subject: RE: Tx Dept. Of M V Oversize, Overweight Vehicles

Mr. Cernosek – could you clarify the basis for your question? Are you referring to the motor carrier rules (43 TAC Chapter 219) we have out for comment or something else?

From: Larry Cernosek [<mailto:lcwrecker@comcast.net>]
Sent: Monday, October 19, 2015 2:50 PM
To: Duncan, David
Subject: Tx Dept. Of M V Oversize, Overweight Vehicles

Mr. Duncan, I didn't see the exemptions listed. Tow Trucks had an overweight, over length exemption from the scene of an accident or breakdown.

Larry Cernosek
Cernosek Wrecker/Deer Park Paint & Body
4527 Red Bluff
Pasadena, TX 77503
Office - 281-930-1539
Fax - 281-930-9904
Cell - 281-808-7835
Email - lcwrecker@comcast.net

TEXAS TRANSPORTATION COMMISSION

All Counties

MINUTE ORDER

Page 1 of 1

All Districts

Pursuant to Transportation Code, §623.145 and §623.195, the Department of Motor Vehicles Board (board) must consult with the Texas Transportation Commission (commission) prior to the adoption of rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles.

The board proposed changes to 43 TAC Chapter 219, Oversize and Overweight Vehicles and Loads, on August 14, 2014. The proposed rule amendments were published in the *Texas Register* on September 18, 2015.

To comply with the statutory requirements, the board consulted with the commission on the amendments to 43 TAC §§219.11(d)(2), 219.11(k), and 219.11(l)(1), (3), and (4), 219.41, 219.42, 219.43, 219.45, 219.61, 219.62, and 219.63. Texas Department of Transportation (department) staff reviewed the amendments to those provisions and had no comments on those proposed changes.

Upon a complete review of all of the proposed rule amendments to 43 TAC Chapter 219, department staff found two areas of concern regarding the department's involvement in the permitting process in amendments to two other provisions of §219.11, specifically subsections (d)(1) and (h) of that section. Department staff has worked with staff of the Department of Motor Vehicles and these issues are being addressed.

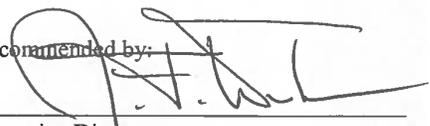
IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to continue to work with the board and staff of the Department of Motor Vehicles and take the necessary steps to ensure compliance with Transportation Code, §623.145 and §623.195 and to provide a copy of this minute order to the board as documentation of the board's consultation with the commission, in accordance with those sections.

Submitted and reviewed by:



Chief Engineer

Recommended by:



Executive Director

114385 SEP 24 15

Minute
Number

Date
Passed

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION AMENDMENTS

43 TAC SECTIONS, 219.1, 219.2, 219.10 - 219.14, 219.31, 219.41 - 219.43,
219.45, 219.61 - 219.63, 219.102, 219.121, AND 219.125,
RELATING TO OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt amendments to Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A: §219.1, Purpose and Scope; §219.2, Definitions; Subchapter B: §219.10, Purpose and Scope; §219.11, General Oversize/Overweight Permit Requirements and Procedures; §219.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; §219.13, Time Permits; and §219.14, Manufactured Housing, and Industrialized Housing and Building Permits; Subchapter C: §219.31, Timber Permits; Subchapter D: §219.41, General Requirements; §219.42, Single-Trip Mileage Permits; §219.43, Quarterly Hubometer Permits; and §219.45, Permits for Vehicles Transporting Liquid Products Related to Oil Well Production; Subchapter E: §219.61, General Requirement for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles; §219.62, Single Trip Mileage Permits; and §219.63, Quarterly Hubometer Permits; Subchapter G: §219.102, Records; and Subchapter H: §219.121, Administrative Penalties, and §219.125, Settlement Agreements.

The preamble and amendments 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 amendments are adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

Jimmy Archer, Director
Motor Carrier Division

Order Number: _____

Date Passed: November 13, 2015

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts
3 amendments to Chapter 219, Oversize and Overweight Vehicles
4 and Loads, Subchapter A: §219.1, Purpose and Scope; and
5 §219.2, Definitions; Subchapter B: §219.10, Purpose and Scope;
6 §219.11, General Oversize/Overweight Permit Requirements and
7 Procedures; §219.12, Single-Trip Permits Issued Under
8 Transportation Code, Chapter 623, Subchapter D; §219.13, Time
9 Permits; and §219.14, Manufactured Housing, and Industrialized
10 Housing and Building Permits; Subchapter C: §219.31, Timber
11 Permits; Subchapter D: §219.41, General Requirements; §219.42,
12 Single-Trip Mileage Permits; §219.43, Quarterly Hubometer
13 Permits; and §219.45, Permits for Vehicles Transporting Liquid
14 Products Related to Oil Well Production; Subchapter E:
15 §219.61, General Requirements for Permits for Oversize and
16 Overweight Unladen Lift Equipment Motor Vehicles; §219.62,
17 Single Trip Mileage Permits; and §219.63, Quarterly Hubometer
18 Permits; Subchapter G: §219.102, Records; and Subchapter H:
19 §219.121, Administrative Penalties; and §219.125, Settlement
20 Agreements. The amendments to §219.11 and §219.13 are adopted
21 with changes to the proposed text as published in the
22 September 18, 2015, issue of the *Texas Register* (40 TexReg
23 6317) and will be republished.

24

25 EXPLANATION OF ADOPTED AMENDMENTS

1 In §219.2(36), the department replaced the term "nondivisible
2 load" with the term "nondivisible load or vehicle." The
3 department also replaced the definition with the definition
4 from 23 C.F.R. §658.5 for the term "nondivisible load or
5 vehicle." Texas must comply with certain federal size and
6 weight laws and regulations to receive federal highway
7 funding.

8
9 Amendments are made throughout Chapter 219 to use the term
10 "nondivisible load" or "nondivisible vehicle" where the
11 defined term applies. Other amendments replace the terms
12 "nondivisible" and "non-divisible" with other language when
13 the definition of the term "nondivisible load or vehicle" does
14 not apply. Amendments to §219.12(b)(6) and §219.13(e)(4) make
15 it clear that the permit may not be used for containers,
16 including trailers and intermodal containers, loaded with
17 divisible cargo, unless the permit is a single-trip permit
18 issued for a load under §219.12(c).

19
20 An amendment to §219.11(d)(1)(E) clarifies that a permitted
21 vehicle or combination of vehicles may not exceed the
22 manufacturer's rated tire carrying capacity, unless expressly
23 authorized in the language on the permit. Transportation Code,
24 §621.101(a)(4) states that a vehicle or combination of
25 vehicles may not be operated over or on a public highway or at

1 a port-of-entry between Texas and the United Mexican States if
2 the vehicle or combination of vehicles has tires that carry a
3 weight heavier than the weight specified and marked on the
4 sidewall of the tire, unless the vehicle is being operated
5 under the terms of a special permit. The amendment to
6 §219.11(d)(1)(E) is necessary because the department has
7 received calls from people who mistakenly believe that any
8 permit authorizes the permitted vehicle or combination of
9 vehicles to exceed the manufacturer's rated tire carrying
10 capacity, even when the permit does not expressly authorize
11 it.

12

13 Amendments to §219.11(d)(2)(G) clarify the weight requirements
14 for trunnion axles, add additional requirements, make it clear
15 that there is an authorized weight per axle, and delete the
16 unnecessary graphic because the requirements are stated in
17 §219.11(d)(2)(G). These amendments assist law enforcement by
18 providing clear requirements.

19

20 Amendments to §219.11(e)(3) clarify that the permit authorizes
21 the permitted vehicle to move oversize and overweight hauling
22 equipment to pick up a permitted load, as well as on the
23 return trip after dropping off the permitted load. The permit
24 also authorizes the permitted vehicle to transport a load on
25 the way to pick up a permitted load and after dropping off a

1 permitted load, as long as the load does not exceed legal size
2 and weight limits and as long as the transport complies with
3 the permit. Similar amendments clarify the movement of
4 overwidth trailers in §219.13(c)(3).

5

6 An adopted amendment deletes language from §219.11(e)(4)(A)
7 and §219.13(e)(5)(D) regarding the requirement to keep the
8 permit in the permitted vehicle because this issue is
9 addressed in the amendments to §219.102(b), which applies to
10 all permits. An amendment deletes the remainder of
11 §219.11(e)(4) because the department's requirements to retain
12 records are contained in the department's records retention
13 schedule. Also, some of the language in §219.11(e)(4) was
14 incorrect.

15

16 An amendment modifies the language in §219.11(h)(1) and
17 §219.13(e)(2)(D) because it is sometimes necessary for a route
18 to include a designated lane, rather than the outside traffic
19 lane, due to overhead structures of varying heights.

20

21 An amendment to §219.11(k)(4)(A) clarifies the purpose of the
22 height pole.

23

24 An amendment to §219.11(k)(5) deletes the unnecessary example
25 regarding escort requirements.

1

2 An amendment to §219.11(1)(4) clarifies that counties also
3 impose curfew restrictions; however, only the curfew
4 restrictions listed on the permit apply to the permit.

5

6 An amendment to §219.12(b)(6) deletes the exemption from the
7 vehicle supervision fee under Transportation Code, §623.078
8 for single and multiple box culverts because the statute does
9 not authorize this exemption.

10

11 An amendment to §219.12(b)(7)(C) deletes the unnecessary
12 requirement for applicants to provide the department with a
13 copy of the signed contract for the proposed shipment. The
14 adopted amendment replaces this requirement with a form that
15 provides the department with the necessary information.

16

17 An amendment to §219.12(c)(2) increases the maximum width from
18 nine feet to 10 feet because pipe boxes are now built slightly
19 wider than nine feet.

20

21 An amendment to §219.12(d)(5) and (6) deletes language that is
22 outdated. The department will permit based on the size and
23 weight, rather than the type of load, under this subsection.

24 There is no reason to treat storage tanks and houses
25 differently in this subsection.

1

2 An amendment to §219.13(d)(2)(B) deletes language regarding an
3 exception because the department does not issue this permit if
4 there is more than 25 feet front overhang or more than 30 feet
5 rear overhang. If a vehicle and load exceed one of these
6 limits, a single-trip permit with a route inspection is
7 required.

8

9 Adopted §219.13(e)(8) implements the new annual overlength
10 permit authorized by Senate Bill 562, 84th Legislature,
11 Regular Session, 2015. Senate Bill 562 amended Transportation
12 Code, §623.071 and §623.076, authorizing the department to
13 issue a permit to a person to operate over a state highway or
14 road a vehicle or combination of vehicles with a maximum
15 length not to exceed 110 feet and a maximum height not to
16 exceed 14 feet. Section 219.13(e)(8) establishes the
17 requirements, restrictions, and procedures regarding this new
18 permit.

19

20 Amendments to §219.102 update the requirements regarding
21 evidence of the permit. The amendments expressly authorize an
22 operator to provide a department inspector or a peace officer
23 with an electronic copy of certain permits on a wireless
24 communication device. Industry requested this amendment
25 because it is not always easy for the driver to obtain a hard

1 copy of the permit to carry in the vehicle, especially when
2 the driver is operating in a rural part of Texas.

3

4 An amendment to §219.121(b)(2) duplicates the definition of
5 the word "knowingly" that is used in §218.71 because
6 Transportation Code, §643.251 governs administrative penalties
7 for Chapters 218 and 219.

8

9 Amendments to §219.125 allow more flexibility regarding
10 settlement agreements.

11

12 Amendments throughout Chapter 219 reflect the role of the
13 Texas Department of Transportation (TxDOT) regarding permits.
14 These amendments are necessary to describe the procedure and
15 practice requirements regarding certain permits.

16

17 Amendments in more than one section are adopted because a
18 route must be inspected for the movement of both the vehicle
19 and load to make sure both the vehicle and load can safely
20 negotiate the route.

21

22 Amendments are adopted to make the rules consistent with
23 current practice, current terminology, other department rules,
24 and current statutes. For example, amendments add the
25 application requirements to obtain certain permits, and

1 amendments delete certain language because permit applications
2 are no longer accepted at cash collection offices. Amendments
3 also correct cross-references.

4

5 Amendments delete language that repeats language found in
6 other parts of Chapter 219 and in statute. Also, the
7 department reorganized portions of Chapter 219 for clarity.
8 Further, the department restructured portions of Chapter 219
9 due to deletions and additions.

10

11 COMMENTS AND RESPONSES:

12 The department received written comments from TxDOT and from
13 Larry Cernosek with Cernosek Wrecker/Deer Park Paint & Body.

14

15 COMMENT:

16 TxDOT requested changes to the proposed language in §219.11 to
17 make it clear that non-TxDOT engineers merely provide an
18 analysis, rather than an approval, because TxDOT provides the
19 approval. TxDOT also requested changes to the proposed
20 language in §219.11 to make it clear that TxDOT determines
21 whether a permitted vehicle or combination of vehicles is
22 authorized to exceed the manufacturer's rated tire carrying
23 capacity. TxDOT further requested changes to the proposed
24 deletions of language in §219.11(h)(1) and §219.13(e)(2)(D)
25 because overwidth loads must travel in the outside traffic

1 lane on multi-lane highways when the width of the load exceeds
2 12 feet, unless stated otherwise on the permit.

3

4 RESPONSE:

5 The department made the changes requested by TxDOT and
6 republished §219.11 and §219.13.

7

8 COMMENT:

9 Larry Cernosek with Cernosek Wrecker/Deer Park Paint & Body
10 stated he did not see the overweight and overlength exemptions
11 in Chapter 219 for tow trucks hauling vehicles from the scene
12 of an accident or after a breakdown.

13

14 RESPONSE:

15 Because the exemptions are included in Transportation Code,
16 §§621.205(b), 622.902(6), and 622.954, there is no need to
17 repeat the exemptions in Chapter 219.

18

19 STATUTORY AUTHORITY

20 The amendments are adopted under Transportation Code,
21 §1002.001, which provides the Board of the Texas Department of
22 Motor Vehicles (board) with the authority to adopt rules that
23 are necessary and appropriate to implement the powers and
24 duties of the department under the Transportation Code; and
25 more specifically, Transportation Code, §§621.008, 622.002,

1 and 623.002, which authorize the board to adopt rules that are
2 necessary to implement and enforce Chapters 621, 622, and 623.

3

4 CROSS REFERENCE TO STATUTE

5 Transportation Code, Chapters 621, 622, and 623.

**ADOPTION PUBLICATION OF AMENDMENTS TO 43 TAC SECTION 217.56,
RELATING TO REGISTRATION RECIPROCITY AGREEMENTS**

Description

This order authorizes the adoption of amendments to Chapter 217, Vehicle Titles and Registration, §217.56, Registration Reciprocity Agreements.

Background

The adopted amendments to §217.56:

- Adopt by reference the future amendments to the International Registration Plan (IRP) that become effective on January 1, 2016.
- Correct language that is inconsistent with the IRP.
- Amend the structure of a sentence for clarity.

Other Comments

There are no fiscal implications related to the adopted amendments.

If the board adopts the amendments during its November 13, 2015, open meeting, staff anticipates:

- Publication of the adoption in the December 4, 2015, issue of the *Texas Register*;
and
- An effective date of the rule of December 10, 2015.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION
AMENDMENTS TO 43 TAC SECTION 217.56,
RELATING TO REGISTRATION RECIPROCITY AGREEMENTS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to adopt amendments to Chapter 217, §217.56, Registration Reciprocity Agreements.

The preamble and the amendments 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 amendments are adopted.

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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

Jimmy Archer, Director
Motor Carrier Division

Order Number: _____

Date Passed: November 13, 2015

Texas Department of Motor Vehicles
Chapter 217, Vehicles Titles and Registration

Page 1 of 2

1 Adoption Preamble

2 The Texas Department of Motor Vehicles (department) adopts
3 amendments to §217.56, Registration Reciprocity Agreements,
4 without changes to the proposed text as published in the
5 September 4, 2015, issue of the *Texas Register* (40 TexReg 5755).
6 The amended section will not be republished.

7

8 EXPLANATION OF ADOPTED AMENDMENTS

9 The amendments to §217.56 adopt by reference the future
10 amendments to the International Registration Plan (IRP) that
11 become effective on January 1, 2016, and correct language that
12 is inconsistent with the IRP. The department is adopting these
13 amendments because Texas is a member of the IRP and must comply
14 with the IRP, including any amendments. An additional amendment
15 to §217.56 is added for clarity.

16

17 COMMENTS

18 No comments on the proposed amendments were received.

19

20 STATUTORY AUTHORITY

21 The amendments are adopted under Transportation Code, §1002.001,
22 which provides the board of the Texas Department of Motor

Texas Department of Motor Vehicles
Chapter 217, Vehicles Titles and Registration

Page 2 of 2

1 Vehicles with the authority to adopt rules that are necessary
2 and appropriate to implement the powers and the duties of the
3 department; and more specifically, Transportation Code,
4 §502.091, which authorizes the department to adopt rules to
5 carry out the IRP.

6

7 CROSS REFERENCE TO STATUTE

8 Transportation Code, §502.091.

1 SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

2 §217.56. Registration Reciprocity Agreements.

3 (a) Purpose. To promote and encourage the fullest
4 possible use of the highway system and contribute to the
5 economic development and growth of the State of Texas and its
6 residents, the department is authorized by Transportation
7 Code, §502.091 to enter into agreements with duly authorized
8 officials of other jurisdictions, including any state of the
9 United States, the District of Columbia, a foreign country, a
10 state or province of a foreign country, or a territory or
11 possession of either the United States or of a foreign
12 country, and to provide for the registration of vehicles by
13 Texas residents and nonresidents on an allocation or distance
14 apportionment basis, and to grant exemptions from the payment
15 of registration fees by nonresidents if the grants are
16 reciprocal to Texas residents.

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

20 (1) Cab card--The apportioned vehicle registration
21 receipt that contains, but is not limited to, the vehicle
22 description and the registered weight at which the vehicle may
23 operate in each jurisdiction.

24 (2) Department--The Texas Department of Motor

1 Vehicles.

2 (3) Director--The director of the Motor Carrier
3 Division, Texas Department of Motor Vehicles.

4 (4) Executive director--The chief executive officer
5 of the department.

6 (5) Regional Service Center--A department office
7 which provides specific services to the public, including
8 replacement titles, bonded title rejection letters, and
9 apportioned registration under the International Registration
10 Plan (IRP).

11 (6) Temporary cab card--A temporary registration
12 permit authorized by the department that allows the operation
13 of a vehicle for 30 days subject to all rights and privileges
14 afforded to a vehicle displaying apportioned registration.

15 (c) Multilateral agreements.

16 (1) Authority. The executive director may on behalf
17 of the department enter into a multilateral agreement with the
18 duly authorized officials of two or more other jurisdictions
19 to carry out the purpose of this section.

20 (2) International Registration Plan.

21 (A) Applicability. The IRP is a registration
22 reciprocity agreement among states of the United States and
23 other jurisdictions providing for payment of registration fees
24 on the basis of fleet distance operated in various

1 jurisdictions. Its purpose is to promote and encourage the
2 fullest possible use of the highway system by authorizing
3 apportioned registration for commercial motor vehicles and
4 payment of appropriate vehicle registration fees and thus
5 contributing to the economic development and growth of the
6 member jurisdictions.

7 (B) Adoption. The department adopts by
8 reference the January 1, 2015, [~~2014~~] edition of the IRP.
9 Effective January 1, 2016, [~~2015~~] the department adopts by
10 reference the amendments to the IRP with an effective date of
11 January 1, 2016. [~~2015~~] Effective July 1, 2016, the
12 department adopts by reference the amendment to the IRP with
13 an effective date of July 1, 2016. The department further
14 adopts by reference the July 1, 2013, edition of the IRP Audit
15 Procedures Manual. In the event of a conflict between this
16 section and the IRP or the IRP Audit Procedures Manual, the
17 IRP and the IRP Audit Procedures Manual control. Copies of the
18 documents are available for review in the Motor Carrier
19 Division, Texas Department of Motor Vehicles. Copies are also
20 available on request. The following words and terms, when used
21 in the IRP or in paragraph (2) of this subsection, shall have
22 the following meanings, unless the context clearly indicates
23 otherwise.

24 (i) Apportionable vehicle--Any vehicle -

1 except recreational vehicles, vehicles displaying restricted
2 plates, city pickup and delivery vehicles, [~~buses used in~~
3 ~~transportation of chartered parties,~~] and government-owned
4 vehicles - used or intended for use in two or more member
5 jurisdictions that allocate or proportionally register
6 vehicles and used either for the transportation of persons for
7 hire or designed, used, or maintained primarily for the
8 transportation of property and:

9 (I) is a power unit having two axles
10 and a gross vehicle weight or registered gross vehicle weight
11 in excess of 26,000 pounds (11,793.401 kilograms);

12 (II) is a power unit having three or
13 more axles, regardless of weight;

14 (III) is used in combination, when
15 the weight of such combination exceeds 26,000 pounds
16 (11,793.401 kilograms) gross vehicle weight; or

17 (IV) at the option of the registrant,
18 a power unit, or the power unit in a combination [~~trucks,~~
19 ~~truck tractors, or combinations~~] of vehicles having a gross
20 vehicle weight of 26,000 pounds (11,793.401 kilograms) or less
21 [~~; or buses used in transportation of chartered parties~~].

22 (ii) Commercial vehicle--A vehicle or
23 combination of vehicles designed and used for the
24 transportation of persons or property in furtherance of any

1 commercial enterprise, for hire or not for hire.

2 (iii) Erroneous issuance--Apportioned
3 registration issued based on erroneous information provided to
4 the department.

5 (iv) Established place of business--A
6 physical structure owned or leased within the state of Texas
7 by the applicant or fleet registrant and maintained in
8 accordance with the provisions of the IRP.

9 (v) Fleet distance--All distance operated
10 by an apportionable vehicle or vehicles used to calculate
11 registration fees for the various jurisdictions.

12 (C) Application.

13 (i) An applicant must submit an
14 application to the department on a form prescribed by the
15 director, along with additional documentation as required by
16 the director.

17 (ii) Upon approval of the application, the
18 department will compute the appropriate registration fees and
19 notify the registrant.

20 (D) Fees. Upon receipt of the applicable fees
21 in the form as provided by §209.23 of this title (relating to
22 Methods of Payment), the department will issue one or two
23 license plates and a cab card for each vehicle registered.

24 (E) Display.

1 (i) The department will issue one license
2 plate for a tractor, truck tractor, trailer, and semi-trailer.
3 The license plate issued to a tractor or a truck tractor shall
4 be installed on the front of the tractor or truck tractor, and
5 the license plate issued for a trailer or semi-trailer shall
6 be installed on the rear of the trailer or semi-trailer.

7 (ii) The department will issue two license
8 plates for all other vehicles that are eligible to receive
9 license plates under the IRP. Once the department issues two
10 license plates for a vehicle listed in this clause, one plate
11 shall be installed on the front of the vehicle, and one plate
12 shall be installed on the rear of the vehicle.

13 (iii) The cab card shall be carried at all
14 times in the vehicle in accordance with the IRP.

15 (F) Audit. An audit of the registrant's vehicle
16 operational records may be conducted by the department
17 according to the IRP provisions and the IRP Audit Procedures
18 Manual. Upon request, the registrant shall provide the
19 operational records of each vehicle for audit in unit number
20 order, in sequence by date, and including, but not limited to,
21 a summary of distance traveled by each individual vehicle on a
22 monthly, quarterly, and annual basis with distance totaled
23 separately for each jurisdiction in which the vehicle
24 traveled.

1 (G) Assessment. The department may assess
2 additional registration fees of up to 100% [~~100 percent~~] of
3 the apportionable fees paid by the registrant for the
4 registration of its fleet in the registration year to which
5 the records pertain, as authorized by the IRP, [~~Texas~~
6 ~~registration fees,~~] if an audit conducted under subparagraph
7 (F) of this paragraph reveals that:

8 (i) the operational records indicate that
9 the vehicle did not generate interstate distance in two or
10 more member jurisdictions for the distance reporting period
11 supporting the application being audited, plus the six-month
12 period immediately following that distance reporting period;

13 (ii) the registrant failed to provide
14 complete operational records; or

15 (iii) the distance must be adjusted, and
16 the adjustment results in a shortage of registration fees due
17 Texas or any other IRP jurisdiction.

18 (H) Refunds. If an audit conducted under
19 subparagraph (F) of this paragraph reveals an overpayment of
20 fees to Texas or any other IRP jurisdiction, the department
21 will refund the overpayment of registration fees in accordance
22 with Transportation Code, §502.195 and the IRP. Any
23 registration fees refunded to a carrier for another
24 jurisdiction will be deducted from registration fees collected

1 and transmitted to that jurisdiction.

2 (I) Cancellation. The director or the
3 director's designee may cancel a registrant's apportioned
4 registration and all privileges provided by the IRP if the
5 registrant:

6 (i) submits payment in the form of a check
7 that is dishonored;

8 (ii) files or provides erroneous
9 information to the department; or

10 (iii) fails to:

11 (I) remit appropriate fees due each
12 jurisdiction in which the registrant is authorized to operate;

13 (II) meet the requirements of the IRP
14 concerning established place of business;

15 (III) provide operational records in
16 accordance with subparagraph (F) of this paragraph;

17 (IV) provide an acceptable source
18 document as specified in the IRP; or

19 (V) pay an assessment pursuant to
20 subparagraph (G) of this paragraph.

21 (J) Enforcement of cancelled registration.

22 (i) Notice. If a registrant is assessed
23 additional registration fees, as provided in subparagraph (G)
24 of this paragraph, and the additional fees are not paid by the

1 due date provided in the notice or it is determined that a
2 registrant's apportioned license plates and privileges should
3 be canceled, as provided in subparagraph (I) of this
4 paragraph, the director or the director's designee will mail a
5 notice by certified mail to the last known address of the
6 registrant. The notice will state the facts underlying the
7 assessment or cancellation, the effective date of the
8 assessment or cancellation, and the right of the registrant to
9 request a conference as provided in clause (ii) of this
10 subparagraph.

11 (ii) Conference. A registrant may request
12 a conference upon receipt of a notice issued as provided by
13 clause (i) of this subparagraph. The request must be made in
14 writing to the director or the director's designee within 30
15 days of the date of the notice. If timely requested, the
16 conference will be scheduled and conducted by the director or
17 the director's designee at division headquarters in Austin and
18 will serve to abate the assessment or cancellation unless and
19 until that assessment or cancellation is affirmed or
20 disaffirmed by the director or the director's designee. In the
21 event matters are resolved in the registrant's favor, the
22 director or the director's designee will mail the registrant a
23 notice of withdrawal, notifying the registrant that the
24 assessment or cancellation is withdrawn, and stating the basis

1 for that action. In the event matters are not resolved in the
2 registrant's favor, the director or the director's designee
3 will issue a ruling reaffirming the department's assessment of
4 additional registration fees or cancellation of apportioned
5 license plates and privileges. The registrant has the right to
6 appeal in accordance with clause (iii) of this subparagraph.

7 (iii) Appeal. If a conference held in
8 accordance with clause (ii) of this subparagraph fails to
9 resolve matters in the registrant's favor, the registrant may
10 request an administrative hearing. The request must be in
11 writing and must be received by the director no later than the
12 20th day following the date of the ruling issued under clause
13 (ii) of this subparagraph. If requested within the designated
14 period, the hearing will be initiated by the department and
15 will be conducted in accordance with Chapter 206, Subchapter D
16 of this title (relating to Procedures in Contested Cases).
17 Assessment or cancellation is abated unless and until affirmed
18 or disaffirmed by order of the Board of the Texas Department
19 of Motor Vehicles.

20 (K) Reinstatement.

21 (i) The director or the director's
22 designee will reinstate apportioned registration to a
23 previously canceled registrant if all applicable fees and
24 assessments due on the previously canceled apportioned account

1 have been paid and the applicant provides proof of an
2 acceptable recordkeeping system for a period of no less than
3 60 days.

4 (ii) The application for the following
5 registration year will be processed in accordance with the
6 provisions of the IRP.

7 (L) Denial of apportioned registration for
8 safety reasons. The department will comply with the
9 requirements of the Performance and Registration Information
10 Systems Management program (PRISM) administered by the Federal
11 Motor Carrier Safety Administration (FMCSA).

12 (i) Denial or suspension of apportioned
13 registration. Upon notification from the FMCSA that a carrier
14 has been placed out of service for safety violations, the
15 department will:

16 (I) deny initial issuance of
17 apportioned registration;

18 (II) deny authorization for a
19 temporary cab card, as provided for in subparagraph (M) of
20 this paragraph;

21 (III) deny renewal of apportioned
22 registration; or

23 (IV) suspend current apportioned
24 registration.

1 (ii) Issuance after denial of registration
2 or reinstatement of suspended registration. The director or
3 the director's designee will reinstate or accept an initial or
4 renewal application for apportioned registration from a
5 registrant who was suspended or denied registration under
6 clause (i) of this subparagraph upon presentation of a
7 Certificate of Compliance from FMCSA, in addition to all other
8 required documentation and payment of fees.

9 (M) Temporary cab card.

10 (i) Application. The department may
11 authorize issuance of a temporary cab card to a motor carrier
12 with an established Texas apportioned account for a vehicle
13 upon proper submission of all required documentation, a
14 completed application, and all fees for either:

15 (I) Texas title as prescribed by
16 Transportation Code, Chapter 501 and Subchapter A of this
17 chapter (relating to Motor Vehicle Titles); or

18 (II) registration receipt to evidence
19 title for registration purposes only (Registration Purposes
20 Only) as provided for in Transportation Code, §501.029 and
21 §217.24 of this title (relating to Vehicle Last Registered in
22 Another Jurisdiction).

23 (ii) Title application. A registrant who
24 is applying for a Texas title as provided for in clause (i)(I)

1 of this subparagraph and is requesting authorization for a
2 temporary cab card, must submit to a Regional Service Center
3 by email, fax, overnight mail, or in person a photocopy of the
4 title application receipt issued by the county tax assessor-
5 collector's office [~~to a Regional Service Center by email,~~
6 ~~fax, overnight mail, or in person~~].

7 (iii) Registration Purposes Only. A
8 registrant who is applying for Registration Purposes Only
9 under clause (i)(II) of this subparagraph and is requesting
10 authorization for a temporary cab card, must submit an
11 application and all additional original documents or copies of
12 original documents required by the director to a Regional
13 Service Center by email, fax, or overnight mail or in person.

14 (iv) Department approval. On department
15 approval of the submitted documents, the department will send
16 notice to the registrant to finalize the transaction and make
17 payment of applicable registration fees.

18 (v) Finalization and payment of fees. To
19 finalize the transaction and print the temporary cab card, the
20 registrant may compute the registration fees through the
21 department's apportioned registration software application,
22 TxIRP system, and:

23 (I) make payment of the applicable
24 registration fees to the department as provided by §209.23 of

1 this title (related to Methods of Payment); and

2 (II) afterwards, mail or deliver
3 payment of the title application fee in the form of a check,
4 certified cashier's check, or money order payable to the
5 county tax assessor-collector in the registrant's county of
6 residency and originals of all copied documents previously
7 submitted.

8 (vi) Deadline. The original documents and
9 payment must be received by the Regional Service Center within
10 72-hours after the time that the office notified the
11 registrant of the approval to print a temporary cab card as
12 provided in clause (iv) of this subparagraph.

13 (vii) Failure to meet deadline. If the
14 registrant fails to submit the original documents and required
15 payment within the time prescribed by clause (vi) of this
16 subparagraph, the registrant's privilege to use this expedited
17 process to obtain a temporary cab card will be denied by the
18 department for a period of six months from the date of
19 approval to print the temporary cab card.

**PROPOSED PUBLICATION TO AMEND 43 TAC SECTION 206.93
AND PROPOSE NEW SECTIONS 206.94 AND 206.95,
RELATING TO ADVISORY COMMITTEES**

Description

This order proposes publication for comment of amendments to Chapter 206, Management, Subchapter E, Advisory Committees, §206.93, Advisory Committee Operations and Procedures and proposes new §206.94, Household Goods Rules Advisory Committee and new §206.95, Motor Vehicle License Advisory Committee.

Background

The amendments are proposed to §206.93 to remove inapplicable language regarding reimbursement of expenses and language relating to the applicability of certain laws, policies, and ethical standards of conduct.

The proposed new §206.94 and §206.95, set out the purpose and tasks of the advisory committees.

Other Comments

There are no fiscal implications related to the proposed amendments and new sections.

If the proposed amendments and new sections are approved by the board, staff anticipates publication of the proposed amendments and new sections in the *Texas Register* on or about December 4, 2015. Comments on the proposed amendments and new sections will be accepted until 5:00 p.m. on January 4, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SECTION 206.93 AND NEW SECTIONS, 206.94 AND 206.95,
RELATING TO ADVISORY COMMITTEES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 206, Management, Subchapter E, Advisory Committees, §206.93, Advisory Committee Operations and Procedures and proposes new §206.94, Household Goods Rules Advisory Committee, and new §206.95, Motor Vehicle License Advisory Committee.

The preamble, proposed amendments, and proposed new sections 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 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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

David D. Duncan, General Counsel
Texas Department of Motor Vehicles

Order Number: _____

Date Passed: November 13, 2015

1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes
3 amendments to Chapter 206, Management, Subchapter E, Advisory
4 Committees, §206.93, Advisory Committee Operations and
5 Procedures and proposes new §206.94, Household Goods Rules
6 Advisory Committee, and new §206.95, Motor Vehicle License
7 Advisory Committee.

8

9 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

10 Amendments are proposed to §206.93, Advisory Committee
11 Operations and Procedures, to remove inapplicable language
12 regarding reimbursement of expenses, and to remove language
13 relating to the applicability of certain laws, policies and
14 ethical standards of conduct. Proposed new §206.94, Household
15 Goods Rules Advisory Committee, and proposed new §206.95, Motor
16 Vehicle License Advisory Committee, are added to state the
17 purpose and tasks of the committees, and to indicate respective
18 end dates.

19

20 FISCAL NOTE

21 Linda M. Flores, Chief Financial Officer, has determined that
22 for each of the first five years the amendments and new sections
23 as proposed are in effect, there will be no fiscal implications

1 for state or local governments as a result of enforcing or
2 administering the proposed amendments and new sections.

3

4 David D. Duncan, General Counsel, has certified that there will
5 be no impact on local economies or overall employment as a
6 result of enforcing or administering the proposed amendments and
7 new sections.

8

9 PUBLIC BENEFIT AND COST

10 Mr. Duncan has also determined that for each year of the first
11 five years the amendments and new sections are in effect, the
12 public benefit anticipated as a result of enforcing or
13 administering the amendments and new sections will be increased
14 public knowledge of the roles of department advisory committees.
15 There are no anticipated economic costs for persons required to
16 comply with the amendments and new sections as proposed. There
17 will be no adverse economic effect on small businesses or micro-
18 businesses.

19

20 TAKINGS IMPACT ASSESSMENT

21 The department has determined that this proposal affects no
22 private real property interests and that this proposal does not
23 restrict or limit an owner's right to property that would

1 otherwise exist in the absence of government action, and so does
2 not constitute a taking or require a takings impact assessment
3 under the Government Code, §2007.043.

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed amendments and new sections may
7 be submitted to David D. Duncan, General Counsel, Texas
8 Department of Motor Vehicles, 4000 Jackson Avenue, Building 1,
9 Austin, Texas 78731 or by email to *rules@txdmv.gov*. The deadline
10 for receipt of comments is 5:00 p.m. on January 4, 2016.

11

12 STATUTORY AUTHORITY

13 The amendments and new sections are proposed under
14 Transportation Code, §1002.001, which provides the board of the
15 Texas Department of Motor Vehicles with the authority to adopt
16 rules that are necessary and appropriate to implement the powers
17 and the duties of the department.

18

19 CROSS REFERENCE TO STATUTE

20 Government Code, Chapter 2110, Transportation Code, §1001.031
21 and §643.155.

1 SUBCHAPTER E. ADVISORY COMMITTEES

2 §206.93. Advisory Committee Operations and Procedures.

3 (a) Unless a member resigns from an advisory committee, the
4 member continues to serve on the committee until the member is
5 dismissed or replaced by the board, or until the committee
6 concludes all business or is disbanded. The executive director
7 may designate a division of the department to participate with,
8 or to provide subject-matter expertise, guidance, or
9 administrative support to the advisory committee.

10 (b) A summary of the business undertaken by each advisory
11 committee shall be prepared and filed with the board or the
12 board's designee.

13 (c) All summaries and other records of each advisory
14 committee proceeding are records of the board that may be
15 subject to disclosure under the provisions of Government Code,
16 Chapter 552.

17 (d) The department may, if authorized by law and the
18 executive director, reimburse advisory committee members for
19 reasonable and necessary travel expenses. [~~Current rules and~~
20 ~~laws governing reimbursement of expenses for state employees~~
21 ~~shall govern reimbursement of expenses for advisory committee~~
22 ~~members.~~]

23 [~~(e) Advisory committee members are subject to the same~~

1 ~~laws, policies, and ethical standards of conduct governing board~~
2 ~~members and employees of the department.]~~

3 (e) [~~(f)~~] In developing department policies, the board shall
4 consider the recommendations submitted by advisory committees.

5 (f) [~~(g)~~] The designated division shall report to the board
6 on actions, including any advice and recommendations, of an
7 advisory committee prior to board action on a pertinent issue.
8 The chair of the advisory committee or the chair's designee may
9 appear before the board prior to board action on a posted agenda
10 item to present the committee's advice and recommendations.

11 (g) [~~(h)~~] Unless a different expiration date is established
12 by the board for the advisory committee, each advisory committee
13 is abolished on the fourth anniversary of its creation by the
14 board.

15

16 §206.94. Household Goods Rules Advisory Committee (HGRAC).

17 (a) The HGRAC is created to make recommendations to the
18 department regarding modernizing and streamlining the rules
19 adopted under Transportation Code, §643.153(a) and (b).

20 (b) The HGRAC shall comply with the requirements of §206.93
21 of this title (relating to Advisory Committee Operations and
22 Procedures).

23 (c) The HGRAC shall expire on August 14, 2019.

1

2 §206.95. Motor Vehicle License Advisory Committee (MVLAC).

3 (a) The MVLAC is created to review license requirements and
4 procedures and make recommendations to the department regarding
5 simplifying and modernizing the licensing process.

6 (b) The MVLAC shall comply with the requirements of §206.93
7 of this title (relating to Advisory Committee Operations and
8 Procedures).

9 (c) The MVLAC shall expire on August 14, 2019.

**PROPOSED PUBLICATION OF NEW 43 TAC
SECTION 210.3, ENHANCED CONTRACT MONITORING PROGRAM**

Description

This order proposes publication for comment of new section, Chapter 210, Contract Management, Subchapter A, Purchase Contracts, §210.3, Enhanced Contract Monitoring Program.

Background

New §210.3, is proposed to implement Senate Bill 20, 84th Legislature, Regular Session, 2015, by establishing a procedure to identify each contract that requires enhanced contract or performance monitoring.

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 new section in the *Texas Register* on or about December 4, 2015. Comments on the proposed new section will be accepted until 5:00 p.m. on January 4, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES
RESOLUTION APPROVING PUBLICATION OF PROPOSED NEW
43 TAC SECTION 210.3,
ENHANCED CONTRACT MONITORING PROGRAM

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to propose new §210.3, Enhanced Contract Monitoring Program.

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 proposed new rule is 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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

Linda M. Flores, Chief Financial Officer
Texas Department of Motor Vehicles

Order Number: _____

Date Passed: November 13, 2015

1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes
3 Chapter 210, Contract Management, Subchapter A, Purchase
4 Contracts, new §210.3, Enhanced Contract Monitoring Program.

5

6 EXPLANATION OF PROPOSED NEW SECTION

7 New §210.3, is proposed to implement Senate Bill 20, 84th
8 Legislature, Regular Session, 2015, to include a procedure for
9 the department to use in identifying contracts that require
10 enhanced contract or performance monitoring. Senate Bill 20
11 requires each state agency to establish by rule a procedure to
12 identify each contract that requires enhanced contract or
13 performance monitoring, and to submit information on the
14 contract to its governing body.

15

16 FISCAL NOTE

17 Linda M. Flores, Chief Financial Officer, has determined that
18 for each of the first five years the new section as proposed is
19 in effect, there will be no fiscal implications for state or
20 local governments as a result of enforcing or administering the
21 proposed new section.

22

1 Ms. Flores has certified that there will be no impact on local
2 economies or overall employment as a result of enforcing or
3 administering the proposed new section.

4

5 PUBLIC BENEFIT AND COST

6 Ms. Flores has also determined that for each year of the first
7 five years the new section is in effect, the public benefit
8 anticipated as a result of enforcing or administering the new
9 section will be the enhanced contract or performance monitoring
10 of department contracts. There are no anticipated economic costs
11 for persons required to comply with the new section as proposed.
12 There will be no adverse economic effect on small businesses or
13 micro-businesses.

14

15 TAKINGS IMPACT ASSESSMENT

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

22

1 SUBMITTAL OF COMMENTS

2 Written comments on the proposed new section may be submitted to
3 David D. Duncan, General Counsel, Texas Department of Motor
4 Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731
5 or by email to *rules@txdmv.gov*. The deadline for receipt of
6 comments is 5:00 p.m. on January 4, 2016.

7

8 STATUTORY AUTHORITY

9 The new section is proposed under Transportation Code,
10 §1002.001, which provides the board of the Texas Department of
11 Motor Vehicles with the authority to adopt rules that are
12 necessary and appropriate to implement the powers and the duties
13 of the department.

14

15 CROSS REFERENCE TO STATUTE

16 Government Code, §2261.253.

17

1 SUBCHAPTER A. PURCHASE CONTRACTS

2 §210.3. Enhanced Contract Monitoring Program.

3 (a) The department will apply risk assessment factors to
4 agency contracts as defined in Government Code, §2261.253 to
5 identify those contracts that require enhanced contract or
6 performance monitoring. The risk assessment will consider the
7 following factors:

8 (1) dollar amount of contract;

9 (2) total contract duration;

10 (3) vendor past performance;

11 (4) risk of fraud, abuse or waste;

12 (5) business process impact of failure or delay; and

13 (6) board or executive director's request for enhanced
14 contract or performance monitoring.

15 (b) The department will notify the board of the results of
16 the risk assessment and present information to the board
17 resulting from the enhanced contract or performance monitoring.

18 (c) The chief financial officer or procurement manager
19 shall immediately notify the department's governing body of any
20 serious issue or risk that is identified under this section.

PROPOSED PUBLICATION TO AMEND 43 TAC SECTION 217.3,
RELATING TO MOTOR VEHICLE TITLES

Description

This order proposes publication for comment of amendments to Chapter 217, Vehicle Titles and Registration, §217.3, Motor Vehicle Titles.

Background

The proposed amendments to §217.3:

- Add autocycle to types of vehicles titled and registered as a motorcycle.
- Correct size of travel trailers for consistency with Texas Transportation Code, Chapter 501.
- Clarify language that excludes some house trailer-type vehicles from eligibility for Texas title under Transportation Code, Chapter 501.
- Clarify language regarding assembled vehicles, including:
 - assembled vehicles never titled in any jurisdiction;
 - creation of vehicle from different vehicle classes;
 - information to be submitted to establish vehicle identification number;
 - previously titled assembled vehicles;
 - method for establishing make and model year by which the vehicle is titled; and
 - remarks on titles for reconstructed or replica vehicles.
- Clarify language regarding certain vehicles not eligible for Texas title.

Other Comments

There are 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 December 4, 2015. Comments on the proposed amendments will be accepted until 5:00 p.m. on January 4, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SECTION 217.3, RELATING TO MOTOR VEHICLE TITLES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 217, Vehicle Titles and Registration, Subchapter A, Motor Vehicle Titles, §217.3, Motor Vehicle Titles.

The preamble and the proposed amendments 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 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.

Laura Ryan, Chair
Board of the Texas Department of Motor Vehicles

Recommended by:

Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: _____

Date Passed: November 13, 2015

1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes
3 amendments to Chapter 217, Vehicle Titles and Registration,
4 Subchapter A, §217.3, Motor Vehicle Titles.

5

6 EXPLANATION OF PROPOSED AMENDMENTS

7 The amendments are proposed to address the consequences of
8 Senate Bill 449, 84th Legislature, Regular Session, 2015, which
9 added autocycles to those items that are considered to be motor
10 vehicles. The amendments also clarify the titling requirements
11 of certain house trailer-type vehicles and assembled vehicles.
12 More specifically, the proposed amendments to §217.3 add
13 autocycles to the definition of motorcycle for the purposes of
14 obtaining a Texas title. Additionally, amendments are proposed
15 regarding house trailer-type vehicles including changes to
16 clarify size required to register, and clarify the eligibility
17 of certain house trailer-type vehicles for Texas title under
18 Transportation Code, Chapter 501.

19

20 Proposed amendments clarify language regarding assembled
21 vehicles, including assembled vehicles that have never been
22 issued title in any jurisdiction; creation of vehicles from
23 different vehicle classes, and vehicles that are not eligible

1 for Texas title; information required to be submitted to
2 establish the vehicle's identification number, and adds language
3 providing provisions for assembled vehicles which have
4 previously been titled. Additional proposed amendments provide
5 methods for establishing the model year for assembled vehicles
6 and noting remarks to be placed on titles for reconstructed
7 vehicles or assembled replica vehicles, and clarifies assembled
8 vehicles that are not eligible for Texas title.

9

10 FISCAL NOTE

11 Linda M. Flores, Chief Financial Officer, has determined that
12 for each of the first five years the amendments as proposed are
13 in effect, there will be no fiscal implications for state or
14 local governments as a result of enforcing or administering the
15 proposed amendments.

16

17 Jeremiah Kuntz, Director of the Vehicle, Titles and Registration
18 Division, has certified that there will be no impact on local
19 economies or overall employment as a result of enforcing or
20 administering the amendments.

21

22 PUBLIC BENEFIT AND COST

1 Mr. Kuntz has also determined that for each year of the first
2 five years the amendments are in effect, the public benefit
3 anticipated as a result of enforcing or administering the
4 amendments will be that more travel trailers will be allowed to
5 be titled. The changes related to assembled vehicles will
6 provide the public with greater clarity as to eligibility for
7 title and inspection requirements of assembled vehicles. The
8 proposed changes will also discourage the operation on Texas
9 roads of certain unsafe vehicles, thereby increasing public
10 safety.

11

12 There are no anticipated economic costs for persons required to
13 comply with the proposed amendments. There are no anticipated
14 adverse economic effects on small businesses or micro-
15 businesses.

16

17 TAKINGS IMPACT ASSESSMENT

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

1

2 SUBMITTAL OF COMMENTS

3 Written comments on the proposed amendments may be submitted to
4 David D. Duncan, General Counsel, Texas Department of Motor
5 Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731,
6 or by email to *rules@txdmv.gov*. The deadline for receipt of
7 comments is 5:00 p.m. on January 4, 2016.

8

9 STATUTORY AUTHORITY

10 The amendments are proposed under Transportation Code,
11 §1002.001, which provides the board of the Texas Department of
12 Motor Vehicles with the authority to adopt rules that are
13 necessary and appropriate to implement the powers and duties of
14 the department under the laws of this state; and more
15 specifically, Transportation Code, §501.0041, which provides the
16 department may adopt rules to administer Chapter 501,
17 Certificate of Title Act.

18

19 CROSS REFERENCE TO STATUTE

20 Transportation Code, Chapters 501, 502, 548, and §504.501.

1 SUBCHAPTER A. MOTOR VEHICLE TITLES

2 §217.3. Motor Vehicle Titles.

3 Unless otherwise exempted by law or this chapter, the owner of
4 any motor vehicle that is required to be registered in
5 accordance with Transportation Code, Chapter 502, shall apply
6 for a Texas title in accordance with Transportation Code,
7 Chapter 501.

8 (1) Motorcycles, motor-driven cycles, autocycles, and
9 mopeds.

10 (A) The title requirements of a motorcycle,
11 motor-driven cycle, autocycle, and moped are the same
12 requirements prescribed for any motor vehicle.

13 (B) A vehicle that meets the criteria for a moped
14 and has been certified as a moped by the Department of Public
15 Safety will be registered and titled as a moped. If the vehicle
16 does not appear on the list of certified mopeds published by
17 that agency, the vehicle will be treated as a motorcycle for
18 title and registration purposes.

19 (2) Farm vehicles.

20 (A) The term motor vehicle does not apply to
21 implements of husbandry, which may not be titled.

22 (B) Farm tractors owned by agencies exempt from
23 registration fees in accordance with Transportation Code,

1 §502.453, are required to be titled and registered with "Exempt"
2 license plates issued in accordance with Transportation Code,
3 §502.451.

4 (C) Farm tractors used as road tractors to mow
5 rights of way or used to move commodities over the highway for
6 hire are required to be registered and titled.

7 (D) Farm semitrailers with a gross weight of more
8 than 4,000 pounds that are registered in accordance with
9 Transportation Code, §502.146, may be issued a Texas title.

10 (3) Neighborhood electric vehicles. The title
11 requirements of a neighborhood electric vehicle (NEV) are the
12 same requirements prescribed for any motor vehicle.

13 (4) Trailers, semitrailers, and house trailers. Owners
14 of trailers and semitrailers shall apply for and receive a Texas
15 title for any stand alone (full) trailer, including homemade or
16 shopmade full trailers, or any semitrailer having a gross weight
17 in excess of 4,000 pounds. Owners of trailers having a gross
18 weight of 4,000 pounds or less may apply for and receive a Texas
19 title. House trailer-type vehicles must meet the criteria
20 outlined in subparagraph (C) of this paragraph to be titled.

21 (A) The rated carrying capacity will not be less
22 than one-third of its empty weight.

1 (B) Mobile office trailers, mobile oil field
2 laboratories, and mobile oil field bunkhouses are not designed
3 as dwellings, but are classified as commercial semitrailers and
4 must be registered and titled as commercial semitrailers if
5 operated on the public streets and highways.

6 (C) House trailer-type vehicles and camper
7 trailers must meet the following criteria in order to be titled.

8 (i) A house trailer-type vehicle designed
9 for living quarters and that is eight body feet or more in
10 width and ~~[or]~~ forty body feet or more in length (not including
11 the hitch), is classified as a manufactured home or mobile home
12 and is not eligible for a Texas title under Transportation Code,
13 Chapter 501. ~~[titled under the Texas Manufactured Housing~~
14 ~~Standards Act, Occupations Code, Chapter 1201, administered by~~
15 ~~the Texas Department of Housing and Community Affairs.]~~

16 (ii) A house trailer-type vehicle that is
17 less than eight feet in width or ~~[and]~~ less than forty feet in
18 length is classified as a travel trailer and shall be registered
19 and titled.

20 (iii) A camper trailer shall be titled as a
21 house trailer and shall be registered with travel trailer
22 license plates.

1 (iv) A recreational park model type trailer
2 that is primarily designed as temporary living quarters for
3 recreational, camping or seasonal use, is built on a single
4 chassis, and is 400 square feet or less when measured at the
5 largest horizontal projection when in the set up mode shall be
6 titled as a house trailer and may be issued travel trailer
7 license plates. If the park model type trailer exceeds one
8 hundred two inches in width or forty feet in length, the title
9 will include a brand to indicate that an oversize permit must be
10 obtained to move the trailer on the public roads.

11 (5) Assembled vehicles.

12 (A) An assembled vehicle is a vehicle assembled
13 from the three basic component parts (motor, frame, and body),
14 except that a motorcycle must have a frame and motor, and a
15 trailer or travel trailer will have no motor, and that is:

16 (i) assembled from new or used materials and
17 parts by someone not regulated as a motor vehicle manufacturer;

18 (ii) altered or modified to the extent that
19 it no longer reflects the original manufacturer's configuration;
20 or

21 (iii) assembled from a kit even if a
22 Manufacturer's Certificate of Origin or Manufacturer's Statement
23 of Origin is provided.

1 (B) A newly [An] assembled vehicle, for which a
2 title has never been issued in this jurisdiction or any
3 other, may be titled if:

4 (i) it is assembled and completed with a
5 body, motor, and frame, except that a motorcycle must have a
6 frame and motor, and a trailer or travel trailer will have no
7 motor;

8 (ii) it is not created from different
9 vehicle classes, (as established by the Federal Highway
10 Administration, except as provided by subparagraph (C) of this
11 paragraph), [that component parts from 2 axle, 4 tire passenger
12 cars and 2 axle, 4 tire pickups, panels and vans can be
13 interchanged with one another,] that were never engineered or
14 manufactured to be combined with one another;

15 (iii) it has all safety components required
16 by federal law during the year of assembly, unless the vehicle
17 qualifies and is registered as a custom vehicle or street rod in
18 accordance with Transportation Code, §504.501;

19 (iv) it is not a vehicle described by
20 paragraph (6) of this section; [designed as a dune buggy,
21 designed by the manufacturer for on track racing, or designed by
22 the manufacturer as an off-road passenger vehicle;]

1 (v) for a vehicle assembled with a body,
2 motor, and frame, the applicant provides proof, on a form
3 prescribed by the department, of a safety inspection performed
4 by an Automotive Service Excellence (ASE) technician with valid
5 certification as a Certified Master Automobile and Light Truck
6 Technician, certifying that the vehicle:

7 (I) is structurally stable;

8 (II) meets the necessary conditions to
9 be operated safely on the roadway; and

10 (III) is equipped and operational with
11 all equipment required by statute or rule as a condition of sale
12 during the year the vehicle was assembled unless it is being
13 inspected pursuant to Subchapter G of this chapter;

14 (vi) for a vehicle assembled with a body,
15 motor, and frame, the applicant submits a copy of the Certified
16 Master Automobile and Light Truck Technician's ASE
17 certification; [~~and~~]

18 (vii) the applicant submits a Rebuilt
19 Vehicle Statement; and [~~+~~]

20 (viii) the applicant submits the following
21 to establish the vehicle's vehicle identification number:

22 (I) an Application for Assigned or
23 Reassigned Number, and Notice of Assigned Number or Installation

1 of Reassigned Vehicle Identification Number, on forms prescribed
2 by the department; or

3 (II) acceptable proof, as established
4 by the department, of a vehicle identification number assigned
5 by the manufacturer of the component part by which the vehicle
6 will be identified.

7 (C) Component parts from the following vehicle
8 classes may be interchanged with one another or used in the
9 creation of an assembled vehicle:

10 (i) 2-axle, 4-tire passenger cars;

11 (ii) 2-axle, 4 tire pickups, panels and
12 vans;

13 (iii) 6-tire dually pickups, of which the
14 rear tires are dual tires.

15 (D) [E] The ASE inspection for a newly assembled
16 vehicle required under subparagraph (B) of this paragraph is in
17 addition to the inspection required by Transportation Code,
18 Chapter 548, except a vehicle that qualifies and is registered
19 as a custom vehicle or street rod in accordance with
20 Transportation Code, §504.501, is exempt from the inspection
21 required under Transportation Code, Chapter 548, for the
22 duration the vehicle is registered as such.

1 (E) An assembled vehicle which has previously
2 been titled and/or registered in this or any other jurisdiction
3 is subject to subparagraph (B)(i) - (B)(iv) but is not subject
4 to subparagraph (B)(v) - (B)(viii) of this paragraph; however,
5 it is subject to the inspection required by Transportation Code,
6 Chapter 548, except a vehicle that qualifies and is registered
7 as a custom vehicle or street rod in accordance with
8 Transportation Code, §504.501.

9 (F) An assembled vehicle will be titled using the
10 year it was assembled as the model year and "ASSEMBLED" or
11 "ASVE" as the make of the vehicle unless the body of the vehicle
12 is established to the department's satisfaction to be an
13 original body from a particular year and make. An assembled
14 vehicle utilizing an original body may be titled by the year and
15 the make of the original body but must reflect a "RECONSTRUCTED"
16 remark. An assembled vehicle not utilizing an original body may
17 obtain a title with a "REPLICA" remark featuring the year and
18 make of the replica if the vehicle resembles a prior model year
19 vehicle. This subparagraph applies regardless of how the
20 vehicle's model year or make was previously identified in this
21 or any other jurisdiction.

1 (6) Not Eligible for Title. The following are not
2 eligible for a Texas title regardless of the vehicle's previous
3 title and/or registration in this or any other jurisdiction:

4 (A) vehicles that are missing or are stripped of
5 their motor, frame, or body, to the extent that it materially
6 alters the manufacturer's original design or makes the vehicle
7 unsafe for on-road operation as determined by the department;

8 (B) vehicles designed or determined by the
9 department to be a dune buggy;

10 (C) vehicles designed or determined by the
11 department to be for on-track racing, unless such vehicles meet
12 Federal Motor Vehicle Safety Standards (FMVSS) for on-road use
13 and are reported to the National Highway Traffic Safety
14 Administration;

15 (D) vehicles designed or determined by the
16 department to be for off-road use only, unless specifically
17 defined as a "motor vehicle" in Transportation Code, Chapter
18 501); or

19 (E) vehicles assembled, built, constructed,
20 rebuilt, or reconstructed in any manner with:

21 (i) a body or frame from a vehicle which is
22 a "nonrepairable motor vehicle" as that term is defined in
23 Transportation Code, §501.091(9), or

1 (ii) a motor or engine from a vehicle which
2 is flood damaged, water damaged, or any other term which may
3 reasonably establish the vehicle from which the motor or engine
4 was obtained is a loss due to a water related event.