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SUBCHAPTER D. GRANTS TO EDUCATIONAL INSTITUTIONS FOR CAREER AND TECHNICAL EDUCATION PROGRAMS

40 TAC §804.41

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§804.41. Grants for Career and Technical Education Programs.

(a) This subchapter is applicable to ~~the Jobs and Education for Texans (JET) Grant Program~~ awards to public junior colleges, ~~and~~ public technical institutes, and ~~ISDs~~ for the development of career and technical education programs that meet the requirements of Texas Education Code, §134.006 and §134.007 and Texas Government Code, §403.356.

(b) A grant received under this subchapter may be used only:

(1) to support courses or programs that prepare students for career employment in occupations that are identified by local businesses ~~business~~ as being in high demand;

(2) to finance the initial costs of career and technical education courses or program development, including the costs of purchasing equipment, and other expenses associated with the development of an appropriate course; and

(3) to finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree.

(c) In awarding a grant under this subchapter, the Agency ~~comptroller~~ shall primarily consider the potential economic returns to the state from the development of the career and technical education course or program. The Agency ~~comptroller~~ may also consider whether the course or program:

(1) is part of a new, emerging industry or high-demand occupation;

(2) offers new or expanded dual-credit career and technical educational opportunities in public high schools; or

(3) is provided in cooperation with other public junior colleges or public technical institutes across existing service areas.

(d) A grant recipient shall provide the matching funds as identified in its application.

(1) Matching funds may be obtained from any source available to the college, including ~~in-kind contributions~~, industry consortia, community or foundation grants, individual contributions, and local governmental agency operating funds.

(2) A grant recipient's matching share may consist of one or more of the following contributions:

(A) cash;

~~(B) in-kind contributions or equipment use;~~

(B) ~~(C)~~ equipment, equipment use, materials, or supplies;

(C) ~~(D)~~ personnel or curriculum development cost; and/or

(D) ~~(E)~~ administrative costs that are directly attributable to the project.

(3) The matching funds must be expended on the same project for which the grant funds are provided and valued in a manner acceptable or as determined by the Agency ~~comptroller~~.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Motor Vehicle Distribution, 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 - 215.133, 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 department also proposes the repeals of 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.

Additionally, the department proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEALS

The department conducted a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4012).

As a result of the review, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist but that certain amendments and repeals, as detailed in the following paragraphs, are necessary.

Amendments to Subchapter A, §215.1 and §215.2 are proposed to replace terminology with defined terms, delete definitions already defined by statute, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language that duplicates statute. The title of §215.1 is amended for consistency with other department rules. Additional amendments to §215.2 are proposed to delete definitions no longer needed and add and define the term "GDN." The department has determined that the reasons for initially adopting §§215.3 - 215.6 no longer exist and that they should be repealed. Section 215.3 should be repealed because it duplicates language already in statute. Sections 215.4 - 215.6, relating to opinions, should be repealed because those sections are contrary to Government Code, §2001.003(6) which defines a rule as "a state agency statement of general applicability that (i) implements, interprets, or prescribes law or policy, or (ii) describes the procedure or practice requirements of a state agency."

Amendments to Subchapter B, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56 and 215.58 are proposed to clarify the purpose of the subchapter, replace terminology with defined terms, correct referenced citations, revise existing terminology for consistency with other department rules, and to delete language contained in statute. An amendment to §215.22 is proposed to add that a violation of that section will be reported to the general counsel of the department in addition to the hearing officer. An additional amendment to §215.34 establishes the last known address of a license holder for purposes of giving notice as "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. The department further proposes to amend §215.37 to clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record. An additional amendment to §215.58 is proposed to authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition. Additional amendments are proposed throughout Subchapter B to simplify and clarify language by removing any unnecessary statutory repetition. In addition, amendments are proposed to rename the titles of certain sections for consistency and accuracy. The department has further determined that §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50 - 215.54 and 215.57 duplicate language already contained in statute and are no longer necessary. Therefore, the department proposes to repeal those sections.

Amendments to Subchapter C, §§215.81 - 215.85 and 215.87 - 215.89 are proposed to replace terminology with defined

terms, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter C to replace "division" with "department" for clarification and consistency with current department practice. An amendment is proposed to §215.83 to implement legislative changes regarding "active duty." In addition, the department proposes to amend §215.83 by including the procedures for processing license applications that are currently set out under existing §215.86 because those procedures are more appropriately located under §215.83. Additional amendments to §215.83 are proposed to subdivide the rule to improve formatting and readability. Because the department proposes to incorporate, with amendments, the rule language under §215.86 with §215.83, the department proposes to repeal §215.86. Additional amendments are proposed throughout Subchapter C to rename certain section titles for consistency and accuracy with the language contained in those rules.

Amendments to Subchapter D, §§215.101, 215.103 - 215.106 and 215.108 - 215.119 are proposed to delete language contained in statute, correct referenced citations, replace terminology with defined terms, revise existing terminology for consistency with other department rules and current department practice. An amendment to §215.105 clarifies that the provisions of that section apply only to purchases and transfers involving physical relocation. Amendments to §215.112 are proposed to clarify that the provisions of that section are limited only to motor home shows that require department approval. Additional amendments are proposed throughout Subchapter D to replace "division" with "department" for clarification and consistency with current department practice. The department also proposes amendments throughout Subchapter D to subdivide and restructure the rules for formatting and improved readability. The department has further determined that §215.107 duplicates language contained in statute and therefore, proposes to repeal that section.

Amendments to Subchapter E, §§215.131 - 215.133, 215.135, 215.137 - 215.141 and 215.144 - 215.159 are proposed to replace terminology with defined terms, delete definitions already defined by statute or to add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. An additional amendment to §215.132 is proposed to add and define the terms "vehicle" and "VIN." An additional amendment to §215.133 includes the acceptance of concealed handgun license (license to carry a handgun) for identification purposes. An amendment to §215.135 specifies that a dealer may not commence business at any location until the department issues a license authorizing that location. Amendments were made to §215.137 to change the title to "Surety Bond" for consistency with statute and to clarify requirements. Amendments were made to §215.138 to clarify use of metal dealer's license plates. Additional amendments to §215.139 subdivide the rule for improved readability and replace existing textual language with graphics under amended subsections (c), (e) and (f)(1). Additional amendments are proposed throughout §215.140 to clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers. Additional amendments to §215.141 clarify sanctions and add an additional sanctionable offense, effective January 1, 2017, for failure to disclose repaired, rebuilt, or reconstructed motor vehicles. An additional amendment to §215.144 is proposed to clarify that license holders are not required to maintain copies of

motor vehicle titles submitted electronically. Additional amendments to §215.145 clarify the requirements for dealer status changes. An additional amendment was made to §215.147 to include acceptance of concealed handgun license (license to carry a handgun) for identification. Additional amendments are proposed to renumber the appendices under §215.153, consistent with the proposed amendments renumbering that section. The department further proposes to repeal §§215.136, 215.142 and 215.143 because those sections are adequately addressed by statute and therefore, are no longer necessary.

An amendment to Subchapter F is proposed to rename the title of that subchapter for consistency with statutorily defined terms. Additional amendments are proposed throughout §§215.171 and 215.173 - 215.181 to delete definitions already defined by statute or to add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter F to renumber and subdivide certain sections for improved readability. Because the department proposes to delete the definitions under §215.172, the reasons for adopting that section no longer exist. Therefore, the department proposes to repeal §215.172.

Amendments to Subchapter G, §§215.201 - 215.210 are proposed to replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct the referenced citations, and to delete language that is already contained in statute. In addition, the department proposes an amendment to §215.201 to rename the title of that section for consistency with other department rules.

Amendments to Subchapter H, §§215.241 - 215.261 and 215.263 - 215.271 are proposed to revise existing terminology for consistency with other department rules. Additional amendments are proposed to replace terminology with defined terms and to correct referenced citations. The department also proposes to amend §215.241 to replace "Board" with "department" for consistency with current department practice, and to replace "code" with "Occupations Code, Chapter 2301" for clarification. Amendments to §215.244 are proposed to add and define the terms "limited rebate" and "savings claim or discount" and clarify definitions for "Monroney label" and "rebate or cash back." Additional amendments to §215.246 clarify accuracy of Internet advertisements. Amendments are proposed to §215.248 to include Internet and online advertisements. An amendment to §215.249 provides clarification of Manufacturer's Suggested Retail Price (MSRP). Additional amendments to §215.250 are proposed to incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250 because those provisions are more appropriately located under that section. The department further proposes to amend and add additional graphics under proposed subsections (h) - (m) of §215.250. Because the department determined that the savings claims and discount offer provisions under §215.262 are more appropriately located under §215.250, the department proposes to repeal §215.262. In addition, amendments to §215.253 are proposed to add additional clarifying language regarding allowable use of trade-in amounts in advertisements.

Amendments to Subchapter I, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311 and 215.314 - 215.317 are proposed to replace terminology with defined terms and to correct referenced citations for consistency. Additional amendments are proposed throughout that subchapter to replace "matter" with "con-

tested case" and "Board" with "department." An amendment to §215.307 is proposed to establish a license holder's last known address for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. An additional amendment to §215.314 is proposed to authorize the director of the division to issue a cease and desist order prior to the commencement of a proceeding by the State Office of Administrative Hearings (SOAH). The cease and desist order may be issued without notice and opportunity for hearing if the provisions under Occupations Code, §2301.802(b) are met. An Administrative Law Judge shall hold a hearing to determine whether the interlocutory cease and desist order should remain in effect during the pendency of the proceeding. Additional amendments to §215.317 are proposed to clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate. The department has also determined that §§215.309, 215.312 and 215.313 duplicate language contained in statute and that those sections should be repealed.

Amendments to Subchapter J, §§215.500 - 215.503 are proposed to replace terminology with statutorily defined terms and to correct referenced citations. Additional amendments to subdivide certain sections of that subchapter are proposed for improved formatting. An amendment to §215.500 is proposed to clarify that an administrative sanction may include denial of an application for a license. An additional amendment to that section establishes the last known address of a license holder for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. An amendment to §215.503 provides that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

Additional nonsubstantive amendments are proposed throughout Chapter 215 to correct punctuation, grammar, and capitalization.

The department also proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments, new section, and repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repeals.

David D. Duncan, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments, new section, and repeals.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the amendments, new section, and repeals are in effect, the public benefit anticipated as a result of enforcing or administering the amendments, new section, and repeals will be simplification, clarification and streamlining of the agency's rules. There are no anticipated economic costs for persons required to comply with the amendments, new section, and repeals as proposed.

There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments, new section, and repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 10, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1, §215.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.1. *Purpose and Scope.* [*Scope and Purpose.*]

Occupations Code, Chapter 2301[;] and Transportation Code, Chapters 503 and 1000 - 1005 [1000 through 1005;] require the Texas Department of Motor Vehicles to license and regulate motor vehicle dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease facilitators, in order to ensure a sound system of distributing and selling motor vehicles[;] provide for compliance with manufacturers' warranties; and to [manufacturer's warranties;] prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of motor vehicles. This [The sections under this] chapter prescribes [prescribe] the policies and procedures for the regulation of the motor vehicle industry. [regulating motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators, by regulating licensing, warranty performance obligations, advertising, enforcement, and providing for adjudicative proceedings.]

§215.2. *Definitions; Conformity with Statutory Requirements.*

(a) The definitions contained in Occupations Code, Chapter 2301[;] and Transportation Code, Chapters 503 and 1000 - 1005 [1000 through 1005] govern this chapter. [All matters of practice and procedure set forth in the Codes shall govern and these rules shall be construed to conform with the Codes in every relevant particular, it being the intent of these rules only to supplement the Codes and to provide procedures to be followed in instances not specifically governed by the Codes.] In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 controls. [shall control.]

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

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

~~[(2) Appropriate department office--The office of the department that is designated by notice or publication for receipt of a specific filing.]~~

~~[(2) [(3)] Board--The Board of the Texas Department of Motor Vehicles, including any personnel to whom the board [Board] delegates any duty assigned.~~

~~[(4) Chapter 503--Transportation Code, Chapter 503.]~~

~~[(5) Chapter 1000 through 1005--Transportation Code, Chapter 1000 through 1005.]~~

~~[(6) Code--Occupations Code, Chapter 2301.]~~

~~[(7) Codes--Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005.]~~

~~[(8) Department--The Texas Department of Motor Vehicles.]~~

~~[(3) [(9)] Director--The director of the department [division] that regulates the distribution and sale of motor vehicles, including[- For purposes of this chapter, the definition of "director" also includes] any personnel to whom the director delegates any duty assigned under this chapter.~~

~~[(10) Division--The division that regulates the distribution and sale of motor vehicles.]~~

~~[(4) [(11)] Executive director--The executive director of the Texas Department of Motor Vehicles.~~

~~[(5) [(12)] Final order authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board [the Codes or Board] rules to issue a final order.~~

~~[(6) GDN--General distinguishing number.~~

~~[(7) [(13)] Governmental agency--All other state and local governmental agencies and all agencies of the United States government, whether executive, legislative, or judicial.~~

~~[(14) Hearings examiner--A person employed by the department to preside over hearings under Occupations Code, Chapter 2301.]~~

~~[(8) [(15)] Hearing officer--An ALJ, [or] a hearings examiner [under this chapter], or any other person designated, employed, or appointed by the department[, or employed or appointed,] to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary in-~~

junctions, make findings of fact and conclusions of law, issue proposals for decision, and recommend or issue final orders.

~~[(16) License purveyor--Any person who for a fee, commission, or other valuable consideration, other than a certified public accountant or a duly licensed attorney at law, assists an applicant in the preparation of a license application or represents an applicant during the review of the license application.]~~

~~(9) [(47)] Motion for rehearing authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board [the Codes or Board] rules to decide a motion for rehearing.~~

~~[(18) Party in interest--A party against whom a binding determination cannot be had in a proceeding before the department without having been afforded notice and opportunity for hearing.]~~

~~(10) [(49)] SOAH--The State Office of Administrative Hearings.~~

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



43 TAC §§215.3 - 215.6

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.3. *Duties and Powers of Board.*

§215.4. *Formal Opinions.*

§215.5. *Informal Opinions.*

§215.6. *Exempted Actions.*

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

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SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.21. *Purpose and Scope. [Objective.]*

(a) The purpose [~~objective~~] of this subchapter [~~these rules~~] is to ensure [~~fair, just, and impartial~~] adjudication of the rights of parties in [~~aH~~] matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005; and to ensure effective administration of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005 by the department, in accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and §2301.152. [the Codes; and to ensure fair, just, and effective administration of the Codes in accordance with the intent of the legislature as declared in Occupations Code, §2301.001, and Occupations Code, §2301.152.]

(b) Practice and procedure in contested cases [~~filed on or after September 1, 2007, and~~] heard by SOAH are addressed in:

(1) 1 TAC Chapter 155;

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

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

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

§215.22. *Prohibited [Disclosures and] Communications.*

(a) No party [in interest], attorney of record, or authorized representative in any contested case [proceeding] shall make, [submit,] directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the merits of the contested case [such proceeding] to the board or hearing officer [Board, or any department employee who is] assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Violations of this section shall be promptly reported to the hearing officer and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law. [and a copy or summary thereof shall be filed with the record of such proceeding and a copy forwarded to all parties of record, and/or any other appropriate action otherwise provided by law.]

§215.23. *Appearances.*

(a) General. Any party to a contested case may appear in person or by an authorized representative. An authorized representative may be required to show authority to represent a party. [proceeding before the Board may appear to represent, prosecute, or defend any rights or interests; either in person, by an attorney, or by any other authorized representative. Any individual may appear pro se; and any member of a partnership which is a party to a proceeding or any bona fide officer of a corporation or association may appear for the partnership, corporation, or association. An authorized full time employee may enter an appearance for his employer.]

[(b) Agreements of representation. The Board may require agreements between a party in interest and an attorney or other authorized representative concerning any pending proceeding to be in writing, signed by the party in interest, and filed as a part of the record of the proceeding.]

[(c) Lead counsel. The attorney or other authorized representative of a party in interest shall be considered that party's lead counsel in any proceeding and, if present, shall have control in the management of the cause pending before the Board.]

(b) [(d)] Intervention. Any public official or other person having an interest in a contested case [proceeding] may, upon request to the hearing officer, [Board,] be permitted to intervene [and present any relevant and proper evidence, data, or argument bearing upon the issues involved in the particular proceeding]. Any person desiring to intervene in a contested case [proceeding] may be required to disclose that person's [his] interest in the contested case [proceeding] before permission to appear will be granted.

[(e) Limitation on appearances. The Board may limit or exclude entirely an attempt by persons to appear in a proceeding when

such appearance would be irrelevant or would unduly broaden the scope of the proceeding.]

§215.24. *Petitions.*

(a) Petitions [for relief under the Codes or complaints alleging violations of the Codes other than those specifically provided for in these rules] shall be in writing and shall: [; shall]

(1) state [clearly and concisely] the petitioner's [grounds of] interest in the subject matter, the facts relied upon, and the relief sought; and [; and shall]

(2) cite the specific code provision(s) or other appropriate law. [by appropriate reference the article of the Codes or other law relied upon for relief and, where applicable, the proceeding to which the petition refers.]

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

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

§215.27. *Complaints.*

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

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

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

§215.29. *Computing Time.*

Any [In computing any] period of time prescribed or allowed by this chapter, by order of the board, [Board,] or by any applicable statute shall be computed in accordance with Government Code, §311.014. [; the date of the act or event after which the designated period of time begins to run is not to be included; but the last day of the period so computed is to be included unless it be a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.]

§215.30. *Filing of Documents.*

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

- (1) [filed] in person; [;]
- (2) by first-class mail to the address of the [appropriate] department; [office,] or
- (3) by electronic document transfer to [at] a destination designated by the department. [for receipt of those documents.]

[(b) Except as provided in subsection (c) of this section, delivery by mail shall be complete upon deposit of the document, enclosed

in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.]

(b) [(e)] [Except as provided in subsection (e) of this section, delivery by mail as specified in subsection (b) of this section shall be timely if the document is deposited on or before the specified date and received by the appropriate department office not later than the fifth business day after the date of deposit.] Delivery by electronic document transfer is considered [shall be] timely if the document is received by 5:00 p.m. Central Standard Time (CST). [5 p.m. (Central Standard Time).] Delivery by electronic document transfer after 5:00 p.m. CST [5 p.m. (Central Standard Time)] shall be deemed received on the following day.

(c) [(d)] [Such document may be delivered by a party to a matter, an attorney of record, or by any other person competent to testify.] A certificate by the party or party's authorized representative [an attorney of record or the affidavit of any person competent to testify.] showing timely delivery of a document in a manner described in this section shall be prima facie evidence [of the fact] of timely delivery. Nothing [although nothing] herein shall preclude the department or any party from offering proof that the [subject] document was not timely delivered.

(d) [(e)] To be timely filed, a [the] document must be received by the department within [in the appropriate department office by] the time specified by statute, rule, or department order. A document [filing] received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed untimely. [not timely filed.]

§215.32. Extension [Enlargement] of Time.

(a) Except as provided by subsection (b) of this section, when [When by these rules or by a notice given thereunder or by order of the Board or the hearing officer having jurisdiction, as the case may be,] an act is required or allowed to be done at or within a specified time in accordance with this chapter, the board [except as provided in subsection (b) of this section, the Board] or the hearing officer, with good cause shown, may: [for cause shown may, at any time in the Board's or the hearing officer's discretion:]

(1) [with or without motion or notice,] order the specific period extended if the extension is requested [period enlarged if application therefore is made] before the expiration of the period previously specified; [originally prescribed or as extended by a previous order;] or

(2) [upon motion] permit the act to be done after the expiration of the specified period, provided [where] good cause is shown for the failure to act.

(b) Notwithstanding [anything contained in] subsection (a) of this section, the board or [neither the Board nor a] hearing officer may not extend [enlarge] the time for filing a document when a [where, by] statute or rule specifies the time period by which a document [the document, to be timely filed,] must be received by the department. [in the appropriate department office by a specified time. The requirements of such statute or rule shall govern the filing of that document. Any such document received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed not timely filed.]

§215.34. Notice of Hearing in Contested Cases. [Adjudicative Proceedings.]

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

[(a) In any adjudicative proceeding under the Codes, the notice of hearing shall state:]

[(1) the name of the party or parties in interest;]

[(2) the time and place of the hearing;]

[(3) the docket number assigned to the hearing;]

[(4) any special rules deemed appropriate for such hearing; and]

[(5) a clear and concise factual statement sufficient to identify with reasonable definiteness the matters at issue. This can be satisfied by attaching and incorporating by reference the complaint or amended complaint.]

(b) A notice of hearing in a contested case shall comply with the requirements of Government Code, §2001.052(a) and [Notice of hearing] shall be served upon the parties [in interest either] in person or by certified mail, return receipt requested to the last known address of the parties or their authorized representatives, in accordance with Occupations Code, §2301.705, [addressed to the parties in interest or their agents for service of process.]

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

[(e) Notice of hearing shall be presumed to have been received by a person if notice of the hearing was mailed by certified mail, return receipt requested, to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing.]

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

[(d) Notice of hearing may be amended at the hearing or at any time prior thereto.]

§215.35. Reply.

(a) Within 20 days after service of a notice of hearing in a contested case [or within 10 days after service of an amended notice of hearing, a [responding] party may file a reply [in which the matters at issue are specifically admitted, denied, or otherwise explained].

(b) [(+) A reply shall include [Form and filing of replies. All replies shall include a reference to] the docket number of the contested case [hearing] and shall be filed [sworn to] by the party or party's authorized representative. The original [responding party or the attorney of record. The original of the] reply shall be filed with the department and a [appropriate department office, and one] copy shall be served on any [upon] other parties to the contested case. [proceeding, if any.]

(c) [(2) A party may file an amended reply prior to the contested case hearing. In any contested case when [Amendment. A responding party may amend his reply at any time prior to the hearing, and in any case where] the notice of hearing has been amended at the contested case hearing, a party, at the discretion of the hearing officer, shall have [hearing, a responding party shall be given] an opportunity to file an amended reply. [amend his reply.]

(d) [(3) [Extension of time.] Upon the motion of a [responding] party, with good cause shown, the department may extend the time to file a reply. [within which the reply may be filed.]

(e) [(4) [Default.] All allegations shall be deemed admitted by any party not appearing [who does not appear] at the contested case hearing on the merits.

§215.36. Hearings To Be Public.

Hearings in contested cases [adjudicative proceedings] shall be open to the public.

§215.37. *Recording and Transcriptions of Hearing Cost.*

(a) Except as provided by [in] Subchapter G of this chapter (relating to Warranty Performance Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the hearing officer. [at the discretion of the hearing officer. Any request regarding recording or transcription must be made to the hearing officer at least two days prior to the hearing.]

(b) In a contested case [those contested cases] in which the hearing is transcribed by a court reporter, the costs of transcribing the hearing and for the preparation of an original transcript of the record for the department shall be assessed to the requesting party in the contested case, [equally among all parties to the proceeding.] unless otherwise directed.

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

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

§215.38. *Consolidation of Proceedings. [Joint Record.]*

No contested case proceedings including [No adjudicative proceedings embracing] two or more complaints or petitions shall be jointly heard [on a joint record] without the consent of all parties, [in interest] unless the hearing officer finds [shall find, prior to the consolidation of the proceedings.] that justice and efficiency are better served by the consolidation.

§215.39. *Waiver of Hearing.*

After [Subsequent to] the issuance of a notice of hearing in a contested case, and in accordance with the deadlines prescribed by [as provided in] §215.35 of this title [subchapter] (relating to Reply), a party may waive a [responding party may waive such] hearing and consent to the entry of an agreed order. Agreed orders proposed by the parties remain subject to the approval of the final order authority.

§215.40. *Continuance [Postponement] of Hearing.*

After a contested case has been called on the date assigned for hearing [in a proceeding,] pursuant to notice, a continuance of the contested case hearing [postponement of the case] will be granted only upon a showing of good cause. A motion for continuance of a contested case [in exceptional circumstances. All motions for postponement of a] hearing shall be filed and served on all parties at least five days before the hearing date, except when good cause is shown to consider a motion for continuance filed after the deadline. [sufficiently in advance of the date of hearing to permit notice to all parties if postponement should be granted.]

§215.41. *Presiding Officials.*

(a) Hearing officer. [A hearing officer of a contested case shall be assigned in accordance with applicable law, including Occupations Code, §2301.704.] The term "hearing officer" as used in this section includes the board [Board] when presiding over a hearing.

(b) [(1)] Powers and duties. A hearing officer shall conduct fair hearings and shall [Hearing officers shall have the duty to conduct fair and impartial hearings, and the power to] take all necessary action to administer [avoid delay in] the disposition of contested cases. A

hearing officer's powers include, but are not limited to the authority to: [proceedings and to maintain order. Hearing officers shall have all powers necessary to these ends, including the authority to]

(1) administer oaths; [to]

(2) examine witnesses; [to]

(3) rule upon the admissibility of evidence; [to]

(4) rule upon motions; and [to]

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

(c) *Recusal.*

(1) [(2)] [Disqualification.] If the [a] hearing officer determines that he or she [the hearing officer] should be recused from a particular contested case hearing, the hearing officer shall withdraw from the contested case [proceeding] by giving notice on the record and by notifying the chief hearing officer. [appropriate department office of the withdrawal.]

(2) A [Whenever a party deems the hearing officer to be disqualified to preside in a particular hearing, the] party may file a motion to recuse [disqualify and remove] the hearing officer. The motion to recuse [disqualify and remove] shall be supported by an affidavit [affidavits] setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the hearing officer who shall have 10 days [within which] to reply, and a copy shall be served on all parties or their authorized representatives.

(3) If the hearing officer contests the alleged grounds for disqualification, the chief hearing officer [department] shall promptly determine the validity of the grounds alleged and render a decision. [such decision being determinative of the issue.]

(d) [(3)] Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled, or withdraws during any contested case proceeding, the chief hearing officer [department] may appoint another hearing officer to preside over the remainder of the contested case proceeding. [who may perform any function remaining to be performed without the necessity of repeating any proceedings in the case.]

§215.42. *Conduct of Hearing.*

Each party in a contested case [interest] shall have the right to [in an adjudicative hearing to due] notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair contested case hearing. Except as provided by this chapter [Procedures in such hearings, except where otherwise provided by these rules] or in the notice of hearing, [shall be insofar as reasonably practicable in accordance with] the Texas Rules of Civil Procedure, as applied to non-jury civil cases, shall be applicable to hearings in contested cases, as far as reasonably practical. [applicable in district and county courts in civil actions heard before the court without a jury.]

§215.43. *Conduct and Decorum.*

(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in all contested case hearings with proper dignity, courtesy, and respect for the board, the hearing officer, and other parties. [Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the Board, the hearing officer, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas Disciplinary Rules of Professional Conduct and the Texas Lawyer's Creed.]

No party to a pending case, and no representative or witness of such a party, shall discuss the merits of such case with the hearing officer outside of the presence of all other parties, or their representatives.]

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

(1) excluded from the contested case [any] hearing for such period and upon such conditions as are just; or [may be]

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

§215.44. Evidence.

(a) General. The Texas Rules of Evidence shall apply in all contested cases, in accordance with Government Code, Chapter 2001. [be applied in all adjudicative hearings to the end that needful and proper evidence shall be conveniently, inexpensively, and speedily adduced while preserving the rights of the parties to the proceeding.]

(b) Admissibility. All relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, and unduly repetitious or cumulative evidence shall be excluded. Immaterial or irrelevant parts of an otherwise admissible document shall be segregated and excluded so far as practicable.]

(c) Official records. An official document or record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by the officer's deputy, and accompanied by a certificate to such effect. This section does not prevent and is not intended to prevent proof of any official record, the absence thereof or official notice thereof by any method authorized by any applicable statute or any rules of evidence in district and county courts.]

(d) Entries in the regular course of business. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business. This section does not prevent and is not intended to prevent proof of any business writing or record by any method authorized by any applicable statute or any rules of evidence in district and county courts.]

(e) Documents in department files. The hearing officer may take judicial notice of documents [Documents] or information in the department's files, in accordance with [licensing files may be officially noticed and may be admitted and considered by the hearing officer, as described in] Government Code, Chapter 2001.

(f) Abstracts of documents. When documents are numerous, the hearing officer may refuse to receive in evidence more than a limited number of said documents which are typical and representative, but may require the abstraction of the relevant information from the documents and the presentation of the abstract in the form of an exhibit; provided, however, that before admitting such abstract the hearing officer shall afford all parties in interest the right to examine the documents from which the abstract was made.]

(g) Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues involved in a particular contested case. Documentary exhibits [proceeding. Exhibits of documentary character] shall not unduly encumber the record. Where practical, [of the proceeding. Where practicable,] the sheets of each exhibit shall not be more than 8-1/2 [8 1/2] inches by 11 inches in size, and shall be numbered and labeled. The original and one copy

of each exhibit offered shall be tendered to the reporter or hearing officer for identification, and a copy shall be furnished to each party [in interest]. In the event an offered exhibit has been excluded after objection and [identified, objected to, and excluded, the hearing officer shall determine whether] the party offering the exhibit withdraws the offer, the hearing officer shall [and if so,] return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose of preserving the exception together with the hearing officer's ruling.

§215.45. Stipulation of Evidence.

Evidence may be stipulated by agreement of all parties [in interest].

§215.46. Objections and Exceptions.

Formal exceptions [exception] to the ruling of the hearing officer is not necessary. [It is sufficient that the party in interest at the time the ruling is made, or sought, make known to the hearing officer the action desired.]

§215.47. Motions.

(a) Each [Every] motion in a contested case [relating to a pending proceeding shall], unless made during a contested case hearing, shall be in writing and shall state: [hearing, be written, and shall set forth]

(1) the relief sought; and

(2) the specific reasons and grounds.

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

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

§215.48. Briefs.

The hearing officer may direct that the parties file briefs [Briefs may be filed] in any pending contested case. [adjudicative proceeding at such time as may be specified by the hearing officer.]

§215.49. Service of Pleading, Petitions, Briefs, and Other Documents. [the Like.]

(a) A copy of each [every] document filed in any contested case [adjudicative proceeding, after appearances have been entered,] shall be served upon all parties or their authorized representatives [other parties in interest or their lead counsel,] and upon the [appropriate] department [office] by sending a copy properly addressed to each party by: [first class United States mail; postage prepaid; by actual delivery; or by electronic document transfer to a facsimile number, e-mail address, or website designated for the receipt of those filings. A certificate of such fact shall accompany the document.]

(1) first-class mail;

(2) hand delivery;

(3) facsimile; or

(4) email.

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

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

§215.55. Final Decision.

(a) The board [Board] has final order authority in a contested case initiated by a complaint filed before January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613[; initiated by a complaint filed before January 1, 2014].

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

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

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

§215.56. *Submission of Amicus Briefs.*

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

(b) A party may submit [file] one written response to the amicus brief [filed by the amicus curiae] no later than the deadline for filing replies to exceptions.

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

§215.58. *Delegation of Final Order Authority.*

(a) In accordance with [Pursuant to] Occupations Code, §2301.154(c), except as provided by [in] subsection (b) of this section, the director [of the department division that regulates the distribution and sale of motor vehicles] is authorized to issue, where there has not been a decision on the merits, a final order in a contested case, including, but not limited to a contested case resolved: [final orders in cases without a decision on the merits resolved in the following ways:]

- (1) by settlement;
- (2) by agreed order;
- (3) by withdrawal of the complaint;
- (4) by withdrawal of a protest;
- (5) by dismissal for want of prosecution;
- (6) by dismissal for want of jurisdiction;
- (7) by summary judgment or summary disposition;
- (8) [(7)] by default judgment; or

(9) [(8)] when a party waives opportunity for a contested case hearing.

(b) In accordance with [Pursuant to] Occupations Code, §2301.154(c), the director [of the department division that regulates the distribution and sale of motor vehicles] is authorized to issue a final order in a contested case filed prior to January 1, 2014, [final orders in cases;] under Occupations Code, §2301.204 or §§2301.601 - 2301.613[; filed prior to January 1, 2014].

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

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

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For further information, please call: (512) 465-5665

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**43 TAC §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50
- 215.54, 215.57**

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.25. *Affidavits.*

§215.26. *Form of Petitions, Pleadings, and the Like.*

§215.28. *Docket.*

§215.31. *Cease and Desist Orders.*

§215.33. *Expenses of Witness or Deponent.*

§215.50. *Submission.*

§215.51. *Findings and Recommendations of Hearing Officer.*

§215.52. *Filing of Exceptions.*

§215.53. *Form of Exceptions.*

§215.54. *Replies to Exceptions.*

§215.57. *Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision.*

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

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SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §§215.81 - 215.85, 215.87 - 215.89

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and

§215.81. *Purpose and Scope [Objective].*

~~This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301[,] and Transportation Code, Chapter 503, regarding licenses required [by prescribing rules to regulate businesses requiring licenses] under those chapters.~~

§215.82. *Duplicate Licenses and Plates. [Administration of Licensing Fees.]*

(a) A request for a duplicate license must:

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

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

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

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

(1) did not receive the original license; and

(2) makes the request within 45 days of the date [time] the license was mailed to the license holder. ~~[licensee:]~~

(c) A license holder may receive a replacement metal dealer's license plate, if applicable, at no charge if the license holder:

(1) did not receive the metal dealer's license plate; and

(2) makes the request within 45 days of the date the metal dealer's license plate was mailed to the license holder and on a department approved form.

~~[(b) A licensee that fails to renew the license in a timely manner because the person was on active duty in the United States armed forces and serving outside Texas shall be exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.]~~

§215.83. *License Applications, Amendments, or Renewals. [Renewal of Licenses.]*

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

(1) on a form approved by the department;

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

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

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

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

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

(d) ~~[(a)]~~ Prior to the expiration of a [its existing] license, a license holder or authorized representative ~~[licensee]~~ must file with the department a sufficient license renewal application ~~[on a form approved by the department]~~. Failure to receive notice of license expiration from the department does not relieve the license holder ~~[licensee]~~ from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if: ~~[renew:]~~

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

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

(e) An application for a new license or license amendment filed with the department must be sufficient. An application is sufficient if the application:

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

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

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

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

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

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

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

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

(i) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(e) A license renewal application is timely filed if:

(1) the sufficient license renewal application is received by the department on or before the license expiration date; or

(2) a legible postmark on the envelope transmitting the license renewal application clearly indicates that the renewal application was mailed on or before the license expiration date.

(d) A timely and sufficient application shall be accepted for processing. The department will review the application and make a final determination whether to approve or deny the application.

(e) A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section [A licensee that submits a timely and sufficient license renewal application] may continue to operate under the expired license until the license renewal application is [finally] determined.

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

(g) License plates issued pursuant to Transportation Code, Chapter 503, Subchapter C expire upon the date the associated license expires or when a timely and sufficient license renewal application is finally determined, whichever is later.

(h) A licensee may rebut a determination that a renewal application was not timely or sufficient by submitting evidence to the department demonstrating the renewal application was timely and sufficient. Such evidence must be received by the department within ten (10) calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(i) The department shall accept a [A] late license renewal application [may be filed] up to 90 days after the date the license expires. In accordance with subsection (k) of this section, the license holder [license expiration date; however, the applicant] is not authorized to continue licensed activities after the date the license expires [license expiration date] until the department approves the late license renewal application. If the department grants a license renewal under this section [renewal license is granted under this subsection], the licensing period begins on the date the department issues the renewed license. The license holder [license is issued and the licensee] may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license. [the licensee.]

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

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

§215.84. *Brokering, New Motor Vehicles.*

(a) For purposes of this subchapter, the phrase "arranges or offers to arrange a transaction," as used in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not brokering, provided [Under Occupations Code, §§2301.002, 2301.006, 2301.251 and 2301.252, the definition of "arranges or offers to arrange a transaction" is construed as soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration. Advertising would not be included in this definition as long as] the person's business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

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

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

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

(3) All participants pay the same fee for participation in the program. The program fee [that] shall be a weekly, monthly, or annual

fee, regardless of the size, location, or line-makes sold by the dealer. [line-make of the dealership.]

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

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

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

(c) Subsections [The provisions of subsections] (a) and (b) of this section do not apply to any person or entity [which is] exempt from the broker definition in Occupations Code, §2301.002. [§2301.002(3).]

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

§215.85. Brokering, Used Motor Vehicles.

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

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

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

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

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

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

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

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

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

§215.87. License and Metal Dealer's License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or metal dealer's license plate issued by the department [division] under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) A metal dealer's license plate [Metal plates] issued by the department expires on the date the associated license expires. [division in connection with a license expire on the same date as the license.]

(c) The fee for a license or metal dealer's license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire amount of the fee is due at the time of application for the license or license renewal.

§215.88. Criminal Offense and Action on License.

(a) This section describes board [Board] or department action on a license application or an existing license issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, including denial, revocation, and suspension, and identifies the types of criminal offenses that directly relate to the duties and responsibilities of the occupations licensed under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301.

(b) Except as provided by subsection (e) of this section, the board [Board] or department will consider denial of an application for a license or revocation or suspension of a license in accordance with the requirements of:

(1) Occupations Code, Chapter 53;

(2) Occupations Code, Chapter 2301, Subchapter N;

(3) Government Code, Chapter 2001 [(Administrative Procedure Act)]; and

(4) board [Board] rules.

(c) The terms [term] "applicant" or "person" as used in this section includes:

(1) an applicant for a license or other authorization issued by the department;

(2) the holder of a license or other authorization issued by the department;

(3) a person's spouse with a community property interest in the entity licensed or to be licensed by the department;

(4) a controlling shareholder of a business entity licensed by the department;

(5) a person holding 50% or more ownership interest in a business entity licensed by the department;

(6) a person acting in a representative capacity for the applicant or license holder, including an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, or similar position of a business entity; or

(7) any person who becomes a person described in this subsection.

(d) An action taken by the board [Board] or department under this section may be based on an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder.

(e) Upon receipt of an order or notice regarding an applicant or license holder issued under Family Code, Chapter 232, the board [Board] or department will deny [refuse to approve] an application for

issuance of a license, will not renew an existing license, or will suspend a license or other authorization issued by the department. The board's [Board] or department's action, based upon receipt of an order or notice issued under Family Code, Chapter 232, on the application for a license or existing license is not subject to the provisions of Government Code, Chapter 2001, including notice, hearing, or opportunity for hearing. Upon [On] receipt of an order vacating or staying an order suspending a license issued under Family Code, Chapter 232, the board [vacating or staying an order suspending a license, the Board] or department will issue the affected license to the applicant or license holder if the applicant or license holder is otherwise qualified for the license.

(f) No person currently imprisoned for conviction of a felony under any state or federal law is eligible for or may retain a license or authorization issued by the department.

(g) The board [Board] or department will revoke a license issued by the department upon the license holder's [licensee's] imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(h) The board [Board] or department may revoke a license issued by the department upon the license holder's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, of a person defined by [in] subsection (c) of this section or identified in subsection (d) of this section.

(i) The board [Board] or department may suspend a license, revoke a license, or disqualify a person from receiving a license issued by the department if:

(1) a person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Any such action shall be made after consideration of the factors listed in Occupations Code, §53.022 and [§] §53.023, and the guidelines issued by the department pursuant to Occupations Code, §53.025;

(2) a person has been convicted of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

(3) a person has been convicted of an offense listed in Code of Criminal Procedure, Article 42.12, Section 3g; [Section 3g, Article 42.12, Code of Criminal Procedure;] or

(4) a person has been convicted of a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001. [Article 62.001, Code of Criminal Procedure.]

(j) For purposes of Occupations Code, §53.021, the following criminal offenses directly relate to the duties and responsibilities of the occupations licensed by the department:

(1) Penal Code, Chapter 15, Preparatory Offenses;

(2) Penal Code, Chapter 16, Criminal Instruments, Interception of Wire or Oral Communication, and Installation of Tracking Device;

(3) Penal Code, Chapter 19, Criminal Homicide;

(4) Penal Code, Chapter 20, Kidnapping, Unlawful Restraint, and Smuggling of Persons;

(5) Penal Code, Chapter 20A, Trafficking of Persons;

(6) Penal Code, Chapter 21, Sexual Offenses;

(7) Penal Code, Chapter 22, Assaultive Offenses;

(8) Penal Code, Chapter 25, Offenses Against [against] the Family;

(9) Penal Code, Chapter 28, Arson, Criminal Mischief, and Other Property Damage or Destruction;

(10) Penal Code, Chapter 29, Robbery;

(11) Penal Code, Chapter 30, Burglary and Criminal Trespass;

(12) Penal Code, Chapter 31, Theft;

(13) Penal Code, Chapter 32, Fraud;

(14) Penal Code, Chapter 33, Computer Crimes;

(15) Penal Code, Chapter 33A, Telecommunications Crimes;

(16) Penal Code, Chapter 34, Money Laundering;

(17) Penal Code, Chapter 35, Insurance Fraud;

(18) Penal Code, Chapter 36, Bribery and Corrupt Influence;

(19) Penal Code, Chapter 37, Perjury and Other Falsification;

(20) Penal Code, Chapter 38, Obstructing Governmental Operation;

(21) Penal Code, Chapter 71, Organized Crime;

(22) Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, involving an offense for which the person has been required to register as a sex offender;

(23) Transportation Code, Chapter 501, Certificate of Title Act;

(24) Transportation Code, Chapter 502, Registration of Vehicles;

(25) Transportation Code, Chapter 503, Dealer's and Manufacturer's Vehicle License Plates;

(26) Transportation Code, Chapter 504, License Plates;

(27) Transportation Code, Chapter 520, Miscellaneous Provisions;

(28) Transportation Code, Chapter 547, Vehicle Equipment;

(29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;

(30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment of Motor Vehicles;

(31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor Vehicle Ignitions;

(32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial Uses of Motor Vehicles;

(33) Tax Code, Chapter 23, Appraisal Methods and Procedures;

(34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;

(35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;

- (36) Health and Safety Code, Chapter 365, Litter;
- (37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;
- (38) Health and Safety Code, Chapter 482, Simulated Controlled Substances;
- (39) Health and Safety Code, Chapter 483, Dangerous Drugs;
- (40) Water Code, Chapter 7, Enforcement;
- (41) United States Code, Title 15, Chapter 28, Disclosure of Automobile Information, especially 15 U.S.C. §1233, Violations and Penalties;
- (42) United States Code, Title 18, Chapter 63, Mail Fraud and Other Fraud Offenses;
- (43) United States Code, Title 49, Chapter 301, Motor Vehicle Safety, especially 49 U.S.C. §30170, Criminal Penalties; or
- (44) United States Code, Title 49, Chapter 327, Odometers, especially 49 U.S.C. §32709, Penalties and Enforcement.

§215.89. Fitness.

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

- (1) the requirements of Occupations Code, Chapter 53;
- (2) the provisions of Occupations Code, §2301.651;
- (3) any specific statutory licensing criteria or requirements;
- (4) mitigating factors; and
- (5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

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

- (1) fails to meet or maintain the qualifications and requirements of licensure;
- (2) is convicted by any local, state, or federal authority of an offense listed in §215.88(j) of this title (relating to Criminal Offense and Action on License) or is convicted in any jurisdiction of an offense containing elements that are substantially similar to the elements in the offenses in §215.88(j) [of this title];
- (3) omits information or provides false, misleading, or incomplete information regarding a criminal conviction on an initial application, renewal application, or application attachment for a license or other authorization issued by the department or by any local, state, or federal regulatory authority;
- (4) is found to have violated an administrative or regulatory requirement based on action taken on a license, permit, or other authorization, including disciplinary action, revocation, suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board [Board], department, or any local, state, or federal regulatory authority;
- (5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the licensee;

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

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

(8) was or is a person defined by §215.88(c) [in §215.88(e) of this title] or identified in §215.88(d) [of this title], or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership interest with a person whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board [Board], department, or any local, state, or federal regulatory authority;

(10) is a business entity that is operated, managed, or otherwise controlled by a relative or family member and that person could be considered unfit, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or

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

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

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For further information, please call: (512) 465-5665



43 TAC §215.86

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires

the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.86. *Processing of License Applications, Amendments, or Renewals.*

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

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

43 TAC §§215.101, 215.103 - 215.106, 215.108 - 215.119

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which

require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.101. *Purpose and Scope. [Objective.]*

This subchapter implements [The objective of these rules is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301[,] and Transportation Code, Chapters 503 and 1000 - 1005. [1000 through 1005, by prescribing rules to regulate businesses requiring licenses under the Code.]

§215.103. *Service-only [Service-Only] Facility.*

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, noncontiguous [non-contiguous] site, from the franchised dealer's new motor vehicle sales and service or sales only location, where the franchised dealer will only perform warranty and nonwarranty [non-warranty] repair services. Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.

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

(c) A service-only facility is [eonsidered] a dealership [under Occupations Code, §2301.002(8), and is therefore] subject to protest under Occupations Code, Chapter 2301. [§2301.652.]

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

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

§215.104. *Changes to Franchised Dealer's [Dealer] License.*

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license in order to request inclusion of an additional line-make at the dealer's currently licensed showroom.

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a copy of:

(A) the executed franchise agreement;

(B) the required excerpt from the executed franchise agreement; or

(C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301.

~~[(a) To effectuate Occupations Code, §2301.356, every licensed dealer who proposes to conduct business at a currently licensed showroom under a franchise that is additional to or that differs from the franchise or franchises on which the license is then based shall file an application to amend the license on the form prescribed by the division, attaching a copy of the franchise agreement. The amended application will be considered as if it were an original application to operate under the additional franchise as to all matters except those reflected by the license as issued.]~~

~~(b) A franchised dealer may propose to sell or [licensed dealer who proposes to sell and/or] assign to another any interest in the licensed entity, whether a corporation or otherwise, provided [so long as] the physical location of the licensed entity remains the same.[.]~~

~~(1) The franchised dealer shall notify the department [division] in writing within 10 [ten] days of the sale or assignment of interest [change] by filing an application to amend the franchised dealer's license.~~

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

~~(3) A publicly-held corporation needs only to [Publicly-held corporations need only] inform the department [division] of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity. [licensee.]~~

~~(c) A franchised dealer is required to file an amendment application within 10 days of a license change, including:~~

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

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

~~(3) a change of mailing address;~~

~~(4) a change of telephone number;~~

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

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

~~(d) A franchised dealer is required to file a business entity amendment application within 10 days of an entity change, including:~~

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

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

~~[(e) In the event of a change in management reflected by a change of the general manager, dealer principal, or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the division shall be advised by means of an application for an amended license.]~~

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

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

~~(g) [(f)] In addition to obtaining permission from the manufacturer or distributor, a franchised dealer [A licensee] shall obtain department [division] approval prior to [the] opening [of] a supplemental location or relocating[, or the relocation of] an existing location. A franchised dealer [licensee] must notify the department [division] when closing an existing location.~~

~~§215.105. Notification of License Application; Protest Requirements.~~

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

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

~~(c) [(b)] If it appears to the department that there are no dealers with standing to protest, then no notice shall be given.~~

~~(d) [(e)] A person holding a franchised dealer's license [Any dealer licensee holding a franchise] for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and that has [with] standing to protest the application may file with the department [division] a notice of protest opposing [in opposition to the application and] the granting of a license.~~

~~(e) [(d)] A franchised [The] dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301. [its notice of protest in the following manner.]~~

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

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

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

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

~~[(e) The provisions of this section shall not be applicable to any application filed with the division for a dealer license as a result of the purchase or transfer of an existing entity holding a current franchise license which does not involve any physical relocation of the purchased or transferred line-makes.]~~

~~§215.106. Time for Filing Protest.~~

~~(a) A notice of protest must be:~~

(1) received by the department [in the division offices in Austin] not later than 5:00 p.m. Central Standard Time (CST) on the date 15 days from the date of mailing of the department's [division's] notification to the license holder [licensees] of the filing of the application;

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

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

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

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

(2) the required filing fee is not remitted within 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.

[(b) Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.]

[(c) Failure to remit the statutorily required protest] filing fee within the specified time period shall result in the disallowance of the protest.]

§215.108. *Addition or Relocation of Line-make.* [Line Make.]

An application to amend [for the amendment of] an existing new motor vehicle dealer's license for [by] the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed [to be] an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest). [§§215.105-215.107 of this subchapter (relating to Notification of License Application; Protest Requirements; Time for Filing Protest; and Hearing).]

§215.109. *Replacement Dealership.*

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

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

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of [division and to its other like-line dealers pursuant to] Occupations Code, §2301.652(b) [within 60 days following the closing of the prior dealership];

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

(4) [(3)] the application is filed with the department [division] not later than one year following the closing of the prior dealership; and

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

§215.110. *Evidence of Franchise.*

(a) Upon application for a new motor vehicle dealer's license or an amendment of an [dealer license, or application for amendment of] existing new motor vehicle dealer's [dealer] license to add a line-make, [in addition to other attachments required to be submitted with the application,] the applicant must submit a photocopy of the [those] pages of the franchise agreement(s) that [which] reflect the parties to the agreement(s), [and] the authorized signatures of the parties to the agreement(s), and each line-make [for each line of motor vehicle] listed in the application. To meet this requirement temporarily for the purpose of application processing, a [A] form prescribed by the department [division] and completed by the manufacturer or distributor [manufacturer/distributor] may be submitted with the application in lieu of the information described in this subsection [to meet this requirement temporarily, for purposes of application processing]. The applicant must submit the required photocopies of the franchise agreement(s); as] described in this subsection[.], immediately upon the applicant's receipt of the franchise agreement(s). [receipt.]

(b) Upon application to relocate a new motor vehicle dealership, [in addition to other attachments required to be submitted with the application,] the applicant must submit a form prescribed by the department [division] and completed by the manufacturer or distributor [manufacturer/distributor] that identifies the license holder [licensee] and the new location.

§215.111. *Notice of Termination or Discontinuance* [Noneontinuance] of Franchise and Time for Filing Protest.

A notice of termination or discontinuance [noneontinuance] of a dealer's franchise shall be given by a manufacturer or distributor in accordance with [the requirements of] Occupations Code, §2301.453[.], not less than 60 days prior to the effective date of the franchise termination or discontinuance [thereof]. A notice of protest of the franchise termination or discontinuance [noneontinuance] by a dealer pursuant to Occupations Code, §2301.453[.], shall be in writing and shall be filed with the department [in the Board's office in Austin,] prior to the effective date of the franchise termination or discontinuance [noneontinuance as] stated in the notice from the manufacturer or distributor.

§215.112. *Motor Home Show Limitations and Restrictions.*

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

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

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

(1) does not exceed six consecutive days;

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

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

(d) *Additional motor home shows.* The department may authorize additional motor home shows in any county upon a showing of

good cause by the promoter for waiver from the show requirements of subsection (c) of this section.

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

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

(2) be accompanied by all required attachments;

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

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

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

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

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

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

(g) Dealer participation requirements. A dealer of new motor homes requesting approval to participate in a show must submit a sufficient application to the department. To be sufficient, the application must be on a form prescribed by the department and accompanied by all required attachments.

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

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

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

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

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

(1) may quote a price;

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

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

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

[(a) A dealer licensed by the division who is authorized to sell new motor homes may attend and sell at any motor home show that has been approved by the division.]

[(b) The scope of this rule is expressly limited to new motor home shows and exhibitions. It does not apply to other types of motor vehicle distribution activities, static displays, or any other provision of Occupations Code, Chapter 2301 other than §2301.355 and §2301.358. Other motor vehicle shows, exhibitions, or static displays will be reviewed by division staff on a case by case basis.]

[(c) Approval must be sought by the show promoter or coordinator no less than 30 days and no more than 90 days prior to the proposed show date. All applications for motor home shows must be submitted on the forms and in the manner prescribed by the division, and must be accompanied by all required attachments. If the promoter or coordinator is not a licensee, an association of licensees, or organization of licensees, the application must be accompanied by a \$25,000 surety bond to assure compliance with Occupations Code, Chapter 2301 and department rules, as well as other regulations pertaining to the sale of new motor vehicles.]

[(d) There must be at least three dealers participating in the show, representing at least three different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.]

[(e) The duration of any motor home show shall not exceed six consecutive days. If a show is conducted over a consecutive Saturday and a Sunday, sales will be suspended by all motor vehicle dealers on the same Saturday or Sunday to achieve uniform compliance with the Blue Law under Transportation Code, Chapter 728, Subchapter A. On the day sales are suspended, a motor home dealer:]

[(1) may quote a price and discuss finance options;]

[(2) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the product;]

[(3) may open and attend to the motor home product;]

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

[(f) No motor home show shall occur in a county within 90 days of a previous motor home show within that county. Upon a showing of good cause, the division may authorize additional motor home shows in any county. Any motor home dealer may attend a motor home show so long as no like line dealership is located within 70 miles of the show site, unless a written waiver is obtained from the like line dealer or dealers located within 70 miles of the show site. Any like line dealer within 70 miles of the show site has a superior and exclusive right to represent that line at the proposed show. If there are two or more like line dealers located within 70 miles of the show site, each has equal right to participate in the proposed show.]

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

(a) In the absence of a showing of good cause, an [An] application for a new motor vehicle dealer's license of [in] which a manufacturer or distributor[, as those terms are defined in Occupations Code,

Chapter 2301,] owns any interest in or has control of the dealership entity must be submitted to the department [~~division~~] no later than 30 days before:

- (1) the opening of the dealership;];
- (2) close of the buy-sell agreement;]; or
- (3) the expiration of the current license;] whichever is the ease].

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

(c) A request for an extension of the initial 12 month period for manufacturer or distributor ownership or control of a new motor vehicle dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section;] along with a sufficient [~~complete~~] application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12 month period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial [~~to be conducted~~] in accordance with Occupations Code, §§2301.701 - 2301.713.

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

(e) The department [~~division~~] will give notice of the hearing described in subsection (d) of this section to all other franchised dealers [~~dealer licensees~~] holding franchises for the sale and service or service only of the same line-make of new motor vehicles that [~~who~~] are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under Occupations Code, §2301.476(e);] must be filed with the department [~~division's Docket Clerk~~] within 15 days of the date of mailing of the notice of hearing, and a copy must be [~~with a copy~~] provided to the manufacturer or distributor. The department will reject a notice of intervention if the notice is not filed at least 30 days before: [~~Failure to file a formal notice of intervention within the specified time period will result in the disallowance of the intervention.~~]

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

(3) the expiration of the current license.

(f) A hearing under subsection (d) [~~subsections (d) and (e)~~] of this section will be conducted as expeditiously as possible, but not later than 120 days after receipt of the subsequent request for extension from the manufacturer or distributor. An [~~A SOAH~~] ALJ will prepare a written decision and proposed findings of fact and conclusions of law as soon as possible, but not later than 60 calendar days after the hearing is closed. The new motor vehicle dealer's license that is the subject of the hearing will continue in effect until a final decision on the request for a subsequent extension is rendered by the board. [~~Board on the request for a subsequent extension.~~]

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

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

[(1) that the dealer development candidate is part of a group of persons who have historically been underrepresented in the manufacturer's or distributor's dealer body or is an otherwise qualified person who lacks the resources to purchase a dealership outright;]

[(2) that the manufacturer or distributor is in a bona fide relationship with the dealer development candidate;]

[(3) that the dealer development candidate has made a significant investment in the dealership, subject to loss;]

[(4) that the dealer development candidate has an ownership interest in the dealership; and]

[(5) that the dealer development candidate operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.]

§215.114. *Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle [Vehicles by Manufacturer/Distributor at Wholesale] Auction.*

A manufacturer or distributor [~~who is~~] licensed under Occupations Code, Chapter 2301;] or a wholly owned [~~wholly-owned~~] subsidiary of a manufacturer or distributor, may sell motor vehicles it owns to dealers through a licensed Texas wholesale motor vehicle auction. A GDN is sued to a licensed manufacturer, distributor, or wholly owned subsidiary of a manufacturer or distributor shall be canceled, unless otherwise allowed under Occupations Code, Chapter 2301. [~~General distinguishing numbers currently issued to licensed manufacturers, distributors, or their wholly-owned subsidiaries shall be cancelled on the date this rule becomes effective, except where otherwise allowed under the Code.~~]

§215.115. *Manufacturer, Distributor, and Converter Records.*

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

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

~~{(a) Manufacturers and distributors must keep records of all vehicles they sell to any person in this state for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.}~~

~~{(b) Converters must keep records of all vehicles converted and distributed to Texas franchised dealers for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.}~~

~~(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months. [Records reflecting purchases, sales, or conversions for at least the preceding 24 months must be maintained at the licensed location.] Records for prior time periods may be kept off-site.~~

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

~~(e) Records required to be maintained [kept] and made available to the department must include the following: [shall contain the following information:]~~

- ~~(1) the date of sale or conversion of the motor vehicle;~~
- ~~(2) the VIN [vehicle identification number];~~
- ~~(3) the name and address of the purchasing dealer or converter;~~
- ~~(4) a copy of or a record [copies of or records] with the information contained in the manufacturer's certificate of origin [Manufacturer's Certificate of Origin] or title;~~
- ~~(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;~~
- ~~(6) the repair history of any motor vehicle subject to a warranty complaint;~~
- ~~(7) technical service bulletin [bulletins] or equivalent advisory; and [advisories; and,]~~
- ~~(8) any audit of a dealership. [audits of dealerships.]~~

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

§215.116. Lease or Sublease Listing.

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

- (1) the entire real property if the termination or discontinuance effectively terminates all line-makes and all franchises for the entire dealership; or
- (2) only that portion of the real property associated with the terminated line-make or franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the dealership.

§215.117. Market Value Property Appraisal.

(a) A market value property appraisal assessment made in accordance with Occupations Code, §2301.482(c)[;] requires three general certified real estate appraisers [that have been] certified by the State of Texas.

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

(c) To determine market value of property in accordance with Occupations Code, §2301.482(c), an average of the market value property appraisals will be calculated from the independent market value property assessment determinations of the three general certified real estate appraisers.

§215.118. Determination of Affected County for Dealership Relocation.

The most recent population data reported by the federal decennial census is used to identify an affected county defined by ~~[under]~~ Occupations Code, §2301.6521.

§215.119. Standing to Protest.

(a) A protesting dealer [protestant] has the burden to demonstrate standing to protest.

(b) Standing requirements are established by the type of application.

(1) Protest of an application to establish a dealership or to add a new line-make to an existing dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.652;

(2) Protest of an application to relocate a dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.652;

(3) Protest of an application to relocate a dealership within an affected county or from an affected county to an adjacent affected county requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.6521;

(4) Protest of an application to relocate an economically impaired dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.6522; and

(5) Protest of an application filed by a manufacturer, distributor, or representative for an extension of time for ownership or control of a dealership requires the protesting dealer [protestant] to meet standing requirements under Occupations Code, §2301.476.

(c) A person has standing to protest an application to establish a dealership or to add a franchised line-make at an existing dealership if:

(1) the person is a franchised dealer of the same line-make; and

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application was filed.

(d) Except as provided in subsections (e) and (f) of this section, a person has standing to protest an application to relocate a dealership or to relocate a franchised line-make of an existing dealership if:

(1) the person is a franchised dealer of the same line-make;

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application for relocation is filed;

(3) the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and

(4) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(e) An application may be filed under Occupations Code, §2301.6521 to relocate a dealership from a location in an affected county to a location that is either within the same affected county or in an adjacent affected county.

(1) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is two miles or less from the relocating dealer's existing licensed location.

(2) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is farther from the protesting dealer's licensed location than the relocating dealer's existing licensed location.

(3) If a dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, then a person has standing to protest an application to relocate[;] filed in accordance with this subsection, if:

(A) the person is a franchised dealer of the same line-make;

(B) the person's dealership is located within 15 miles of the proposed relocation site;

(C) the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and

(D) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(4) If no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site, then a person has standing to protest an application to relocate[;] filed in accordance with this subsection, if:

(A) the person is a franchised dealer of the same line-make;

(B) no other dealership of the same line-make is located nearer to the proposed relocation site;

(C) the person's dealership is located in the same affected county as the relocating dealership is proposed to be located;

(D) the proposed relocation site is more than two miles from the location where the relocating dealership is currently licensed; and

(E) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(f) If an economically impaired dealer files an application under Occupations Code, §2301.6522[;] to relocate its dealership, then a dealer may have [has] standing to protest the application if:

(1) the dealer is franchised for a line-make that is the same as a line-make proposed to be relocated;

(2) the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically impaired dealer's existing licensed location; and

(3) there is no other dealer located nearer to the proposed relocation site that is franchised for a line-make that is proposed to be relocated.

(g) A dealer has standing to protest an application for an extension of time that was filed by a manufacturer, distributor, or representative under Occupations Code, §2301.476[;] if:

(1) the protesting dealer is franchised for a line-make being sold or serviced from the dealership owned or controlled by a manufacturer, distributor, or representative; and

(2) the protesting dealer is located either in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer, distributor, or representative.

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

Filed with the Office of the Secretary of State on August 26, 2016.

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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



43 TAC §215.107

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.107. *Hearing.*

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

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David D. Duncan

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.131 - 215.133, 215.135, 215.137 - 215.141, 215.144 - 215.160

STATUTORY AUTHORITY

The new rule and amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

§215.131. *Purpose and Scope.* [Objective.]

This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Transportation Code, Chapter 503[,] and Occupations Code, Chapter 2301[,] by prescribing rules to regulate businesses requiring general distinguishing numbers].

§215.132. *Definitions.*

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

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

(2) Charitable organization--Has the meaning assigned by Transportation Code, §503.062(e). [An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.]

(3) Consignment sale--The owner-authorized sale of a motor vehicle by a person other than the owner[; under the terms of a written authorization from the owner].

[(4) Dealer--Any person who is regularly and actively engaged in the business of buying, selling, or exchanging new or used motor vehicles, motorcycles, motor homes, mobility motor vehicles, house trailers, or trailers or semitrailers as defined in Transportation Code, §501.001 et seq., or Transportation Code, §502.001 et seq., at either wholesale or retail, either directly, indirectly, or by consignment.]

[(5) Independent mobility motor vehicle dealer--A non-franchised dealer who:]

[(A) holds a general distinguishing number issued by the department under Transportation Code, Chapter 503;]

[(B) holds a converter's license issued under Occupations Code, Chapter 2301;]

[(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and]

[(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.]

(4) [(6)] House trailer--A nonmotorized vehicle designed for human habitation and for carrying persons and property on [upon] its own structure and for being drawn by a motor vehicle. A house trailer [The term] does not include manufactured housing. A towable recreational vehicle, [Towable recreational vehicles] as defined by [in] Occupations Code, §2301.002, is [are] included in the terms "house trailer" or "travel trailer."

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

[(8) Mobility motor vehicle--A motor vehicle that is designed and equipped to transport a person with a disability and that:]

[(A) has a chassis that contains:]

[(i) a permanently lowered floor or lowered frame; or]

[(ii) a permanently raised roof and raised door;]

[(B) contains at least one of the following:]

[(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;]

[(ii) an electronic or mechanical wheelchair ramp; or]

[(iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and]

[(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.]

(6) [(9)] Person--Has the meaning assigned by Occupations Code, §2301.002. [Any individual, firm, partnership, corporation, or other legal entity.]

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

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

(9) [(12)] Towable recreational vehicle--Has the same meaning as "house trailer" defined by this section. [See definition for House Trailer in this section.]

(10) [(13)] Travel Trailer--Has the same meaning as "house trailer" defined by this section. [See definition for House Trailer in this section.]

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

(12) VIN--Vehicle identification number.

~~[(14) Wholesale dealer--A licensed dealer who only sells or exchanges vehicles with other licensed dealers.]~~

§215.133. *General Distinguishing Number.*

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department [~~division~~] for each location from which the person engages in business. If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the dealer must also hold a general distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department [~~division~~] as provided in §215.135 of this subchapter (relating to More than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, [~~division~~], if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and

if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.

(c) Application for a general distinguishing number shall be on a form prescribed by the department [~~division~~] properly completed by the applicant showing all information requested thereon and shall be submitted to the department [~~division~~] accompanied by the following:

(1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond); [~~Security Requirements~~];

(2) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer [~~metal~~] plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:

(A) current driver's license;

(B) current Department of Public Safety identification;

(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(D) [~~(C)~~] current passport; or

(E) [~~(D)~~] current United States armed forces identification.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA."

(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.

(f) A wholesale dealer licensee may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer licensee holder may not sell or exchange vehicles at retail.

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

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

§215.135. *More than One Location.*

(a) A dealer that holds a GDN [~~holding a general distinguishing number~~] for a particular type of vehicle may operate from more than one location within the limits of a city, provided each [~~sueh~~] location is operated by the same legal entity and meets the requirements of

§215.140 of this title [subchapter] (relating to Established and Permanent Place of Business).

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

(1) obtain a new GDN; and [separate license and security]

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

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

(1) obtain a new GDN; and

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

[(e) Dealerships that are relocated from a point outside the limits of a city, or relocated to a point not within the limits of the same city of the initial location are required to obtain a new license and provide new security reflecting the new address unless the location is exempt from the security requirement by statute.]

(d) A dealer shall notify the department [division] in writing within 10 days of [the] opening, closing, or relocating any licensed [relocation of any dealership] location. Each [new] location must meet and maintain the requirements of §215.140 [of this subchapter].

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

§215.137. *Surety Bond. [Security Requirements.]*

[(a) Unless exempt pursuant to subsection (d) of this section, a dealer shall maintain a \$25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:]

[(1) The bond shall be on a form which is prescribed by the division and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.]

(a) [(2)] The surety bond required by Transportation Code, §503.033 [The bond] shall be in the legal business name in which the dealer's license will be issued and shall contain the complete physical address of each dealership location licensed under the GDN [general distinguishing number] that the surety bond is intended to cover.

(b) [(3)] A surety bond executed by an agent representing [who represents] a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

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

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

(2) unknown.

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

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

[(b) Recovery against the bond may be made by any person who obtains a court judgment assessing damages and/or attorneys fees for an act or omission on which the bond is conditioned. If the person seeking to obtain such a court judgment is a dealer, that dealer shall notify the division of the claim immediately upon filing suit on the bond.]

[(e) Payment of any judgment by the bonding company shall be immediately reported to the division in writing.]

(f) [(d)] The surety bond required by this section does [The provisions of subsection (a) of this section do] not apply to a:

(1) franchised motor vehicle dealer [who is] licensed by the department; [division;]

(2) franchised motorcycle dealer [who is] licensed by the department; [division;]

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

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

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

(a) A metal dealer's license plate [Metal dealer license plates] shall be attached to the rear license plate holder of a vehicle in accordance with [vehicles on which such plates may be displayed pursuant to] Transportation Code, §503.061.

(b) A [Although not a requirement, a] copy of the receipt for the metal dealer's license plate issued by the department [division] should be carried in the vehicle so that the receipt [it] can be presented to law enforcement personnel upon request.

(c) [(b)] A metal dealer's license plate [Metal dealer license plates] may not be displayed on:

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

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

[(1) Examples of vehicles considered as service or work vehicles for purposes of this subsection are:]

[(A) a vehicle used for towing or transporting other vehicles;]

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

[(C) a courtesy car on which a courtesy car sign is displayed;]

[(D) a rental or lease vehicle; and]

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

[(2) A light truck is not considered to be a laden commercial vehicle when it is:]

[(A) mounted with a camper unit; or]

[(B) towing a trailer for recreational purposes.]

[(3) As used in this subsection, "light truck" has the meaning assigned by Transportation Code, §541.201.]

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

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

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

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

(4) a rental or lease vehicle; and

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

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

(f) For purposes of this section, a light truck is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(g) ~~[(e)]~~ A metal dealer's license plate [Metal dealer license plates] may be displayed only on the type of vehicle for which the GDN [general distinguishing number] is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a metal dealer's license plate on a new motor vehicle. ~~[Non-franchised dealers may not display metal dealer plates on new motor vehicles.]~~

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

(i) ~~[(d)]~~ A dealer shall maintain a record of each metal dealer's license [dealer metal] plate issued to that dealer. The record must contain: ~~[that contains:]~~

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

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

(3) the VIN [vehicle identification number (VIN)] of the vehicle; and

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

(j) If a dealer cannot account for a metal dealer's license plate that the department issued to that dealer, the dealer must:

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

(2) within three days of discovering that the metal dealer's license plate is missing, report to the department in writing that the metal dealer's license plate is lost or stolen; and

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

(k) A metal dealer's license plate is no longer valid for use after the dealer reports to the department that the metal dealer's license plate is missing.

~~[(e)]~~ Dealer metal plates that cannot be accounted for shall be voided in the dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing, it is no longer valid for use.]

~~[(f)]~~ The dealer's record required under subsections (d) and (e) of this section shall be available at the dealer's location during normal working hours for review by a representative of the department.]

§215.139. *Metal Dealer's License [Dealer] Plate Allocation.*

(a) The number of metal dealer's license [dealer] plates a dealer may order for business use is ~~[allotted]~~ based on the type of

license for which the dealer applied ~~[for]~~ and the number of vehicles the dealer sold during the previous year. ~~[New license applicants are allotted a predetermined number of metal dealer plates during the first license term.]~~

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

~~[(b)]~~ The maximum number of metal dealer plates issued to a new license applicant during the first license term is, unless otherwise qualified to receive more:]

~~[(1)]~~ Franchised motor vehicle dealer - 5;]

~~[(2)]~~ Franchised motorcycle dealer - 5;]

~~[(3)]~~ Independent motor vehicle dealer - 2;]

~~[(4)]~~ Independent motorcycle dealer - 2;]

~~[(5)]~~ Franchised or independent travel trailer dealer - 2;]

~~[(6)]~~ Utility trailer or semi-trailer dealer - 2;]

~~[(7)]~~ Independent mobility vehicle dealer - 2; and]

~~[(8)]~~ Wholesale dealer - 1.]

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

Figure: 43 TAC §215.139(c)

~~[(e)]~~ A newly licensed dealership with a previous license status is not subject to the initial allotment limits described in subsection (b) of this section; and may rely on that previous license status to obtain dealer plates, if it is:]

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

(1) a franchised dealership ~~[that has been]~~ subject to a buy-sell agreement, regardless of a change in the entity or ownership; ~~[(e)]~~

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

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

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

Figure: 43 TAC §215.139(e)

~~[(d)]~~ The maximum number of dealer plates issued to a motor vehicle dealer per license term is:]

~~[(1)]~~ Franchised motor vehicle dealer - 30;]

~~[(2)]~~ Franchised motorcycle dealer - 10;]

~~[(3)]~~ Independent motor vehicle dealer - 3;]

~~[(4)]~~ Independent motorcycle dealer - 3;]

~~[(5)]~~ Franchised or independent travel trailer dealer - 3;]

~~[(6)]~~ Utility trailer or semi-trailer dealer - 3;]

~~[(7)]~~ Independent mobility vehicle dealer - 3; and]

~~[(8) Wholesale dealer - 1.]~~

~~(f) [(e)] A dealer may obtain more than the maximum number of metal dealer's license plates provided by [plates set out in subsections (b) or (d) of] this section[.] by submitting to the department proof of sales for the previous 12-month period that justifies additional allocation.~~

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

~~Figure: 43 TAC §215.139(f)(1)~~

~~[(1) The dealer may receive the following additional plates:]~~

~~[(A) Wholesale dealers- 1:]~~

~~[(B) Dealers selling fewer than 50 vehicles - 1:]~~

~~[(C) Dealers selling 50 to 99 vehicles - 2:]~~

~~[(D) Dealers selling 100 to 200 vehicles - 5; or]~~

~~[(E) Dealers selling more than 200 vehicles may receive any number of dealer plates at the dealer's discretion.]~~

~~(2) For purposes of this [subsection and subsection (f) of this] section, proof of sales for the previous 12-month period may consist of a copy of the most recent vehicle inventory tax declaration [recently filed Vehicle Inventory Tax Declaration] or monthly statements [duly] filed with the [proper] taxing authority in the county of the dealer's licensed [dealership's] location. Each copy must be stamped as received by the taxing [tax] authority. A [Any] franchised dealer's [renewal] license renewal application that indicates sales of more than 200 units is considered to be proof of sales of more than 200 units and no additional proof is required.~~

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

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

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

~~(g) [(f)] The director may waive the metal dealer's license [dealer] plate issuance restrictions [in accordance with this subsection] if the waiver is essential for the continuation of the business. The director will determine [base the determination of] the number of metal dealer's license [dealer] plates the department will issue based [dealer will receive] on the dealer's past sales, dealer's inventory, and any other factor [factors that] the director determines pertinent.~~

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

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

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

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

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

~~§215.140. Established and Permanent Place of Business.~~

~~A dealer must meet the following requirements at each licensed location and [must] maintain the [following] requirements during the [entire] term of the license.~~

~~(1) Business hours for retail dealers.~~

~~(A) A retail dealer's office [facility] shall be open at least four days per week for at least four consecutive hours per day.~~

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

~~(2) Business hours for wholesale motor vehicle dealers. A dealer that [who] holds only a wholesale motor vehicle dealer's license must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer shall be at the wholesale motor vehicle dealer's licensed location [for] at least two weekdays per week for at least two consecutive hours per day. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.~~

~~(3) Business sign requirements for retail dealers. A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's license[.] under which the retail dealer conducts business. The sign must be permanently mounted at the address listed on the application for the retail dealer's [dealer] license. A retail dealer may use a temporary sign or banner if that retail [the] dealer can show proof that a sign [is on order] that meets the requirements of [set out in] this paragraph has been ordered.~~

~~(4) Business sign requirements for wholesale motor vehicle dealers. A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's license[.] under which the wholesale motor vehicle dealer conducts business. The sign must be permanently mounted on the business property and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses [housing] the wholesale motor vehicle dealer's office. If the wholesale motor vehicle dealer's office [dealership] is located in an office building with one or more other businesses and an outside sign is not permitted by the landlord, a business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. A wholesale motor vehicle dealer may use a temporary sign or banner if the wholesale motor vehicle dealer can show proof that a sign [is on order] that meets the requirements of [set out in] this paragraph has been ordered.~~

(5) Office structure for a retail dealer and a wholesale motor vehicle dealer. ~~[retail and wholesale dealers.]~~

(A) A dealer's office ~~[The office of a retail or wholesale dealer]~~ must be located in a building~~[,]~~ with connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable local zoning ordinances and deed restrictions.

(C) A dealer's office may not be located within a residence, apartment ~~[house]~~, hotel, motel, or rooming house.

(D) The physical address of the dealer's office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail. The department will not mail a license or a metal dealer's license plate to an out of state address. ~~[Licenses and metal dealer plates will not be mailed to any out-of-state address.]~~

(E) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer ~~[dealers]~~. At a minimum, a dealer's ~~[the]~~ office must be equipped with:

- (A) a desk;
- (B) two chairs;
- (C) Internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts ~~[does]~~ business.

(7) Number of retail dealers in one office. Not more than four retail dealers may be located in the same business structure.

(8) Number of wholesale motor vehicle dealers in one office. Not more than eight wholesale motor vehicle dealers may be located in the same business structure.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. ~~[Wholesale and retail dealers office sharing prohibition.]~~ Unless otherwise authorized by the Transportation Code, a retail ~~[motor vehicle]~~ dealer and a wholesale motor vehicle dealer~~[, either of which is]~~ licensed after September 1, 1999, may not be located in the same business structure.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name ~~[that]~~ of the other business, a separate telephone listing and a separate sign for each business is required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets ~~[meeting]~~ the requirements of ~~[paragraph (13) of]~~ this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(11) Display area requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements. ~~[in accordance with this subsection.]~~

(i) ~~[(A)]~~ The display area must be located at the retail dealer's business address or contiguous with the retail dealer's address. A noncontiguous ~~[non-contiguous]~~ storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the retail dealer's name, telephone number, and the fact the property is a storage lot is permissible.

(ii) ~~[(B)]~~ The ~~[A dealer's]~~ display area must be of sufficient size to display at least five vehicles of the type for which the GDN ~~[general distinguishing number]~~ is issued. Those spaces must be reserved exclusively for the retail dealer's inventory and may not be shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) ~~[(C)]~~ The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) ~~[(D)]~~ If the retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory ~~[If the display area is in conjunction with another dealership or another business that is not related to the sale or operation of motor vehicles, the display area for the dealer's inventory]~~ must be separated from the other business's display or ~~[any other business's or dealer's]~~ parking area by a material object or barrier ~~[barriade]~~ that cannot be readily removed. ~~[moved by an individual.]~~

(v) ~~[(E)]~~ The display area must be adequately illuminated if the retail dealer is open at night ~~[after sundown]~~ so that a vehicle ~~[vehicles]~~ for sale can be properly inspected by a potential buyer. ~~[any prospective customer.]~~

(vi) ~~[(F)]~~ The display area may be located inside a building.

(12) Dealers holding a license issued under Occupations Code, Chapter 2302. ~~[Dealer with salvage dealer license.]~~ If a dealer also holds a license issued under Occupations Code, Chapter 2302, each salvage motor ~~[salvage dealer license, each salvage]~~ vehicle that is offered for sale on the premises of the dealer's display area must be clearly and conspicuously marked with a sign informing a potential buyer ~~[that informs the potential buyers]~~ that the vehicle is a salvage motor vehicle. This requirement does not apply to a licensed salvage pool operator.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time ~~[with the period]~~ for which the dealer's license will be issued. ~~The~~ ~~[That]~~ lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises; ~~[names of the lessor and lessee;]~~

(B) the period of time for which the lease is valid; ~~[and]~~

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, ~~provided,~~ the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and~~[-]~~

(D) the signature of the landlord as the lessor and the signature of the dealer as the tenant or lessee.

(14) Dealer must display license. A dealer must display the dealer's ~~dealer~~ license issued by the department at all times in a manner that makes the license easily readable by the public and in a conspicuous place at each place of business for which the dealer's license ~~it~~ is issued. If the dealer's license applies to more than one location, a copy of the original license may be displayed in each supplemental location.

§215.141. *Sanctions.*

(a) The board or department may:

(1) deny an application;

(2) revoke a license;

(3) suspend a license; and

(4) assess a civil penalty or other action against a license applicant, a license holder, or a person engaged in business for which a license is required.

~~{(a) Revocation/Denial. The Board may deny, revoke, or suspend a dealer's license (general distinguishing number) or assess civil penalties against any person if that person;}~~

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

(1) fails to maintain a good and sufficient bond in the amount of \$25,000 if required;

(2) fails to maintain records required under this chapter; ~~{an established and permanent place of business conforming to the regulations pertaining to office, sign, and display space requirements;}~~

(3) refuses ~~{to permit}~~ or fails to comply with a request by a representative of the department to examine and copy during the license holder's business hours at the licensed location; ~~{the}~~

(A) sales records required to be maintained by ~~{kept under}~~ §215.144 of this title (relating to Records); ~~{subchapter (relating to Record of Sales and Inventory) and}~~

(B) ownership papers for a vehicle ~~{vehicles}~~ owned by that dealer or under that dealer's control;~~[-]~~ and

(C) evidence of ownership or a current lease agreement for the property on which the business is located; ~~{lease rights on the property upon which the dealer's business is located, during posted working hours or through a request made by the department pursuant to these rules;}~~

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

(5) ~~{(4)}~~ holds a wholesale motor vehicle dealer's license and; ~~{dealer license and, without notifying the division and meeting the vehicle display space requirements of §215.140 of this subchapter, is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;}~~

(A) fails to meet the requirements of §215.140 of this title (relating to Established and Permanent Place of Business); or

(B) sells or offers to sell a motor vehicle to a person other than a licensed dealer;

(6) ~~{(5)}~~ sells or offers to sell a type of vehicle that the person is not licensed to sell;

(7) ~~{(6)}~~ fails to notify the department ~~{division}~~ of a change of the license holder's physical address, ~~{physical or}~~ mailing address, ~~{and/or}~~ telephone number, or email address within 10 days of the ~~{after such}~~ change;

(8) ~~{(7)}~~ fails to notify the department ~~{division}~~ of a license holder's ~~{dealer's}~~ name change or ownership change within 10 days of the ~~{after such}~~ change;

(9) ~~{(8)}~~ except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(10) ~~{(9)}~~ fails to remove a license plate or registration insignia ~~{license plates as required by law}~~ from a vehicle that is displayed for sale;

(11) ~~{(10)}~~ misuses a metal dealer's ~~{metal dealer}~~ license plate or a temporary tag;

(12) ~~{(11)}~~ fails to display a metal dealer's ~~{dealer}~~ license plate or temporary tag, as required by law; ~~{plates or tags in a manner conforming to the regulations pertaining to the display of such plates and tags;}~~

~~{(12) fails to satisfy the notification requirements of §215.144 of this subchapter;}~~

(13) holds open a title ~~{titles}~~ or fails to take assignment of a certificate ~~{all certificates}~~ of title, manufacturer's certificate, ~~{certificates,}~~ or other basic evidence of ownership for a vehicle ~~{vehicles}~~ acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold; ~~{vehicles sold (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);}~~

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN ~~{general distinguishing number}~~ is issued by the department;

(15) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1000 - 1005; a board order or rule; or a ~~{any of the provisions the Codes, or any rule of}~~ regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules ~~{set out in}~~ Subchapter H of this chapter (relating to Advertising);

(16) is convicted of an offense that directly relates to the duties or responsibilities of the occupation;

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

(18) ~~{(16)}~~ has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(19) ~~{(17)}~~ files a false or forged; ~~{title or}~~

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit; ~~{application for certified copy of a title;}~~

(20) [(48)] uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [the provisions of the dealer law] or other laws;

(21) [(19)] omits information or makes a material misrepresentation in any application or other documentation [information] filed with the department; [division;]

(22) [(20)] fails to remit payment as ordered for a civil penalty assessed by the board or department; [for civil penalties assessed by the Board;]

(23) [(21)] sells a new motor vehicle [vehicles] without a franchised dealer's license issued by the department; [division;]

(24) [(22)] utilizes a temporary tag that fails to meet the requirements of [specifications as cited in] §215.153 of this title [subchapter] (relating to Specifications for All Temporary Tags); [or]

(25) [(23)] violates any state or federal law or regulation relating to the sale of a motor vehicle; or[-]

(26) effective January 1, 2017, knowingly fails to disclose that a motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100.

[(b) Civil penalties. The Board may assess a civil penalty of not less than \$50 nor more than \$1,000 against a person that is found to have engaged in conduct described in subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances, including but not limited to the factors enumerated in Occupations Code, §2301.801(b).-]

[(c) Warning letter. In lieu of imposing sanctions under subsection (a) or (b) of this section, the division may issue a warning letter to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the Board may not issue a warning letter in more than three subsequent violations of the same or similar nature by that person in the same calendar year.-]

§215.144. Records. [Record of Sales and Inventory.-]

(a) Purchases [Purchase] and sales records. A dealer must maintain [keep] a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record [those records] available for inspection and copying by a representative of the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each [records relating to a] vehicle purchase, vehicle sale, [or sale] and any adaptive work performed on each [the] vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle.

(c) Location of records. A dealer's record [Records] reflecting purchases and sales for [at least] the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request. A dealer's record [Location. Records] for prior time periods may be kept off-site [at a location within the same county].

(d) Request for records. Within 15 days of [Upon] receipt of a request sent by mail or electronic document transfer from a representative of the department, [the division,] a dealer must deliver a copy of the [produce copies of] specified records to the address listed in the request [within 15 days.-] If a dealer has a concern about the origin of

a records request, the dealer may verify that request with the division prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain: [As used in this subsection, a complete record of vehicle purchases and sales shall contain the following information or documents:-]

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN; [vehicle identification number;]

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor [selling dealer] if the vehicle is offered for sale by consignment;

(7) except for [in] a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a [by a wholesale dealer,] copy of the receipt, titled "Tax [Tax] Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax" [Tax, Form 31];

(8) a copy of [copies of any and] all documents, forms, and agreements applicable to a particular sale, including a copy of: [including, but not limited to title applications; work-up sheets; Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements; buyer's orders; bills of sale; waivers; or other agreements between the seller and purchaser;]

(A) the title application;

(B) the work-up sheet;

(C) the front and back of manufacturer's certificate of origin or manufacturer's statement of origin, unless the title is obtained through the electronic title system;

(D) the front and back of the title, unless the title is obtained through the electronic title system;

(E) the factory invoice;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser; and

(L) Form VTR-136, relating to County of Title Issuance, completed and signed by the buyer;

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles offered for sale by a dealer, and a properly stamped original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles sold by a dealer if the title transaction is entered into the electronic system by the dealer;

(10) [(9)] the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) [(40)] if the vehicle sold is a motor home or a towable recreational vehicle[;] subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, [sale] notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments. [All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name.]

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

- (A) title;
- (B) manufacturer's statement of origin;
- (C) manufacturer's certificate of origin; or
- (D) other evidence of ownership.

(2) A dealer must apply in the name of the purchaser of a [motor] vehicle for the registration of the [motor] vehicle with the appropriate county tax assessor-collector as selected by the purchaser.

(3) To comply [To be in compliance] with Transportation Code, §501.0234(f), a registration is [and] considered filed within a reasonable time if the registration is filed within[; a registration filed in Texas must be filed within]

(A) 20 working days of the date of sale of the vehicle for a vehicle registered in Texas; or [- For a transaction that is dealer-financed, a registration filed in Texas within]

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is registered in Texas. [will be considered filed within a reasonable time.]

(4) The dealer is required to [shall] provide to the purchaser the receipt for the registration application.

(5) The dealer is required to [and] maintain a copy of the receipt for the registration application in the dealer's sales file.

(g) Out of state sales. For [Out-of-state sales. When] a sales transaction involving [involves] a vehicle to be transferred out of state, the dealer must[;]

(1) within 20 working days of the date of sale, either file the application for certificate of title on behalf of [for] the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and[-]

(2) maintain in the dealer's record at the dealer's licensed location [In such instance,] a photocopy of the completed sales tax exemption form for out of state [out-of-state] sales approved by the Texas Comptroller of Public Accounts [shall be maintained on file at the dealer's business location].

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement [for the vehicle] or a power of attorney for [covering] the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with the appropriate county tax assessor-collector as selected by the purchaser. The dealer must, for a minimum of 48 months, [and shall] maintain a record of each [such] vehicle offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment. [by vehicle identification number and

owner of each such vehicle handled on consignment for a minimum of 48 months.]

(i) Public motor vehicle auctions.

(1) A GDN holder that [general distinguishing number holder who] acts as a public motor vehicle auction must comply with [the requirements relating to consignment sales as set out in] subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle [vehicles] it offers for sale[; but]

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and[-]

(C) [(3)] [A public motor vehicle auction] must make application for title on behalf of the purchaser and remit motor vehicle sales tax within 20 working days of the sale of the [motor] vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder must maintain, for a minimum of 48 months, [auction must keep] a complete record of each vehicle purchase and sale [all vehicle purchases and sales] occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record [auction for a minimum period of 48 months and such records shall be made] available for inspection and copying by a representative of the department during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale [Records reflecting purchases and sales] for at least the preceding 24 months [must be maintained at the licensed location]. Records for prior time periods may be kept off-site [at a location within the same county].

(2) Within 15 days of [Upon] receipt of a request sent by mail[;] or by electronic document transfer from a representative of the department, a wholesale motor vehicle auction license holder must deliver a copy of the [auction must submit copies of] specified records to the address listed in the request [within 15 days].

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain: [The records required to be kept by a wholesale auction shall at a minimum provide the following information:]

- (A) the date of sale;
- (B) the VIN; [vehicle identification number;]
- (C) the name and address of the person selling the vehicle;
- (D) the name and address of the person purchasing the vehicle;
- (E) the dealer license number of both the selling dealer and the purchasing dealer, [seller and buyer] unless either is exempt from holding a license;
- (F) all information necessary to comply with the Truth in Mileage Act;
- (G) auction access documents, including the written authorization and revocation [cancellation] of authorization for an agent

or employee, in accordance with [agents, employees, or representatives required by] §215.148 of this title [subchapter] (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy [copies] of any written authorization [authorizations] allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by a representative of the department. A license holder does not have to maintain a copy of a vehicle title if the title is submitted through the electronic title system. [Any records required to be kept by a licensee may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department. Original hard copy titles or photocopies of the front and back of titles of vehicles in a dealer's inventory shall be kept in a secure location at the licensed location or within the same county as the licensed location.]

§215.145. *Change of Dealer's Status.*

(a) A dealer's name change requires [shall require] a new bond or a rider to the existing bond reflecting the new dealer name, unless the dealer is not otherwise required to purchase a bond. [The dealer may retain the same general distinguishing number.]

(b) A dealer shall notify the department [division] in writing within 10 days of a [if there is any] change of ownership. A licensed dealer that [who] proposes to sell or [and/or] assign to another any interest in the licensed entity, whether a corporation or otherwise, and provided [so long as] the physical location of the licensed entity remains the same, shall notify the department [division] in writing within 10 [ten] days of the change by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license. A publicly held corporation [Publicly-held corporations need] only needs to inform the department [division] of a change in ownership if one person or entity acquires a 10% [10 percent] or greater interest in the licensed entity. [licensee.]

(c) Upon the death of a dealer of a dealership [If a dealership is] operated as a sole proprietorship [and the sole proprietor dies], either the surviving spouse of the deceased dealer[,] or other individual deemed qualified by the department [division,] shall submit to the department [division] a bond rider adding the name of the surviving spouse or other qualifying person [his or her name] to the bond for the remainder of the bond and license term. The surviving spouse or other qualifying person [That person] may continue dealership operations under the current dealer license until the end of the license term. [its expiration. In the event the qualifying individual is a surviving spouse, he or she may change the ownership of the dealership upon renewal of the license without applying for a new general distinguishing number by submitting additional information regarding ownership, business background, and financial responsibility as required for a new application.]

(d) For purposes of subsection (c) of this section, if the qualifying person is the sole proprietor's surviving spouse, then the surviving spouse may change the ownership of the dealership at the time the license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole proprietor's surviving spouse is required to submit to the department:

(1) an application to amend the business entity;

(2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

(3) the required ownership information; and

(4) a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, if the qualifying person is not the surviving spouse, then the qualifying person may operate the sole proprietorship business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business; and

(3) a bond rider adding the individual's name to the existing bond.

(f) For purposes of subsection (c) of this section, if the qualifying person is not the surviving spouse, then at the time the license is due to be renewed, the qualifying person must file with the department an application for a new GDN.

(g) A determination made under this section does not impact a decision made by the board under Occupations Code, §2301.462, Succession Following Death of Dealer.

§215.146. *Metal Converter's License Plates.*

(a) A metal [Metal] converter's license plate [plates] shall be attached to the rear license plate holder of a vehicle in accordance with [vehicles on which the plates may be displayed pursuant to] Transportation Code, §503.0618.

[(b) Metal converter's license plates tags may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.]

[(c) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove the dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to that vehicle or the purchasing converter may display a converter's temporary tag or metal converter plate on that vehicle.]

(b) [(d)] A converter shall maintain a record of each metal converter's license plate [converter metal plate] issued to that converter. The record of each metal converter's license plate issued must contain: [that contains:]

(1) the assigned metal converter's license plate number;

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

(3) the VIN [vehicle identification number] of the vehicle [(VIN)]; and

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

(c) If a converter cannot account for a metal converter's license plate that the department issued to the converter, the converter must:

(1) document the metal converter's license plate as "void" in the converter's metal license plate record;

(2) within three days of discovering that the plate is missing, report to the department in writing that the metal converter's license plate is lost or stolen; and

(3) if found, cease use of the metal converter's license plate.

(d) A metal converter's license plate is no longer valid for use after the converter reports to the department that the plate is missing.

(e) A metal converter's license plate record shall be made available for inspection and copying by the department at the converter's licensed location during the converter's posted business hours.

~~[(e) Converter metal plates that cannot be accounted for shall be voided in the converter's dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing it is no longer valid.]~~

~~[(f) The converter's record, required under subsections (d) and (e) of this section, shall be available at the converter's location during normal working hours for review by a representative of the department.]~~

§215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be [may consist of]:

(1) a passport;

(2) a driver's license;

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

~~[(3) a consular identity document;]~~

(4) a national identification certificate or identity document; or

(5) other identification document containing the: [issued by the jurisdiction where the buyer resides that is able to be verified by law enforcement and includes the]

(A) name of the issuing jurisdiction; [the]

(B) buyer's full name; [;]

(C) buyer's foreign address; [;]

(D) buyer's date of birth; [;]

(E) buyer's photograph; [;] and

(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the license holder's GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

~~[(b) All licensees that sell a vehicle for export from the United States shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their General Distinguishing Number. The licensee shall also place the stamp on the front of the title in a manner that does not obscure any names, dates, mileage statements or other information printed on the title. The stamp must be at least two inches wide, and all text and the license number must be clearly legible.]~~

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The sales file record shall be made available for inspection and copying upon request by the department. The sales file record of each vehicle sold for export shall contain: [§215.144(d) and (i) of this subchapter (relating to Record of Sales and Inventory); a licensee shall maintain the following records in the sales file for each vehicle sold for export and shall make those records available upon request by a representative of the department:]

(1) a [A] completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State [for each vehicle sold], indicating that the vehicle has been purchased for export to a foreign country;

(2) a [A] copy of the front and back of the title of [to] the vehicle, showing the "For Export Only" stamp and the GDN of the dealer; and [General Distinguishing Number of the auction or dealer;]

~~[(3) A legible copy of each buyer's photo identification document; and]~~

(3) [(4)] if [H] applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall:

(1) enter the information required by Transportation Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063. [temporary buyer's tag as required by Transportation Code, §503.063 after entering the information in the database as required by Transportation Code, §503.064, and report the sale as for export.]

§215.148. Dealer Agents.

(a) A dealer must provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license.

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301.

(d) A dealer's authorization to an agent or employee shall:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Records).

~~[(a) In regard to the duties and obligations of a dealer, a dealer is responsible for the acts and omissions of any agent, representative, or employee if that dealer has given authority to any person for that agent, representative, or employee to act on the behalf of the dealer. This section is not to be construed in any manner to allow retail sales by any dealer agent or representative. The term "employee" used in this section includes only those persons paid by the licensee and reported on the federal form W-2, Wage and Tax Statement.]~~

~~[(b) A dealer must provide written authorization to any person buying or selling motor vehicles for resale or operating a licensed auction for the sale of motor vehicles for resale with which an agent, representative, or employee will be conducting business or acting on the dealer's behalf.]~~

~~[(1) Once a dealer has given written authorization for an agent, representative, or employee to buy and sell motor vehicles for resale for that dealer, the dealer shall be liable for any acts or omissions regarding duties and obligations of dealers caused by that agent, representative, or employee unless and until either the earlier of written notification of revocation of the agent's, representative's or employee's authority or revocation of the dealer's license.]~~

~~[(2) Written authorization shall be a letter on the dealership letterhead of the dealer authorizing buying or selling, or on a form approved by the director, and stating that the dealer is liable for any acts or omissions regarding duties and obligations of dealers, caused by that agent, representative, or employee including any financial considerations to be paid for the vehicle unless and until the recipient is notified in writing of the revocation of the authority. The letter or form shall be signed by the dealer principal or person in charge of daily activities of the dealership.]~~

~~[(3) The written authorization shall include the employee, agent or representative's name; current mailing address; phone number; the business name, address, and license number of the dealer with whom the employee or agent is associated. The written authorization is a record that must be kept as all other records set out in §215.144 of this subchapter (relating to Record of Sales and Inventory) and shall be made available to a division representative upon request.]~~

(e) [(e)] A license holder, including a wholesale motor vehicle auction license holder that [Any licensee, including wholesale auctions who act on behalf of others, who] buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle: [either an employee, agent or representative who represents they are buying or selling motor vehicles]

(1) on behalf of a licensed dealer; or[-]

(2) under the written authority of a licensed dealer.

(f) [(d)] A title to a vehicle bought by an agent or employee [Titles to vehicles bought by an employee, agent or representative] of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and [auction and]

(2) shall not be delivered to the agent or employee, [agent or representative] but delivered only to the dealer [; the dealer's employee,] or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an authorized agent[; representative] or employee may sign a [any] required odometer statement. [statements.]

(h) [(e)] In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn [Only checks or drafts drawn] on the purchasing dealer's account[; or]

(2) a cashier's check [cashiers checks] in the name of the purchasing dealer[;] or

(3) a wire transfer [wire transfers] from the purchasing dealer's bank account [shall be accepted for motor vehicles purchased in a wholesale transaction].

§215.149. Independent Mobility Motor Vehicle Dealers.

In accordance with Occupations Code, §2301.361, [~~§2301.362,~~] a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make [~~line make~~] if the franchised dealer applies for title and registration of the mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a mobility motor vehicle.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag [Dealers who hold a General Distinguishing Number license may issue dealer temporary tags, buyer's temporary tags, and Internet-down temporary tags] for each type of vehicle the dealer is licensed to sell. A converter that [who] holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag. [converter temporary tags.]

(b) A license holder [Licensees] may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag [temporary dealer, buyer's, or converter tags] until the [a] license is canceled [cancelled], revoked, or suspended [in accordance with law].

[(e) A dealer's authorization to obtain numbers in advance for use on Internet-down tags may be modified, suspended, or revoked after opportunity for hearing in accordance with Occupations Code, Chapter 2301 and Government Code, Chapter 2001, if the dealer has misused the tags or failed to comply with the requirements for issuance and recordkeeping in Transportation Code, §503.067 or this subchapter.]

§215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

[(a) All temporary tags shall be displayed in the rear license plate display area of the vehicle. The tag must be secured to the vehicle so that the entire tag is visible and legible.]

(b) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

~~[(e) Homemade tags or tags that have buyer's tag information printed on one side and dealer's tag information printed on the other side are not permitted.]~~

(c) ~~[(d)]~~ A ~~[Each]~~ motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a ~~[or]~~ converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported. ~~[that vehicle.]~~

§215.152. Obtaining Numbers for Issuance of Temporary Tags.

(a) A dealer or a converter is required to ~~[Dealers and converters must]~~ have Internet access to connect to the temporary tag databases maintained by the department.

(b) Except as provided by §215.157 of this title ~~[subchapter]~~ (relating to Advance Numbers, Preprinted Internet-down [Buyer's] Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a ~~[the]~~ dealer or converter must:

(1) enter in the temporary tag ~~[into the]~~ database information about the vehicle, dealer, converter, or buyer, as appropriate; ~~;~~ and

(2) obtain a specific number for the temporary tag. ~~[tag before a temporary tag may be issued and displayed on a vehicle.]~~

§215.153. Specifications for All Temporary Tags.

(a) Information printed or completed on a temporary tag ~~[all temporary tags]~~ must be in black ink on a white background. Other than for a motorcycle ~~[For vehicles, other than motoreyes],~~ a completed buyer's, dealer's, converter's, or preprinted [buyer, dealer, converter, and] Internet-down temporary tag shall be six ~~[6]~~ inches high and at least ~~[by a minimum of]~~ 11 inches wide. For a motorcycle ~~[motoreyes],~~ the completed buyer's, dealer's, converter's, or preprinted [buyer, dealer, converter, and] Internet-down temporary tag shall be four ~~[4]~~ inches high and at least seven ~~[by 7]~~ inches wide.

(b) A temporary tag ~~[All temporary tags]~~ must be:

(1) composed of plastic or other durable, weather-resistant material; ~~or;~~ or must be

(2) sealed in a two ~~[2]~~ mil clear poly bag that encloses the entire temporary tag.

(c) A dealer or converter may manually copy the information ~~[provided]~~ from the temporary tag database to a preprinted [pre-printed] temporary tag template. A temporary tag completed in this manner must: [in accordance with the specifications of the appropriate appendix listed in subsection (e) of this section. Temporary tags completed by hand must have]

(1) display the information drawn in letters and numerals with a permanent, thick, black marking pen; and ~~;~~

(2) comply with the specifications of the applicable temporary tag identified by the following appendices:

~~[(e)]~~ ~~[If a dealer uses the option provided by subsection (b) of this section, the dealer or converter shall use the design of the respective temporary tag from the appropriate following Appendices:]~~

(A) ~~[(+)]~~ Appendix A-1 - Dealer's Temporary Tag [Dealer] - Assigned to Specific Vehicle;
Figure: 43 TAC §215.153(c)(2)(A)

~~[Figure: 43 TAC §215.153(e)(1)]~~

(B) ~~[(2)]~~ Appendix A-2 - Dealer's Temporary Tag [Dealer] - Assigned to Agent;
Figure: 43 TAC §215.153(c)(2)(B)
~~[Figure: 43 TAC §215.153(e)(2)]~~

(C) ~~[(3)]~~ Appendix B-1 - Buyer's Temporary Tag [Buyer];
Figure: 43 TAC §215.153(c)(2)(C)
~~[Figure: 43 TAC §215.153(e)(3)]~~

(D) ~~[(4)]~~ Appendix B-2 - Preprinted Internet-down Temporary Tag; and
Figure: 43 TAC §215.153(c)(2)(D)
~~[Figure: 43 TAC §215.153(e)(4)]~~

(E) ~~[(5)]~~ Appendix C-1 - Converter's Temporary Tag [Converter].
Figure: 43 TAC §215.153(c)(2)(E)
~~[Figure: 43 TAC §215.153(e)(5)]~~

§215.154. Dealer's ~~[Dealer]~~ Temporary Tags.

(a) A dealer's temporary tag ~~[Dealer temporary tags]~~ may be displayed only on the type of vehicle for which the GDN ~~[general distinguishing number]~~ is issued and for which the ~~[a]~~ dealer is licensed by the department to sell.

~~[(b)]~~ Dealer temporary tags may be used by the dealer only to:

~~[(1)]~~ demonstrate the vehicle or cause the vehicle to be demonstrated to a prospective buyer for sale purposes only;

~~[(2)]~~ convey or cause the vehicle to be conveyed;

~~[(A)]~~ from one of the dealer's places of business in this state to another of the dealer's places of business in this state;

~~[(B)]~~ from the dealer's place of business to a place where the vehicle is to be repaired, reconditioned, or serviced;

~~[(C)]~~ from the state line or a location in this state where the vehicle is unloaded to the dealer's place of business;

~~[(D)]~~ from the dealer's place of business to a place of business of another dealer;

~~[(E)]~~ from the point of purchase by the dealer to the dealer's place of business;

~~[(F)]~~ to road test the vehicle;

~~[(3)]~~ use the vehicle for or allow its use by a charitable organization or use the vehicle or allow its use in parades; or

~~[(4)]~~ permit a customer to temporarily operate a vehicle while the customer's vehicle is being repaired. A vehicle-specific type dealer temporary tag shall be used for this purpose.

~~[(e)]~~ A vehicle being conveyed under this section is exempt from the inspection requirements of Transportation Code, Chapter 548.

(b) ~~[(d)]~~ A wholesale motor vehicle auction license holder that also holds a dealer GDN ~~[A dealer who holds a wholesale motor vehicle auction general distinguishing number]~~ may display a dealer's temporary tag on a vehicle that is being ~~[its dealer temporary tags on any vehicles that are]~~ transported to or from the licensed auction location ~~[by a bona fide employee or agent of the auction].~~

(c) ~~[(e)]~~ When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's ~~[its dealer]~~ temporary tag. The purchasing dealer may display its dealer temporary tag or

its metal dealer's license [dealer] plate on the vehicle. [If a vehicle is consigned from one dealer to another, the vehicle must display the temporary tag of the dealer to which that vehicle was consigned.]

(d) [(f)] A dealer's temporary tag [Dealer temporary tags] may not be displayed on:

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

(2) on the dealer's service or work vehicles.

(e) [(H)] For purposes of this section, a dealer's service or work vehicle includes: [Examples of vehicles considered as service or work vehicles for purposes of this subsection are:]

(1) [(A)] a vehicle used for towing or transporting other vehicles;

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

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

(4) [(D)] a rental or lease vehicle; and

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

[(2) A light truck is not considered to be a laden commercial vehicle when it is:]

[(A) mounted with a camper unit; or]

[(B) towing a trailer for recreational purposes.]

(f) [(I)] For purposes of subsection (d) of this section, a [A] vehicle bearing a dealer's temporary tag is not considered [to be] a laden commercial vehicle when the vehicle [it] is:

(1) [(A)] towing another vehicle bearing the same dealer's temporary tags; and

(2) [(B)] both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle [auto] auction or from a licensed wholesale motor vehicle [auto] auction to the dealer's place of business.

(g) [(4)] As used in this section, "light truck" has the [same] meaning assigned by Transportation Code, §541.201.

(h) [(g)] A dealer's [dealer] temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) [(h)] A dealer's [dealer] temporary tag must show its expiration date, which must [which may] not exceed 60 days after the date the temporary tag was issued. [its date of issuance.]

(j) [(i)] A dealer's [dealer] temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) [(j)] A dealer that [who] issues a dealer's [dealer] temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]

(4) the month, day, and year of the temporary tag's expiration; and[-]

(5) the name of the dealer.

(l) [(k)] A dealer that [who] issues a dealer's [dealer] temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific [agent-specific] number from the temporary tag database; [and]

(2) the month, day, and year of the temporary tag's expiration; and[-]

(3) the name of the dealer.

§215.155. *Buyer's Temporary Tags.*

(a) A buyer's temporary [buyer's] tag may be displayed only on a vehicle that can be legally operated on [may be operated upon] the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

[(b) A dealer must place a temporary buyer's tag on any new or used vehicle sold by the dealer, except for a vehicle sold in a wholesale transaction in which the purchasing dealer places its own dealer temporary tag or the purchasing dealer's metal dealer plate on the vehicle.]

(d) [(e)] A buyer's temporary tag is [Temporary buyer's tags are] valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) [(d)] The dealer must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]

(4) the month, day, and year of the expiration of the buyer's temporary tag; and [tag's expiration.]

(5) the name of the dealer.

§215.156. *Buyer's Temporary Tag Receipt.*

A dealer must provide a buyer's temporary tag receipt to the buyer of each vehicle for [to] which a buyer's temporary tag is issued, regardless of whether the buyer's temporary tag is issued using the temporary tag database or if the tag is a preprinted [in the ordinary course of business or is an] Internet-down temporary tag. The dealer may print the image of the buyer's temporary tag receipt issued from the temporary tag database or create [construct] the form using the same information. The dealer shall instruct the buyer to keep a copy of the buyer's temporary tag receipt in the vehicle until the vehicle is registered in the buyer's name and until metal plates are affixed to the vehicle. The buyer's temporary tag receipt must include the following information:[-]

- (1) the issue date of the buyer's temporary tag;
- (2) the year, make, model, body style, color, and VIN [vehicle identification number (VIN)] of the vehicle sold;
- (3) the vehicle-specific temporary tag number;
- (4) the expiration date of the temporary tag;
- (5) the date of the sale;
- (6) the name of the issuing dealer and the dealer's license number; and
- (7) the buyer's name and mailing address.

§215.157. Advance Numbers, Preprinted Internet-down [Buyer's] Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a dealer may obtain an advance supply of preprinted Internet-down temporary tags with specific numbers and buyer's temporary tag receipts to issue in lieu of buyer's temporary tags if the dealer is unable to access the Internet.

(b) If a dealer is unable to access the Internet at the time of a sale, the dealer must complete the preprinted Internet-down temporary buyer's tag and buyer's temporary tag receipt by providing details of the sale, signing the buyer's temporary tag receipt, and retaining a copy. The dealer must [and sign the buyer's receipt, retain a copy of the signed buyer's receipt, and] enter the required information regarding [on] the sale in the temporary tag [into the] database not later than the close of the next business day that the dealer has access to the Internet. The buyer's temporary tag receipt must include [have] a statement that the dealer has Internet access[;] but, at the time of the sale, the dealer was unable to access the Internet or the temporary tag database.

§215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

(a) [Preprinted tags with Internet-down numbers shall be kept in a secure place.] The dealer is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place. The dealer [those tags and] shall report any loss, theft, or destruction of preprinted Internet-down temporary [those] tags to the department within 24 hours of discovering [the time of] the loss, theft, or destruction.

(b) A dealer may use a preprinted Internet-down temporary tag [Tags with Internet-down numbers may be used] up to 12 months after the date the preprinted Internet-down temporary tag is created. [of issuance of the tag from the database.] A dealer may create replacement preprinted Internet-down temporary tags [tags with Internet-down numbers,] up to the maximum allowed, when:

(1) a dealer uses one or more preprinted Internet-down temporary tags and then enters the required information in the temporary tag database [tags with Internet-down numbers and then enters the data into the system,] after access to the temporary tag database [system] is again available; or

(2) a preprinted Internet-down temporary tag expires. [tag with an Internet-down number expires.]

(c) The number of preprinted Internet-down temporary tags that [tags with Internet-down numbers] a dealer may create is equal to the greater [greatest] of:

- (1) the number of preprinted Internet-down temporary tags previously allotted by the department to the dealer;
- (2) 30 [thirty]; or
- (3) 1/52 of the dealer's total annual sales.

(d) For good cause shown, a dealer may obtain more than the number of preprinted Internet-down temporary tags described in subsection (c) of this section. The director of the Vehicle Titles and Registration Division of the department[;] or that director's delegate[;] may approve, in accordance with this subsection, an additional allotment of preprinted Internet-down temporary tags [with Internet-down numbers] for a dealer if the additional allotment is essential for the continuation of the dealer's business. The director of the Vehicle Titles and Registration Division of the department[;] or that director's delegate[;] will base the determination of the additional allotment of preprinted Internet-down temporary tags on the dealer's past sales, inventory, and any other factors that the director of the Vehicle Titles and Registration Division of the department[;] or that director's delegate[;] determines pertinent, such as an emergency. A request for additional preprinted Internet-down temporary tags [tags with Internet-down numbers] must specifically state why the additional preprinted Internet-down temporary tags are necessary for the continuation of the applicant's business.

§215.159. Converter's Temporary Tags.

~~[(a) Converter's temporary tags may be used only by the converter or the converter's employees on unregistered vehicles to:]~~

~~[(1) demonstrate the vehicle, or cause the vehicle to be demonstrated, to a prospective buyer who is a franchised motor vehicle dealer or an employee of a franchised motor vehicle dealer; or]~~

~~[(2) convey the vehicle or cause the vehicle to be conveyed:]~~

~~[(A) from one of the converter's places of business in this state to another of the converter's places of business in this state;]~~

~~[(B) from the converter's place of business to a place where the vehicle is to be assembled, repaired, reconditioned, modified, or serviced;]~~

~~[(C) from the state line or a location in this state where the vehicle is unloaded to the converter's place of business;]~~

~~[(D) from the converter's place of business to a place of business of a franchised motor vehicle dealer; or]~~

~~[(E) to road test the vehicle.]~~

~~[(b) Prospective buyers who are employees of a franchised dealer or a converter may operate a vehicle displaying converter's temporary tags during a demonstration.]~~

~~[(c) A vehicle being conveyed while displaying a converter's temporary tag is exempt from the inspection requirements of Transportation Code, Chapter 548.]~~

~~[(d) Converter's temporary tags may not be used to operate a vehicle for the converter's or a converter's employee's personal use.]~~

~~[(e) A converter's temporary tag [Converter's temporary tags] may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.~~

~~[(f) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove a dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to the vehicle or the purchasing converter may display a converter's temporary tag or metal converter plate on the vehicle.]~~

~~[(g) A converter's [A converter] temporary tag must show its expiration date, which may not be more than 60 days after the date of its issuance.~~

~~[(h) A converter temporary tag may be issued by a converter to a specific vehicle or to a converter's agent who is authorized to operate a motor vehicle owned by the converter.]~~

(c) [(i)] A converter that [who] issues a converter's temporary [converter's] tag to a specific vehicle shall ensure that the following information is placed on the converter's temporary tag:

- (1) the vehicle-specific [vehicle specific] number from the temporary tag database;
- (2) the year and make of the vehicle;
- (3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]
- (4) the month, day, and year of [the tag's] expiration of the converter's temporary tag; and[-]
- (5) the name of the converter.

[(j)] A converter who issues a temporary converter's tag to an agent shall ensure that the following information is placed on the tag:]

- [(1) the agent-specific number from the database; and]
- [(2) the month, day, and year of the tag's expiration.]

§215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

(a) For each motor vehicle a dealer displays or offers for retail sale and which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100. The written disclosure must:

- (1) be visible from outside of the motor vehicle; and
- (2) contain lettering that is reasonable in size, stating as follows: "*This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle.*"

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in eleven point or larger font that states as follows: "*I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle.*"

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure does not require a separate signature.

(d) An original signed acknowledgement required by subsection (b) of this section or a signed vehicle disclosure form shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Records). If the acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that document must be given to the purchaser and a copy retained in the dealer's records in accordance with §215.144.

(e) This section does not apply to a wholesale motor vehicle auction.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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43 TAC §§215.136, 215.142, 215.143

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

- §215.136. *Off-site Sales.*
§215.142. *GDN Sanction and Qualification Hearing.*
§215.143. *Manufacturers License Plates.*

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

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SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.181

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department

of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.171. *Purpose and Scope.* [Objective.]

This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301 and more specifically[; and in particular], §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and 2301.551 - 2301.556[; by prescribing rules to regulate the business of leasing motor vehicles in this state].

§215.173. *License.*

(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department [has a currently valid license assigned by the division], or is otherwise exempt by law from obtaining such a license.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax, [in which Social Security, Federal Unemployment Tax,] and all other appropriate taxes are withheld from the representative's paycheck and [said taxes are] paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.

§215.174. *Application for a License.*

(a) An applicant [Application] for a vehicle lessor's or vehicle lease facilitator's license must submit a sufficient application to the department. To be sufficient, the application must [shall] be on a form prescribed by the department and accompanied by all required supporting documentation. [division; properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested.]

(b) The supporting documentation for a vehicle lessor's license application shall include:

{(1) a letter of appointment for each lease facilitator or acceptable substitute as designated by the division;}

(1) [(2)] [a] verification of the criminal background of each owner and officer of the applicant, if applicable;

(2) [(3)] the fee required [for the license as prescribed] by law for each type of license required;

(3) [(4)] a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk; [and]

(4) [(5)] a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;[-]

(5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business; and

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location.

(c) The supporting documentation for a vehicle lease facilitator's license application shall include:

{(1) a letter of appointment from each lessor or acceptable substitute as designated by the division;}

(1) [(2)] [a] verification of the criminal background of each owner and officer of the applicant, if applicable;

(2) [(3)] the fee required [for the license as prescribed] by law for each type of license required;

(3) [(4)] a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(4) [(5)] a sample copy of the vehicle lease agreement between each of the lessors the lease facilitator represents, and the [a] lessee; [and]

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for [with] whom any vehicle lease facilitator solicits or procures a lessee. The vehicle lease facilitator shall update the list upon renewal of a license and within 10 [executes leases. This list must be updated in writing upon renewal of a license, and within ten] days of the addition of any vehicle lessor to this list; and[-]

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor.

§215.175. *Sanctions.*

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

~~[(a) Revocation/Denial. The Board may revoke, deny or suspend a lessor or lease facilitator's license, or assess civil penalties, if that lessor or lease facilitator:]~~

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

~~(1) fails to maintain an established and permanent place of business required by [conforming to] §215.177 of this title [subchapter] (relating to Established and Permanent Place of Business);~~

~~(2) fails to maintain records required under this subchapter;~~

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

~~(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);~~

~~(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or~~

~~(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;~~

~~[(A) during normal working hours at the lessor's or lease facilitator's permanent place of business; or]~~

~~[(B) through a request made by the division pursuant to these rules;]~~

~~(4) refuses or fails to timely comply with a request for records made by a representative of the department;~~

~~(5) ~~[(3)]~~ fails to notify the department in writing within 10 days ~~[division] of a change of the vehicle lessor or vehicle lease facilitator license holder's: [address within ten days after such change;]~~~~

~~(A) mailing address;~~

~~(B) physical address;~~

~~(C) telephone number; or~~

~~(D) email address;~~

~~(6) ~~[(4)]~~ fails to notify the department in writing within 10 days ~~[division] of a change of the vehicle lessor or vehicle lease facilitator license holder's name or ownership: [lessor/lease facilitator's name or ownership within ten days after such a change;]~~~~

~~(7) ~~[(5)]~~ fails to comply with ~~[observe] the fee restrictions or other requirements under [as described in] Occupations Code, §2301.357 or [and] §§2301.551 - 2301.556;~~~~

~~(8) ~~[(6)]~~ fails to maintain ~~[leasing and/or] advertisement records or otherwise fails to comply with the advertising requirements of: [as described in these rules;]~~~~

~~(A) §215.178; or~~

~~(B) Subchapter H of this chapter (relating to Advertising);~~

~~[(7) fails to remain regularly and actively engaged in the business of leasing vehicles or facilitating the leasing of vehicles for which the license is issued;]~~

~~(9) ~~[(8)]~~ violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;~~

~~(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;~~

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

~~(12) ~~[(9)]~~ uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision ~~[provisions] of Occupations Code, Chapter 2301; or~~~~

~~(13) ~~[(10)]~~ wilfully omits material information or makes a material misrepresentation in any application or other documentation ~~[information] filed with the department. [division;]~~~~

~~[(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;]~~

~~[(12) violates any state or federal law relating to the leasing of new motor vehicles.]~~

~~(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.~~

~~(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the vehicle lease facilitator's failure to notify the department in writing within 10 days of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.~~

~~(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer, directly or indirectly, for referring a customer who purchases or considers purchasing a motor vehicle.~~

~~[(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.]~~

~~§215.176. More Than One Location.~~

~~(a) A vehicle lease facilitator ~~[Lease facilitators] must be licensed separately for each business location.~~~~

~~(b) A vehicle lessor or vehicle lease facilitator that relocates ~~[Lessors or lease facilitators that relocate] from a point outside the limits of a city or relocates[, or relocate] to a point not within the limits of the same city of the initial location is [are] required to obtain a new license.~~~~

~~(c) A vehicle lessor is ~~[Lessors are] required to obtain a license for the vehicle lessor's primary location. A vehicle lessor [their primary~~~~

locations. Lessors] must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

§215.177. Established and Permanent Place of Business.

(a) A vehicle lessor or vehicle lease facilitator operating within the State [state] of Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within the State of [within] Texas must be open to the public. The vehicle lessor's or vehicle [lessor or] lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The[; and the] owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office [The] structure must be of sufficient size to accommodate the following required equipment: [and must be equipped with]

(i) a desk and chairs from which the vehicle lessor or vehicle lease facilitator transacts [his] business; and [-The office also must be equipped with]

(ii) a working telephone number [instrument] listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts [does] business.

(C) [(B)] A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with [supplemental location must conform to] the following requirements.[;]

(i) The office must be located in a building[;] with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and [or] capable of receiving U.S. mail.

(D) [(C)] A portable-type office structure may qualify as an office only if the structure meets the[; provided it meets the minimum] requirements of this section and is not a readily moveable trailer or other [such] vehicle.

(E) One or more licensed vehicle lessors or vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each person engaged in business as a vehicle lessor or vehicle lease facilitator must have:

[(D)] [In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitators operating from such location will

be acceptable; provided, however, each lessor or lease facilitator must have:]

(i) a separate desk from which that vehicle lessor or vehicle lease facilitator transacts business;

(ii) a separate working telephone number listed [instrument, number, and listing] in the vehicle lessor or vehicle lease facilitator's business name or assumed name;

(iii) a separate right of occupancy that meets [meeting] the requirements of this section; and[-]

(iv) a vehicle lessor or vehicle lease facilitator license issued by the department in the name of the vehicle lessor or vehicle lease facilitator.

(F) [(E)] A vehicle lease facilitator's established and permanent place of business[; as prescribed in this rule,] must be physically located within the State [state] of Texas.

(2) Sign requirements. A vehicle lessor or vehicle lease facilitator shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor signs must contain letters that are at least [no smaller than] six inches in height.

(3) Premises lease [Lease] requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business is [are] not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle [licensee, such licensee shall maintain a lease continuous for the same period of time as the] lessor's or vehicle lease facilitator's license will be issued. The premises[; and such] lease agreement must [shall] be on a properly executed form containing at a minimum[; but not limited to the following information]:

(A) the name of the landlord of the premises and the name of the vehicle lease facilitator as the tenant of the premises; [names of the lessor and lessee;]

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; [or street address;] and

(C) the period of time for which the premises lease is valid.

(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and whose licensed location is in another state [and who does not deal directly with the public to execute leases] must meet the following requirements at each location.

(1) Physical location requirements.

(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment: [and must be equipped with]

(i) a desk and chairs from which the vehicle lessor transacts [his] business; and[- The office also must be equipped with]

(ii) a working telephone number [instrument] listed in the business name or assumed name under which the vehicle lessor conducts [lessor or lease facilitator does] business.

(B) A vehicle lessor that files an application for a new license or a satellite location with a primary [supplemental location

whose] licensed location [is] in another state must conform to the following requirements.[:]

(i) The office must be located in a building[:] with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and and [or] capable of receiving U.S. mail.

(C) A portable-type office structure may qualify as an office only if the structure meets the[: ~~provided it meets the minimum~~] requirements of this section and is not a readily moveable trailer or other [~~such~~] vehicle.

(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations under different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:

~~[(D) [In those instances when two or more lessors occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors operating from such location will be acceptable; provided, however, each lessor must have:]~~

(i) a separate desk from which that vehicle lessor transacts business;

(ii) a separate working telephone number listed [instrument, number, and listing] in the vehicle lessor's business name or assumed name;

(iii) a separate right of occupancy that meets [meeting] the requirements of this section; and[:]

(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.

(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least [no smaller than] six inches in height.

(3) Premises lease [Lease] requirements. If the out of state premises from which a licensed vehicle lessor conducts business is [are] not owned by the license holder, the license holder must maintain a valid premises lease for [that person or entity, that person or entity shall maintain a lease on] the property of the licensed location. The premises lease must be continuous during the period of time for which the license will be issued. The premises lease agreement must [continuous for the same period of time as the license, and such agreement shall] be on a properly executed form containing at a minimum[:], but not limited to the following information[:]

(A) the name [names] of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises; [lessor and lessee;]

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; [or street address;] and

(C) the period of time for which the premises lease is valid.

(c) ~~[Independence.]~~ A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

(1) employee or [of, a] legal subsidiary of the financial institution or dealership; or[: or an]

(2) entity wholly owned by the financial institution or dealership.

(d) For [the] purposes of this section, [subsection,] an employee is a person who meets the requirements of §215.173(b) of this title [chapter] (relating to License).

§215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators [of Leasing].

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain [keep] a complete record of all vehicle purchases and sales for [a minimum period of] at least one year after the expiration of the vehicle lease.

(1) Records reflecting vehicle lease transactions that [have] occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles of the licensed location.

(2) Within 15 days of [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].

(b) Content of records. A complete record for a vehicle lease transaction must contain: [As used in this subsection, a complete lease file shall contain the following information or documents:]

(1) the name, address [names, addresses], and telephone number [numbers] of the lessor of the vehicle subject to [in] the transaction;

(2) the name, mailing address, physical address, [names, addresses] and telephone number of each [numbers of the] lessee of the vehicle subject to [in] the transaction;

(3) the name, address, [names, addresses] telephone number, [numbers] and license number [numbers] of the lease facilitator of the vehicle subject to [in] the transaction;

(4) the name, home address, and telephone number of each employee of the vehicle lease facilitator that [who] handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN; [its vehicle identification number (VIN);]

(6) the name, address, telephone number, and GDN [general distinguishing number] of the dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle involved in the transaction is a new motor vehicle;

(7) the amount of fee [received by or] paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy [copies] of the buyer's [buyers] order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy [copies] of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy [copies] of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, [Manufacturer's Statement/Certificate of Origin] or the title of the vehicle if the vehicle involved in the transaction is a new motor vehicle.

(c) Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a copy [copies] of all advertisements, brochures, scripts, or an [or] electronically reproduced copy [copies], in whatever medium appropriate, of promotional materials for a period of at least 18 months. Each copy is[.] subject to inspection upon request by a representative of the department [Board] at the business of the license holder during posted [licensee during regular] business hours.

(1) Vehicle Lessors and vehicle lease facilitators must comply with all federal and state advertising laws and regulations, including [All advertisements by lessors or lease facilitators must be in accordance with] Subchapter H of this chapter (relating to Advertising).

(2) A vehicle lessor or vehicle lease facilitator [Lessors and lease facilitators] may not state or infer in any advertisement, either directly or indirectly, that the [in any manner such as advertisements, stationery or business cards that their] business involves the sale of new motor vehicles.

(d) Title assignments. Each certificate [All certificates] of title, manufacturer's certificate [certificates] of origin, or other evidence of ownership for a vehicle that has [vehicles which have] been acquired by a vehicle lessor for lease must be properly assigned [properly] from the seller in the vehicle [into the] lessor's name.

(e) Letters of appointment. A letter [All letters] of appointment between a vehicle lessor and a vehicle [each lessor or] lease facilitator with whom the vehicle lessor conducts [the licensee does] business must be executed by both parties.

(f) Electronic records. Any record [records] required to be maintained [kept] by a vehicle lessor or vehicle lease facilitator may be maintained [kept] in an electronic format, provided [if] the electronic record [records] can be printed at the licensed location upon request for the record by a representative of the department.

§215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

(a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [who] proposes to sell or [and/or] assign to another any interest in the licensed entity, whether a corporation or otherwise, provided [so long as] the physical location of the licensed entity remains the same, shall notify the department [division] in writing within 10 [ten] days by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing or assignee [purchasing/assignee] entity must apply for and obtain a new license. A publicly held corporation licensed as a vehicle lessor or vehicle lease facilitator needs only inform the department [Publicly held corporations licensed as lessors or lease facilitators need only inform the division] of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity. [licensee.]

(b) Change of operating status of business location. A license holder [licensee] shall obtain department [division] approval prior to opening a satellite location or relocating [the opening of a supplemental location, or the relocation of] an existing location, in accordance with §215.176 of this title [subchapter] (relating to More than One Lo-

cation). A license holder [Also, a licensee] must notify the department [division] when closing an existing location or a satellite location.

§215.180. Required Notices to Lessees.

Vehicle lessors and vehicle [Lessors and] lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §§2301.204 and 2301.601 - 2301.613 to each lessee of a new motor vehicle with whom they enter into a vehicle [transact a] lease.

§215.181. General Distinguishing Number Exception.

A licensed vehicle lessor is not required to hold a GDN [It is not necessary for a licensed lessor to hold a general distinguishing number (GDN)] in order to sell a motor vehicle that the vehicle lessor owns to [lessor owns, to either] the lessee or to a duly licensed dealer, either directly or through a licensed wholesale motor vehicle auction. A licensed vehicle lessor may not purchase a motor vehicle [lessor is not allowed to purchase vehicles] at a wholesale motor vehicle auction. Any existing GDN held by a vehicle lessor that [lessor who] does not otherwise qualify for a GDN shall be canceled. A vehicle [cancelled. A] lessor whose GDN has been canceled [cancelled] under this section may reapply for a GDN once all the qualifications for a GDN are met.

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

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David D. Duncan

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



43 TAC §215.172

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.172. Definitions.

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

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SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201 - 215.210

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.201. *Purpose and Scope. [Objective and Definitions.]*

(a) This subchapter implements Occupations Code, §2301.204 and §§2301.601 - 2301.613.

(a) It is the objective of this subchapter to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, Subchapter M (§§2301.601-2301.613) and Occupations Code, §2301.204. These rules provide a simplified and fair procedure for the enforcement of these provisions of the Code, including the processing of complaints, the conduct of hearings, and the formal or informal disposition of complaints filed by owners seeking relief under these provisions of the Code.

(b) Practice and procedure in contested cases heard by the department's [State] Office of Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) [(SOAH) are provided for in Subchapter F of this chapter (relating to Practice and Procedure for Hearings

Conducted by the State Office of Administrative Hearings)] and the provisions of this subchapter to the extent that the provisions do not conflict with state law, rule, or court order. [SOAH rules.]

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

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

(2) Lemon Law--Refers to Occupations Code, Chapter 2301, Subchapter M (§§2301.601-2301.613).

[(3) Owner--A person as defined by Occupations Code, §2301.601(2).]

(3) [(4)] Warranty Performance--Refers to Occupations Code, §2301.204.

§215.202. *Filing of Complaints.*

(a) Lemon law complaints. [Law Complaints.]

(1) Complaints seeking [for] relief under the lemon law must be in writing [written] and filed with the department. A complaint filed with the department shall be delivered:

(A) in person to the department; [by hand delivery to the department's headquarters building in Austin;]

(B) by mail to the address of the department; [; or]

(C) by email [by e-mail or facsimile transmission] to a department-designated email address; or [e-mail address or]

(D) by facsimile transmission to a department-designated facsimile number.

(2) Complaints may be submitted in letter or other written format, or on complaint forms provided by the department.

(3) [(2)] Complaints shall [should] state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming [which form] the basis of the claim for relief under the lemon law.

(4) [(3)] Complaints shall, at a minimum, [should] provide the following information:

(A) the name, address, and telephone [phone] number of the motor vehicle owner;

(B) the identification of the motor vehicle, including the [vehicle by] make, model, [and] year, and manufacturer's VIN; [vehicle identification number;]

(C) the type of warranty coverage;

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

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

(F) the motor vehicle mileage at the time when: [time]

(i) the motor vehicle was purchased or leased; [; mileage when]

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

(iii) the complaint was filed;

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

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

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

(ii) a copy of each repair order; with copies of repair orders] where possible;

(I) [(H)] the date the motor [date on which written notification of complaint was given to the] vehicle manufacturer, converter, or distributor received written notification of the complaint; and

(J) the date and results of the motor vehicle inspection, if the motor vehicle was [if the vehicle has been] inspected by the manufacturer, converter, or distributor; the date and results of such inspection; and

(K) [(H)] any other information [which] the complainant deems relevant [believes to be pertinent] to the complaint.

(5) [(4)] The department's staff will provide information concerning the complaint procedure and complaint forms to any person requesting [information or] assistance.

(6) [(5)] The filing fee required under the lemon law should be remitted with the complaint by any form of payment accepted by the department. The filing fee is nonrefundable, but a complainant that [who] prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of the 150-day period referenced in paragraph (8) [(7)] of this subsection and may result in dismissal of the complaint.

(7) [(6)] The commencement of a lemon law proceeding occurs on the date the filing fee is received [of receipt of the filing fee] by the department or its authorized agent.

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

(b) Warranty performance complaints (repair-only relief). [Performance Complaints (Repair-Only Relief).]

(1) Complaints for warranty performance relief filed with the department must comply with the requirements of subsection (a)(1) - (4) [(a)(1) - (3)] of this section.

(2) A [No] filing fee is not required for a complaint that is subject to [filed for] a warranty performance claim.

(3) A complaint may be filed with the department in accordance with this section if [if] the defect in the motor vehicle subject to [that is the subject of] the warranty performance complaint was reported to the manufacturer, converter, distributor, or to an [or distributor or its] authorized agent prior to the expiration of the warranty pe-

riod; a complaint may be filed with the department in accordance with this section].

(4) If the defect is not [cannot be] resolved pursuant to §215.205 of this title [subchapter] (relating to Mediation; Settlement), a hearing will be scheduled and conducted in accordance with Government Code, Chapter 2001, subject to [this subchapter and] Occupations Code, Chapter 2301, Subchapter O and this subchapter.

(5) The final order authority will issue an order on the warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with [using the procedures described in] §215.207 of this title [subchapter] (relating to Contested Cases: Final Orders).

(6) Department staff will provide information concerning the complaint procedure and complaint forms to any person requesting [information or] assistance.

§215.203. Review of Complaints.

Department staff will promptly review a complaint [All complaints will be reviewed promptly by department staff] to determine if the complaint meets [whether they satisfy] the minimum requirements of a lemon law or a warranty performance complaint.

(1) If department staff cannot determine [it cannot be determined] whether a complaint meets [satisfies] the minimum lemon law or warranty performance requirements, the complainant will be contacted for additional information.

(2) If department staff determines [it is determined] that the complaint meets [does meet] the minimum lemon law or warranty performance requirements, the complaint will be processed in accordance with [the procedures set forth in] this subchapter.

§215.204. Notification to Manufacturer, Converter, or Distributor.

(a) Upon receipt of a complaint for lemon law or warranty performance relief, the department will:

(1) provide notification of the complaint to, and request a response from, the appropriate manufacturer, converter, or distributor; and a response to the complaint will be requested. The department will also

(2) provide a copy of the complaint to, and may request a response from, the selling dealer and any other dealer [dealers that have been] involved with the complaint; and a response may be requested].

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

§215.205. Mediation; Settlement.

(a) Department [Before a complaint filed under Occupations Code, §§2301.204 or §2301.601 - 2301.613 is scheduled for a hearing, department] staff will attempt to settle or resolve a lemon law or warranty performance complaint through nonbinding mediation before a hearing on the complaint is scheduled. [effect a settlement or resolution of the complaint through mediation.]

(b) The parties are required [While the mediation is not binding, all parties are required] to participate in the nonbinding mediation process in good faith.

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

§215.206. Hearings.

Lemon law or warranty performance complaints that satisfy the jurisdictional requirements of the Occupations Code will be set for hearing. Notification; and notification of the date, time, and place of the hearing will be given to all parties by certified mail. Additional information contained in the notice of hearing shall be consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).

(1) When [Where] possible, hearings will be held in the city in which [where] the complainant resides [or at a location reasonably convenient to the complainant].

(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day notice or other notice; or such other notice as is required by law; is given to all parties.

(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O; Occupations Code, §2301.704; and with the provisions of Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) and this subchapter.

(4) Hearings will be conducted informally [informal]. The parties have the right to be represented by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented at a hearing by an attorney or an authorized representative [at a hearing] must notify the hearings examiner, the department, and any [the] other party in writing at least five business days prior to the hearing. Failure to provide [such] notice will result in postponement of the hearing if [postponement is] requested by any [the] other party.

(5) Subject to a hearings examiner ruling, a party may present that party's case [hearings examiner rulings; parties may present their cases] in full, including testimony from witnesses; and documentary evidence such as repair orders, warranty documents, and the motor vehicle sales contract.

(6) By agreement of the parties and with the written approval of the hearings examiner, the hearing may be conducted by written submission [submissions] only or by telephone.

(7) Except for a hearing [hearings] conducted by written submission [only], each party may be questioned by the other party; at the discretion of the hearings examiner.

(8) Except for a hearing [hearings] conducted by written submission [only] or by telephone, the complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good cause by the complainant.

(9) The department may have the motor vehicle in question inspected by an expert prior to the hearing, if the department determines that an expert opinion may assist in arriving at a decision. An inspection under this section [Any such inspection] shall be made only upon prior notice to all parties, who shall have the right to be present at such inspection. A copy [Copies] of any findings or report from such inspection will be provided to all parties before, or at, the hearing.

(10) Except for hearings conducted by written submission [only], all hearings will be recorded by the hearings examiner. A copy of the recording [Copies of the hearing recordings] will be provided to any party upon request and upon payment for the cost of the copy, as provided by law or board rules.

§215.207. Contested Cases: Final Orders.

(a) A motion for rehearing of a final order issued by the board for a complaint filed [Board] under Occupations Code, Chapter 2301, Subchapters E or M shall proceed in accordance with Occupations Code, §2301.713. [Subchapter E or M; shall follow the procedures

in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings).]

[(b) A motion for rehearing of a final order issued by a hearings examiner shall follow the procedures in this subsection.]

(b) [(4)] The hearings examiner shall [will] prepare a final order as soon as possible, but not later than 60 days after the hearing is closed, or as otherwise provided by law. The final order shall [will] include the hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all parties by certified mail. [of record]

(c) [(2)] A party who [that] disagrees with the final order may file a motion for rehearing in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion for rehearing of a final order issued by a hearings examiner must: [within 20 days from the date of the notification of the final order.]

(1) be filed with and decided by the chief hearings examiner;

[(3) A motion for rehearing of a final order issued by a hearings examiner must be filed with the appropriate department office and decided by the chief hearings examiner.]

(2) [(4)] [A motion for rehearing must] include the specific reasons, exceptions, or grounds [that are] asserted by a party as the basis of the request for a rehearing; and [A motion for rehearing shall]

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

(d) [(5)] Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. [motion for rehearing authority under Occupations Code, §2301.713 within 30 days after the date of the notification of the final order.]

[(6) The motion for rehearing authority must act on the motion within 45 days after the date of notification of the final order, or as otherwise provided by law, or the motion is overruled by operation of law. The motion for rehearing authority may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification of the final order.]

(e) [(7)] If the chief hearings examiner [motion for rehearing authority] grants a motion for rehearing, the parties will be notified by mail and a: A rehearing will be scheduled promptly [as promptly as possible]. After rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to support the final order. The chief hearings examiner [motion for rehearing authority also] may issue an order granting the relief requested in a motion for rehearing or requested in a reply to a motion for rehearing [replies thereto] without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order [so stating] will be issued.

(f) [(8)] A party who has exhausted all administrative remedies; and who is aggrieved by a final order in a contested case from which appeal may be taken is entitled to judicial review pursuant to Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P [§§2301.751 - 2301.756], under the substantial evidence rule. A petition for judicial review [The petition] shall be filed in a district court of Travis County [or in the Court

of Appeals for the Third Court of Appeals District] within 30 days after the order is final and appealable. A copy of the petition must be served on the final order authority and any other parties of record. After service of the petition and within the time permitted for filing an answer, the final order authority shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence ~~[to]~~ be presented to the final order authority, the final order authority ~~[such decision-maker]~~ may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.

§215.208. *Lemon Law Relief Decisions.*

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

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's motor vehicle, creating ~~[vehicle which creates]~~ a serious safety hazard or substantially impairing ~~[impairs]~~ the use or market value of the motor vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606~~;~~ are not applicable, the final order authority shall issue a final order to the manufacturer, distributor, or converter to:

(A) replace the motor vehicle with a comparable motor vehicle, less a reasonable allowance for the owner's use of the vehicle~~;~~ or

(B) accept the return of the motor vehicle from the owner and refund ~~[to the owner]~~ the full purchase price of the motor vehicle to the owner, ~~[vehicle,]~~ less a reasonable allowance for the owner's use of the motor vehicle.

(2) In any decision in favor of the complainant, the final order authority will, to the extent possible, accommodate the complainant's request with respect to replacement or repurchase of the motor vehicle~~;~~ ~~[to the extent possible]~~.

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

(1) ~~When~~ ~~[Where]~~ a refund of the purchase price of a motor vehicle is ordered, the purchase price shall be the total purchase price of the motor vehicle, ~~excluding~~ ~~[vehicle, but shall not include]~~ the amount of any interest, finance charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of ~~[for]~~ the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor ~~[the]~~ vehicle owner. The refund shall be made payable to the motor vehicle owner and to any lienholder, respectively to their ownership interest. ~~[the lienholder, if any, as their interests require.]~~

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

(A) The ~~[the]~~ product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the motor vehicle~~;~~ ~~[as defined in paragraph (1) of this subsection,]~~ by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% ~~[50 percent]~~ of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(3) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days or 10 years. ~~[(40 years).]~~ Except in cases where a preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days or 10 years. ~~[(40 years).]~~ the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the towable recreational vehicle~~;~~ ~~[as defined in paragraph (1) of this subsection,]~~ by a fraction having as its denominator 3,650 days or 10 years. ~~[(40 years).]~~ except the denominator shall be 1,825 days or five years. ~~[(5 years).]~~ if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% ~~[50 percent]~~ of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days or 10 years. ~~[(40 years).]~~ except the denominator shall be 1,825 days or five years. ~~[(5 years).]~~ if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

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

(c) This subsection applies only to leased motor vehicle relief.

(1) Except in cases involving unusual and extenuating circumstances~~;~~ supported by a preponderance of the evidence, when a ~~[where]~~ refund of the purchase price of a leased motor vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the vehicle lessor, respectively, in accordance with ~~[set out as follows in]~~ subparagraphs (A) and (B) of this paragraph.

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by the lessee to the vehicle ~~[him to the]~~ lessor under the terms of the lease; and

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

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

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

(ii) an additional 5.0% of the [5 percent of such] purchase price plus any amount or fee paid by vehicle lessor to secure the lease or interest in the lease.[:]

(C) [(iii)] A credit [provided, however, that a credit,] reflecting all of the payments made by the lessee[.] shall be deducted from the actual purchase price that [which] the manufacturer, converter, or distributor is required to pay the vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph. [clauses (i) and (ii) of this subparagraph.]

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

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

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

(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:

(A) promptly [Promptly] authorize the exchange of the complainant's motor vehicle with the complainant's choice of any comparable motor vehicle; and[.]

(B) instruct [Instruct] the dealer to contract the sale of the selected comparable motor vehicle with the complainant under the following terms.[:]

(i) The sales price of the comparable motor vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

(ii) The trade-in value of the complainant's motor vehicle shall be the MSRP at the time of the original transaction, less a reasonable allowance for the complainant's use of the complainant's motor vehicle. [vehicle; and]

(iii) The use allowance for replacement relief shall be calculated in accordance with [using the formulas outlined in] subsection (b)(2) and (3) of this section.

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

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

(B) If the comparable motor vehicle has a lower MSRP than the complainant's vehicle, the complainant will be credited the difference in the MSRP between the two motor vehicles. The difference

credited shall not exceed the amount of the calculated usage allowance for the complainant's vehicle.

(3) The complainant is responsible for obtaining [to obtain] financing, if necessary, to complete the transaction.

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

(e) If the final order authority finds that a complainant's motor vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

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

(g) In any award in favor of a complainant, the final order authority may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items or options added to the motor vehicle if one or more of those [such] items or options contributed to the defect that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

§215.209. *Incidental Expenses.*

(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verifiable. [verified through receipts or similar written documents.] Reimbursable incidental expenses include, but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

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

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

(5) loss or damage to personal property;

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

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

(b) Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle

replacement, shall be tendered to the complainant at the time of replacement.

(c) When awarding reimbursement for the cost of items or accessories presented under subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature, functionality, and value added by the items or accessories and whether the items or accessories are original equipment manufacturer (OEM) parts or non-OEM parts.

§215.210. Compliance with Order Granting Relief.

(a) Compliance with an order issued by the final order authority will be monitored by the department.

(b) ~~[(4)]~~ A complainant is not bound by a final decision and order ~~[and may either accept or reject the decision].~~

(c) ~~[(2)]~~ If a complainant does not accept the final decision, the proceeding before the final order authority will be deemed concluded and the complaint file closed.

(d) ~~[(3)]~~ If the complainant accepts the final decision, then the manufacturer, converter, or distributor, and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the final decision and order.

(e) ~~[(4)]~~ If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant to an order issued by the final order authority, reacquires a vehicle to settle a complaint filed under Occupations Code, §2301.204 or §§2301.601 - 2301.613, ~~[Chapter 2301, Subchapter M or Occupations Code, §2301.204,]~~ or brings a motor vehicle into the State ~~[state]~~ of Texas ~~that [which]~~ has been reacquired to resolve a warranty claim in another jurisdiction, ~~then~~ the manufacturer, converter, or distributor shall, prior to the resale of such motor vehicle, ~~retitle [vehicle, re-title] the vehicle in Texas and shall:~~

(1) issue a disclosure statement on a form provided by or approved by the department; ~~and[. In addition, the manufacturer, converter, or distributor reacquiring the vehicle shall]~~

(2) affix a department-approved disclosure label in a conspicuous ~~[disclosure label provided by or approved by the department on an approved]~~ location in or on the motor vehicle.

(f) ~~The [Both the] disclosure statement and [the] disclosure label required under subsection (e) of this section shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license or GDN [general distinguishing number] issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first retail purchaser.~~

(g) A manufacturer, converter, or distributor shall provide to the department ~~[in writing,]~~ the name, address, and telephone number of the transferee ~~[any transferee, regardless of residence,]~~ to whom the manufacturer, distributor, or converter~~;~~ ~~as the case may be,]~~ transfers the motor vehicle on the disclosure statement ~~[vehicle]~~ within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the department within 60 days of the retail sale of a reacquired motor vehicle.

(h) ~~The [Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Occupations Code. In addition, the] manufacturer, converter, or distributor must repair the defect or condition in the motor vehicle that resulted in the vehicle being reacquired and issue[; at a minimum,] a basic warranty excluding non-OEM items or accessories, for a minimum of 12 months or 12,000 miles, whichever comes first. The [for (12 months/12,000 mile, whichever comes first); except for non-original equipment man-~~

~~ufacturer items or accessories, which]~~ warranty shall be provided to the first retail purchaser of the motor vehicle.

(i) ~~[(5)]~~ In the event ~~this section conflicts with [of any conflict between this section and]~~ the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(j) ~~[(6)]~~ The failure of any manufacturer, converter, distributor, or dealer to comply with a final order issued by the final order authority within the time period prescribed in the order may subject the manufacturer, converter, ~~[or]~~ distributor, or dealer to formal action by the department, including the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order issued by the final order authority.

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

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For further information, please call: (512) 465-5665



SUBCHAPTER H. ADVERTISING

43 TAC §§215.241 - 215.261, 215.263 - 215.271

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.241. Purpose and Scope. [Objective.]

~~This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301[.] by regulating the advertising of persons under the jurisdiction of the department [Board] by requiring truthful and accurate advertising practices for the benefit of the citizens of this state.~~

§215.242. *General Prohibition.*

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the department [Board] to be false, deceptive, or misleading, whether herein described, [or not enumerated herein] shall be deemed a violation of Occupations Code, Chapter 2301 [violations of the Code,] and shall also be considered a violation [violations] of this rule. [the general prohibition.]

§215.243. *Specific Rules.*

The violation of an advertising rule shall be considered by the department [Board] as a prima facie violation of Occupations Code, Chapter 2301.

§215.244. *Definitions.*

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to [without limitation,] a statement or representation:

- (i) made in a newspaper, magazine, or other publication; [; or]
- (ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter; [; or]
- (iii) aired on the radio; [on radio,]
- (iv) broadcast on the Internet or television; or [; or]
- (v) streamed via an online service. [via an on-line service, or on television.]

(B) Advertisement [The term] does not include direct communication between a person or person's [dealer or dealer's] representative and a prospective purchaser.

(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, [the Code] relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301, [the Code.]

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain a lead to a person [leads to persons] interested in buying or leasing merchandise of the type advertised and to switch a consumer [consumers] from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the dealer. [advertiser.]

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

[(5) Buyers guide--A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer.]

(5) [(6)] Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audi-

bility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(6) [(7)] Dealership addendum--A form that is [which is to be] displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts, or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for delivery to a buyer.

(A) The purpose of the addendum is to disclose:

- (i) [(A)] that it is supplemental;
- (ii) [(B)] any added feature, service, equipment, part, or accessory, including the retail price, charged and added by the dealership [and the retail price therefore];
- (iii) [(C)] any additional charge to the selling price such as additional dealership markup; and
- (iv) [(D)] the total dealer selling price.

(B) The dealership addendum form shall not be deceptively similar in appearance to the Monroney label, as defined by paragraph (12) of this section. [manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.]

(7) [(8)] Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used [or has been used] primarily for test drives by customers and for other purposes [other dealership purposes and so] designated by the dealership.

(8) [(9)] Disclosure--Required information that is clear, conspicuous, and accurate.

(9) [(10)] Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

(10) [(11)] Licensee--Any person required to obtain a license from the department.

(11) Limited rebate--A rebate that is not available to every consumer purchasing or leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United States is not a limited rebate.

(12) Monroney [Manufacturer's] label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed [by the manufacturer] to the windshield or side window of certain [each] new motor vehicles [automobile] delivered to the dealer and that contains information about the motor vehicle, including, but not limited to: [-]

(A) the retail price of the motor vehicle suggested by the manufacturer;

(B) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to the motor vehicle at the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in subparagraph (A) of this paragraph;

(C) the amount charged, if any, to a dealer for the transportation of the motor vehicle to the location at which it is delivered to the dealer; and

(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

(13) Online [On-line] service--A network that connects computer users.

(14) Rebate or cash back--A sum of money applied to the purchase or lease of a motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser. [refunded to a purchaser or for the benefit of the purchaser after full payment has been rendered. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to himself or for his benefit subsequent to payment in full.]

(15) Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced price, including a manufacturer's or distributor's customer rebate, a dealer discount, or a limited rebate.

(16) [(+5)] Subsequent violation--Conduct that is the same or substantially the same as conduct the department [Board] has previously alleged in an earlier communication to be a violation of an advertising provision.

§215.245. *Availability of Motor Vehicles.*

(a) A dealer [licensee] may advertise a specific new motor vehicle or line-make of vehicles for sale if the specific motor vehicle or line-make is in the possession of the dealer [licensee] at the time the advertisement is placed.[: or if]

(b) If the specific motor vehicle or line-make is not in the possession of the dealer [licensee] at the time the advertisement is placed, the dealer must [licensee] clearly and conspicuously disclose [discloses] that fact in the advertisement and state [states] that the motor vehicle may be obtained from the manufacturer, distributor, or some other source. The advertisement must set[: and]

[(4)] [the advertisement sets] forth the number of motor vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed[: or]

[(2)] the [a] dealer can show that it has the number of motor vehicles available to meet the [he has available a] reasonable expected public demand based on prior experience.

(c) [(b)] If an advertised price pertains to only one specific motor vehicle, then the advertisement must also disclose the motor vehicle's stock number or VIN. [vehicle identification number.]

(d) [(e)] This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer advertising association, or distributor, nor does it prohibit [and] the inclusion of the names and addresses of the dealers selling such motor vehicles in the particular area.

(e) [(d)] A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

(1) the specific used motor vehicle is in the possession of the dealer at the time the advertisement is placed; and

(2) the title certificate to the used motor vehicle has been assigned to the dealer.

§215.246. *Accuracy.*

Advertisements [All advertisements] shall be accurate, clear, and conspicuous. Advertisements [and] shall not be false, deceptive, or misleading. For an Internet advertisement, a disclosure may be considered accurate, clear, and conspicuous if:

(1) the viewer highlights, hovers a mouse or cursor over, or otherwise selects certain text or images on a screen that results in an immediate and legible visible disclosure; or

(2) only one click on select text or image(s) is required to view the disclosure; and

(3) the internet advertisement clearly and conspicuously indicates where to hover or click for the disclosure and is in close proximity to the information being disclosed.

§215.247. *Untrue Claims.*

The following statements are prohibited.

(1) Statements such as "write your own deal," "name your own price," "name your own monthly payments," or statements with similar meaning.

(2) Statements such as "everybody financed," "no credit rejected," "we finance anyone," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

(4) Statements representing that because of its large sales volume, a dealer is able to purchase motor vehicles for less than another dealer selling the same make of motor vehicles, unless the dealer can show such is the case.

§215.248. *Layout.*

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, conspicuously, and accurately set forth to prevent misunderstanding.

§215.249. *Manufacturer's Suggested Retail Price.*

(a) Except as provided by subsection (b) of this section, the suggested retail price [The suggested retail price] of a new motor vehicle [when] advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.[: except that]

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;[: and any]

(2) registration, certificate of title, license fees, or an additional registration fee, if any;[: charged by a full service deputy as provided by Transportation Code, §502.114; any]

(3) taxes; and [any]

(4) other fees or charges that are allowed or prescribed by law [may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded].

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement [However, with respect to advertisements] placed with local media in the State of Texas by a manufacturer or distributor and [which include] the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the [: if the price of a vehicle is stated in the advertisement, such] price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only

costs and charges that may be excluded from the price are: [and may exclude only any]

(1) registration, certificate of title, license fees, or an additional registration fee, if any; [e] charged by a full service deputy as provided by Transportation Code, §502.114; any]

(2) taxes; and [any]

(3) other fees or charges that are allowed or prescribed by law.

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

(a) When featuring a sales [an advertised sale] price of a new or used motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales [such advertised] price to any retail buyer. The featured sales [advertised sale] price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges must be included in the featured sales price. [The only charges that may be excluded from the advertised price are:]

~~[(1) any registration, certificate of title, or license fees;]~~

~~[(2) any taxes; and]~~

~~[(3) any other fees or charges that are allowed or prescribed by law.]~~

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

(c) [(b)] A qualification may not be used when featuring a sales price for a motor [advertising the price of a] vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or Internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

[(e)] [If a price advertisement discloses a rebate, cash back, or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.]

(1) If a savings claim or discount offer includes only a dealer discount, that [an advertisement discloses a discount savings claim, this] incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following are acceptable

formats [is an acceptable format] for advertising a dealer discount with and without a sales price. [price with a discount savings claim.]

Figure: 43 TAC §215.250(h)(1)

[Figure: 43 TAC §215.250(e)(1)]

(2) If a savings claim or discount offer includes only a customer rebate, that [an advertisement discloses a rebate, this] incentive must be disclosed as a deduction from the MSRP. [advertised price.] The following are acceptable formats [is an acceptable format] for advertising a customer rebate with and without a sales price. [price with a rebate.]

Figure: 43 TAC §215.250(h)(2)

[Figure: 43 TAC §215.250(e)(2)]

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, [an advertisement discloses both a rebate and a discount savings claim,] the incentives must be disclosed as deductions [a deduction] from the MSRP. The following are acceptable formats for advertising both a customer rebate and a dealer discount with and without a sales price. [is an acceptable format] for advertising a price with a rebate and a discount savings claim.]

Figure: 43 TAC §215.250(h)(3)

[Figure: 43 TAC §215.250(e)(3)]

(i) [(d)] If a savings claim or discount offer includes an option package discount, [In the event that the manufacturer offers a discount on a package of options, then] that discount should be disclosed above, or prior to, the MSRP with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP. The following are acceptable formats for advertising an option package discount with and without a sales price.

[The following is an acceptable format.]

Figure: 43 TAC §215.250(i)

[Figure: 43 TAC §215.250(d)]

(j) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.

Figure: 43 TAC §215.250(j)

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.

Figure 43 TAC §215.250(k)

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a savings claim may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a savings claim for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP of the vehicle including the option obtained from the manufacturer or distributor.

Figure: 43 TAC §215.250(l)

(m) If a distributor physically installs a factory available option on a new motor vehicle, a savings claim may be advertised for that vehicle if the option is disclosed on a vehicle label along with the suggested retail price for the option. A dealer may advertise a savings claim for that motor vehicle if the dealer discloses the total MSRP and the total of the distributor installed options and the difference is shown

between the dealer's sales price and the total of the MSRP and distributor installed options for that vehicle.

Figure: 43 TAC §215.250(m)

{(e) If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (e) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format.}

[Figure 43 TAC §215.250(e)]

{(f) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an on-line or Internet consumer or transaction is prohibited.}

§215.251. Identification.

(a) When the sales price of a motor vehicle is advertised, the following must be disclosed:

- (1) model year;
- (2) make;
- (3) model line and style or model designation; and
- (4) if applicable, whether the motor vehicle is [a] used, a demonstrator, or a factory executive/official vehicle.

(b) Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms shall not be used in any advertisement that contains the sales price of a motor vehicle unless the optional equipment of the motor vehicle is listed in the advertisement.

(c) A photograph or other representation [An illustration] of a motor vehicle used in an advertisement must be of the motor vehicle being advertised or substantially the same as that of the motor vehicle advertised.

§215.252. Advertising at Cost or Invoice.

(a) The term "dealer's cost" or other reference to the cost of the motor vehicle shall not be used.

(b) The terms [~~use of the term~~] "invoice" or "invoice price" in advertising shall not be used.

§215.253. Trade-in Allowances.

No guaranteed trade-in amount or range of amounts shall be used in advertising. Additionally, an advertisement shall not state an amount or range of amounts for trade-in assistance or advertise that an offer is any specific amount or range of amounts over blue book value, black book value, or use any other similar language indicating there is an established retail value or starting price point for a used motor vehicle.

§215.254. Used Motor Vehicles.

A used motor vehicle shall not be advertised in any manner that creates the impression that it is new. A used motor vehicle shall be identified as [either] "used" or "pre-owned." Terms such as "program car," "special purchase," "factory repurchase," or other similar terms shall not be used to identify a motor vehicle as used. [~~are not sufficient to designate a vehicle as used, and these vehicles must be identified as "used" or "pre-owned."~~]

§215.255. Demonstrators and Factory Executive/Official Motor Vehicles. [~~Factory, Executives/Official Vehicles.~~]

If a demonstrator or factory executive/official motor vehicle is advertised, the advertisement must clearly and conspicuously identify the motor vehicle as a demonstrator or factory executive/official motor vehicle. A demonstrator or factory executive/official motor [~~official~~] vehicle may not be advertised or sold except by a dealer franchised and licensed to sell that line-make [line make] of new motor vehicle.

§215.256. Free Offers.

(a) No merchandise or enticement may be described as "free" if the:

(1) motor vehicle can be purchased or leased for a lesser sales price without the merchandise or enticement; or [if the]

(2) sales price of the motor vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement.

(b) The advertisement shall clearly and conspicuously disclose the conditions under which the "free" merchandise or enticement being offered [~~offer~~] may be obtained.

§215.257. Authorized Dealer.

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a dealer license to sell the motor [those] vehicles the dealer identifies itself [is holding itself out] as "authorized" to sell.

§215.258. Manufacturer and Distributor Rebates.

It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, interest or finance charge reduction, or other financial inducement or incentive[;] for the benefit of the purchaser of a motor vehicle if the selling dealer contributes in any manner to that incentive program, unless the advertisement discloses that the dealer's contribution may affect the final negotiated sales price of the motor vehicle.

§215.259. Rebate and Financing Rate Advertising by Dealers.

(a) It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, or other financial inducement or incentive if the dealer contributes to the incentive program, unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the motor vehicle.

(b) An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor[;] shall disclose:

(1) that the dealer pays for or finances the interest or finance charge rate reduction[;]

(2) the amount of the dealer's contribution in either a dollar or percentage amount[;] and

(3) that such arrangement may affect the final negotiated price of the motor vehicle.

(c) An offer or promise to pay or to [to pay, promise to pay, or] tender cash to a buyer of a motor vehicle, as in a rebate or cash back program, may not be advertised[;] unless the rebate or cash back program [it] is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or to the assignee of the retail purchaser and unless the advertisement sets forth the contribution disclosures required by this rule.

§215.260. Vehicle Lease Advertisements.

A vehicle lease advertisement [~~Vehicle lease advertisements~~] shall clearly and conspicuously disclose that the advertisement is for the lease of a motor vehicle. Statements such as "alternative financing plan," "drive away for \$ per month," or other terms or phrases that do not use the term "lease" [~~"lease."~~] do not constitute adequate disclosure of a lease. A vehicle lease advertisement [~~Lease advertisements~~] shall not contain the phrase "no down payment" or similar words or phrases if any payment [words of similar import if any outlay of money] is required to be paid by the customer to lease the motor vehicle. Vehicle lease [~~Lease~~] terms that are not available to the general public shall not be included in advertisements directed at the general public, or all limitations and qualifications applicable to the vehicle lease terms advertised shall be clearly and conspicuously disclosed.

§215.261. *Manufacturer Sales and[:] Wholesale Prices.*

A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall not:

(1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," or "manufacturer sale"; [~~"manufacturer sale,"~~]

(2) use a manufacturer's name or abbreviation in any manner calculated or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or distributor;[:] or

(3) use any other similar terms which indicate sales other than retail sales from the dealer.

§215.263. *Sales Payment Disclosures.*

An advertisement that contains the amount of any payment, including a down payment[:] in either a percentage or dollar amount, or an advertisement that contains[:] the amount of any payment, in either a percentage or dollar amount[:] the number of payments,[:] the period of repayment,[:] or the amount of any finance charge[:] must include the following:

(1) the amount or percentage of the down payment;

(2) the terms of repayment, from which the number of months to make repayment and the amount per month can be determined, [(from which the number of months to make repayment and the amount per month can be determined)] including any balloon payment;

(3) the annual percentage rate (APR) [~~or APR~~]; and

(4) the amount of the APR [annual percentage rate], if increased, after consummation of the credit transaction.

§215.264. *Payment Disclosure - Vehicle Lease.*

(a) An advertisement that promotes a consumer lease and contains the amount of any payment or that contains either[:] or a statement of any capitalized cost reduction or other payment or a statement [~~or~~] that no payment is required [~~prior to~~ or] at consummation or prior to consummation or [~~by~~] delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due [~~prior to~~ or] at consummation or prior to consummation or [~~by~~] delivery, if delivery occurs after consummation;

(3) the number, amount, and due date or period [~~amounts, and due dates or periods~~] of scheduled payments under the vehicle lease;

(4) a statement of whether [~~or not~~] a security deposit is required; and

(5) a statement that an extra charge may be imposed at the end of the vehicle lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the vehicle lease term.

(b) Except for a periodic payment, a reference to a charge [as] described in subsection (a)(2) of this section[:] i.e., to components of the total due at lease signing or delivery[:] cannot be more prominently advertised than the disclosure of the total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate information, if [~~H~~] a percentage rate is advertised, that rate shall not be more

prominently advertised [prominent] than any of the following disclosures [~~stated~~] in the advertisement[:] with the exception of paragraph (19) of this subsection; the notice required to accompany the rate].

(1) Description of payments.

(2) Amount due at vehicle lease signing or delivery.

(3) Payment schedule and total amount of periodic payments.

(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.

(5) Total number of payments.

(6) Payment calculation, including:

(A) gross [Gross] capitalized cost;[:]

(B) capitalized [Capitalized] cost reduction;[:]

(C) adjusted [Adjusted] capitalized cost;[:]

(D) residual value; [Residual value.]

(E) depreciation [Depreciation] and any amortized amounts;[:]

(F) rent charge; [Rent charge.]

(G) total [Total] of base periodic payments;[:]

(H) vehicle lease term; [Lease term.]

(I) base [Base] periodic payment;[:]

(J) itemization [Itemization] of other charges that are a part of the periodic payment; and[:]

(K) total [Total] periodic payment.

(7) Early termination conditions and disclosure of charges.

(8) Maintenance responsibilities.

(9) Purchase option.

(10) Statement referencing nonsegregated disclosures.

(11) Liability between residual and realized values.

(12) Right of appraisal.

(13) Liability at the end of the vehicle lease term based on residual value.

(14) Fees and taxes.

(15) Insurance.

(16) Warranties or guarantees.

(17) Penalties and other charges for delinquency.

(18) Security interest.

[(19) Limitations on rate information.]

(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating [~~that~~] "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms [~~term~~] "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate. [~~term~~.]

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement,

provided that for vehicle lease terms appearing [if, for lease terms that appear] without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section[;] must comply with subsection (a)(1) - (5) [the disclosures in subsection (a)] of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain [that contains] a table or schedule of the required disclosures under subsection (a)(1) - (5).

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements: [state in the advertisement:]

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due [prior to or] at consummation or due prior to consummation or [by] delivery, if delivery occurs after consummation; and

(3) the number, amount, and due date or period [amounts, and due dates or periods] of scheduled payments under the vehicle lease. [lease; and]

(h) In addition to the requirements of subsection (g)(1) - (3) of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

[(4) Either:]

(1) [(A)] provide a toll-free telephone number along with a statement that the telephone [reference that such] number may be used by consumers to obtain the information in subsection (a) of this section[-]. The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast and the lessor shall provide the information in subsection (a) of this section orally or in writing upon request]; or

(2) [(B)] direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement. [The written advertisement shall be published beginning at least three days before and ending at least 10 days after the broadcast.]

(i) The toll-free telephone number required by subsection (h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

§215.265. Bait Advertisements. [Advertisement.]

Bait advertisements ["Bait" advertisement] shall not be used by any person.

§215.266. Lowest Price Claims.

(a) Claims that represent a lowest price, best price, best deal, [Representing a lowest price claim, best price claim, best deal claim,] or other similar superlative claims shall not be used in advertising.

(b) If a [dealer advertises a] "meet or beat" guarantee is advertised, then the advertisement must clearly and conspicuously disclose the conditions and requirements necessary in order for a person to receive the offer or guarantee. [any advertised cash amount.]

§215.267. Fleet Prices.

Terms such as "fleet prices," "fleet sales," ["fleet prices" or "fleet sales"] or other terms or phrases implying that individual retail [implying that retail individual] customers will be afforded the same price or [and/or] discount as multi purchase commercial businesses shall not be used [in advertising].

§215.268. Bankruptcy and Liquidation Sales. [Bankruptcy/Liquidation Sale.]

[No licensee may willingly misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business.] A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the owner of the business in the advertisement. The phrases [A person may not conduct a sale advertised with the phrase] "going out of business," "closing out," "shutting doors forever," [or] "bankruptcy sale," "foreclosure," [or] "bankruptcy," or similar phrases or words indicating that an enterprise is ceasing business shall not be used unless the business is closing its operations and follows the procedures required by [the] Business and Commerce Code, Chapter 17, Subchapter F.

§215.269. Finding of Violation.

A person shall not [No person shall] be held in violation of the rules, including the general prohibition, except upon a finding of a violation [thereof] made by the department [Board,] after the filing of a Notice of Department Decision and [complaint and notice and] an opportunity to request a [for] hearing as provided in Occupations Code, Chapter 2301. [the Code.]

§215.270. Enforcement.

(a) The department [Board] may file a Notice of Department Decision [complaint] against a licensee alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department [only if the Board] can show:

(1) that the licensee who allegedly violated an advertising provision has received from the department [Board] a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section [relating to effectiveness of notice]; and

(2) that the licensee committed a subsequent violation of the same advertising provision.

(b) An effective notice issued under subsection (a)(1) of this section must:

(1) state that the department [Board] has reason to believe that the licensee violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department [Board] bases its allegation of a violation; and

(3) state that if the licensee commits a subsequent violation of the same advertising provision, the department [Board] will formally file a Notice of Department Decision. [complaint.]

(c) As a part of the cure procedure, the department [Board] may require a licensee[;] who allegedly violated an advertising provision[;] to publish a retraction notice to effect an adequate cure of the alleged violation. A [An adequate] retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the [that] portion of the newspaper[; if any,] devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A [~~Performance of a~~] cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301; [~~the Code;~~] or other law.

§215.271. *Auction.*

Terms such as "auction," "auction special," or other terms with similar meaning [~~"auction" or "auction special" and other terms of similar import~~] shall be used only in connection with a motor vehicle offered or sold at a bona fide auction.

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

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



43 TAC §215.262

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.262. *Savings Claims; Discounts.*

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

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For further information, please call: (512) 465-5665



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

**43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310,
215.311, 215.314 - 215.317**

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.301. *Purpose and Scope.* [~~Scope and Purpose.~~]

(a) This subchapter implements the [~~The scope and purpose of this subchapter is to provide~~] practice and procedure for contested cases [~~case hearings~~] under the jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005. [~~a SOAH ALJ under the Codes.~~]

(b) A contested case hearing held by an [~~a SOAH~~] ALJ shall be conducted in accordance with Government Code, Chapter 2001; applicable SOAH rules; and board [~~Board~~] rules.

(c) Unless otherwise provided by statute or by this chapter, this subchapter governs practice and procedure relating to contested cases [~~matters~~] filed with the department [~~Board~~] on or after September 1, 2007.

(d) Practice and procedure in contested cases filed on or after January 1, 2014, under Occupations Code, Chapter 2301, Subchapters E or M [~~Subchapter E or M,~~] are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure).

§215.302. *Conformity with Statutory Requirements.*

In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 ~~controls.~~ [~~shall control.~~]

§215.303. *Application of Board and SOAH Rules.*

[(a)] Upon referral by the ~~department~~ [Board] of a ~~contested case~~ [matter] to SOAH, the rules contained in 1 TAC Chapter 155 [(relating to Rules of Procedure)] and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the ~~contested case~~ [matter] until the ALJ disposes of the ~~contested case.~~ [matter.]

[(b)] The ALJ shall consider the rules and policies applicable to the Board in the hearing and preparation of the proposal for decision.]

§215.305. *Filing of Complaints, Protests, and Petitions; Mediation.*

(a) All complaints, protests, and petitions required or allowed to be filed under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [the Codes] or this chapter must be ~~delivered to the department:~~

(1) ~~in person;~~

(2) ~~by first-class mail; or [filed with the appropriate department office in person, by mail, or]~~

(3) ~~by electronic document transfer at a destination designated by the department. [for receipt of those documents.]~~

(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 - 1005 [ease under the Codes] are required to participate in mediation, in accordance with this section, before the case is referred for hearing.

(c) The term "mediation" as used in this section ~~has the meaning assigned by Occupations Code, §2301.521. [means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or resolution among the parties.]~~

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

(e) The department shall provide mediation services.

(f) The mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(g) The mediation process will conclude within 60 days of the date a ~~contested case~~ [matter] is assigned to a mediator unless, at the department's discretion, the mediation deadline is extended.

(h) The department will ~~assign~~ [appoint] a different mediator if:

(1) ~~either~~ [Either] party promptly and with good cause objects to an assigned mediator; or

(2) ~~an~~ [An] assigned mediator is recused.

(i) At any time before a ~~contested case~~ is referred for hearing, the parties may file a joint notice of intent to retain ~~an outside~~ [a private] mediator. The notice must include:

(1) the name, address, ~~email address,~~ [e-mail,] facsimile number, and telephone number of the ~~outside~~ [private] mediator selected;

(2) a statement that the parties have entered into an agreement with the ~~outside~~ [private] mediator regarding the mediator's rate and method of compensation;

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

(4) a statement that the mediation will conclude within 60 days of the date of the joint notice of retention unless, at the department's discretion, the mediation deadline is extended.

(j) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Government Code, §2009.054.

(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator and signed by the parties before the mediation concludes or as soon as ~~practical.~~ [practicable]

(l) Within 10 days of the conclusion of the mediation ~~period,~~ a mediator shall provide to the department and to the parties a written report stating:

(1) whether the parties attended the mediation;

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

(3) any unresolved issues; and

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

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

(1) enter an order [identifying and] disposing of resolved issues; and

(2) refer unresolved issues for hearing.

(n) Parties to a contested case filed as an enforcement action brought by the department are not required to participate in mediation.

(o) Parties to a ~~contested case~~ filed under Occupations Code, §2301.204 or §§2301.601 - 2301.613, must participate in mediation in accordance with §215.205 of this ~~title~~ [chapter] (relating to Mediation; Settlement).

§215.306. *Referral to SOAH.*

~~Contested cases~~ [Matters] shall be referred to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this chapter, including ~~contested cases~~ [matters] relating to:

(1) an enforcement complaint on the department's own initiative;

(2) a notice of protest[;] that has been timely filed in accordance with §215.106 of this ~~title~~ [chapter] (relating to Time for Filing Protest);

[(3) a complaint under Occupations Code, §2301.204 or §§2301.601-2301.613, that satisfies the jurisdictional requirements of the applicable provisions filed on and after September 1, 2007, and before January 1, 2014;]

(3) [(4)] a protest filed under Occupations Code, §2301.360 or a complaint or protest filed under Occupations Code, Chapter 2301, Subchapters I or J; [Subchapter I or Subchapter J;]

(4) [(5)] issuance of a cease and desist order, whether the order is issued with or without prior notice at the time the order takes effect; or

(5) [(6)] any other contested matter that meets [matter meeting] the requirements for a hearing at SOAH under Occupations Code, Chapter 2301.

§215.307. *Notice of Hearing.*

(a) The requirements for a notice of hearing in a contested case are provided by Government Code, §2001.052; [are set out in] Occupations Code, §2301.705; [Government Code, §2001.052;] and 1 TAC §155.401 [(relating to Notice of Hearing)], as applicable.

(b) For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the department may serve a notice of hearing by any method allowed under [by] Texas Rules of Civil Procedure, Rule 108a(1)[;] or that provides for confirmation of delivery to the party.

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

§215.308. *Reply to Notice of Hearing and Default Proceedings.*

(a) On or before the 20th day after a notice of hearing has been served on a party in a contested case [matter] referred by the department to SOAH, the party may file a written reply or pleading responding to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC §155.101 [(relating to Filing Documents);] and must identify the SOAH and department docket numbers [docket number] as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's representative [provide service of copies of the reply or pleadings to other parties] in compliance with 1 TAC §155.103 [(relating to Service of Documents on Parties)]. Any party filing a reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt of served documents is subject to 1 TAC §155.103.

(c) A party may file an amended or supplemental [amend or supplement its] reply or responsive pleading [pleadings] in accordance with 1 TAC §155.301 [(relating to Required Form of Pleadings)].

(d) If a party properly noticed under this chapter does not appear at the hearing, a [another] party may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may [matter and if dismissed the case can] be presented to the board [Board] for disposition based on the default pursuant to 1 TAC §155.501. The board [(relating to Default Proceedings)- The Board] may enter a final order finding [with findings] that the allegations in the petition are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the board [Board] to set aside the [a] default and reopen the record. The board [Board], for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.

§215.310. *Issuance of Proposals for Decision[, Recommendations,] and Orders.*

(a) All [recommendations or] proposals for decision prepared by the ALJ shall [will] be submitted to the board [Board] and copies furnished to the parties.

(b) All decisions and orders issued by the board shall [Board will] be furnished to the parties and to the ALJ.

§215.311. *Amicus Briefs.*

(a) Any interested person may submit [wishing to file] an amicus brief for consideration by the board [Board regarding] in a contested case by [must file the brief not later than] the deadline for exceptions under 1 TAC §155.301 [(relating to Required Form of Pleadings)]. A party may submit [file] one written response to the [an] amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.

(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ, and copies must be served on all parties. [must be filed with the Board, the ALJ, and all parties to the proceeding-]

(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within the deadlines prescribed by subsection (a) of [filed with the Board and with SOAH within the period prescribed by] this section will not be considered by the board [Board], unless good cause is shown why the [this] deadline should be waived or extended.

(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to an amicus brief.

§215.314. *Cease and Desist Orders.*

(a) Whenever it appears [to the ALJ] that a person is violating any provision of Occupations Code, Chapter 2301; [Transportation Code, Chapter 503; or a board rule or order;] or a Board rule or order, the ALJ may enter an order requiring the person to cease and desist from the violation may be entered.

(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more of the conditions [enumerated] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held, the order may be issued without notice; otherwise, the order must be issued after a hearing has been held to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case. [; otherwise it must be issued subject to a notice of hearing to determine the validity of the order.]

(c) Each [A] cease and desist order issued without notice must include:

(1) the date and hour of issuance;

(2) a statement of which of the conditions [enumerated] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held; and

(3) a notice of hearing for the earliest date possible to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case. [proceedings-]

(d) Each [A] cease and desist order shall: [issued with or without notice must:]

(1) state [set out] the reasons for its issuance; and

(2) describe in reasonable detail; and not by reference to the complaint or other document, the act or acts [sought] to be restrained.

(e) A cease and desist order shall not be issued unless the person requesting the order presents a petition or complaint, verified by affidavit, containing a plain [and intelligible] statement of the grounds for seeking the cease and desist order. [relief.]

(f) A cease and desist order issued without notice expires as provided in the order, but shall not exceed 20 days.

(g) A cease and desist order may be extended for a period of time equal to the period of time granted in the original order if, if prior to the expiration of the previous order, good cause is shown for the extension or the party against whom the order is directed consents to the extension. [No more than one extension may be granted unless subsequent extensions are unopposed.]

(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.

(i) After the hearing, the ALJ shall prepare a written order, including a [reasoned] justification[,] explaining why the cease and desist order should remain in place during the pendency of the contested case. [proceeding.]

(j) A party may appeal to the board [Board] an order granting or denying a motion for a cease and desist order.

(k) An appeal of an order granting or denying a motion for a cease and desist order [the interlocutory decision] must be made to the board [Board] before a person may seek judicial review of an order issued under this section. [An interlocutory decision is sufficient for a complaining party to seek judicial review of the matter.]

(l) Upon appeal to a district court of an order issued under this section [to the district court, as provided in the Codes], the order may be stayed by the board [Board] upon a showing of good cause by a party [of interest].

(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a cease and desist order under this section. An ALJ shall hold a hearing to determine whether an interlocutory cease and desist order should remain in effect during the pendency of the proceeding.

§215.315. Statutory Stay.

(a) A [In accordance with Occupations Code, §2301.803(e), a] person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory stay.

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

(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301[,] may initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the statutory stay.

§215.316. Informal Disposition.

(a) Notwithstanding any other provision in this subchapter, at any time during the contested case, the board [adjudication process, the Board] may informally dispose of a contested case [matter] by stipulation, agreed settlement, dismissal, or consent order.

(b) If the parties have settled or otherwise determined that a contested case proceeding is not required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the contested case [proceeding] from SOAH's docket and present a proposed agreed order or dismissal order to the board. [Board for consideration.]

(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed by all [the] parties or their authorized [designated] representatives.

(d) Upon receipt of the agreed order, the board [Board] may:

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

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

(3) take other action that the board [Board] finds just.

§215.317. Motion for Rehearing.

(a) A motion for rehearing and any reply to a motion for rehearing will be processed in accordance with Government Code, Chapter 2001.

(b) For an order issued by the board [Board], a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board [Board], unless the board [Board] specifically delegates motion for rehearing authority.

(c) For an order issued by a board delegate [director authorized directly by law, rather than through delegated authority], a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board delegate who [director that] issued the order.

(d) The requirements for a motion for rehearing regarding a complaint filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613[,] are governed by §215.207 of this title [chapter] (relating to Contested Cases: Final Orders).

[(e) This section in no way precludes delegation by the Board or executive director under the Codes.]

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

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43 TAC §§215.309, 215.312, 215.313

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which

require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.309. *Recording and Transcriptions of Hearing Cost.*

§215.312. *Discovery.*

§215.313. *Official Notice of Records.*

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

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David D. Duncan

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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §§215.500 - 215.503

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and Transportation Code, Chapter 503.

§215.500. *Administrative Sanctions and Procedures.*

(a) An administrative sanction [Administrative sanctions] may include:

- (1) denial of an application for a license; [license denial];
- (2) suspension of a license;[;]

(3) revocation of a license; or[; and]

(4) the imposition of civil penalties.

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

- (1) an application for a license should be denied; or
- (2) administrative sanctions should be imposed.

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

(d) [(e)] The Notice of Department Decision shall include:

- (1) a statement describing the department decision and the [its] effective date;
- (2) a description of each alleged violation[; if applicable];
- (3) a description of each administrative sanction being proposed;
- (4) a statement regarding [as to] the legal basis for each administrative sanction;

(5) a statement regarding [as to the right of] the license applicant, license holder, or other person's right to request a hearing; [or the licensee to request an administrative hearing;]

(6) the procedure to request a [a statement as to the procedure for requesting an administrative] hearing, including the deadline for filing; [period during which a request must be received by the department;] and

(7) notice to the license applicant, license holder, or other person [a statement] that the proposed decision and administrative sanctions [specified] in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person [or the licensee] fails to timely request a hearing.

(e) [(d)] The license applicant, license holder, or other person must submit, in writing, a request for a [A request for an administrative] hearing under this section. The department must receive a request for a hearing [must be made in writing and received by the department] within 26 days of the date of the Notice of Department Decision [is mailed by the department].

(f) [(e)] If the department receives a timely request for a hearing, [If a request for an administrative hearing is timely received,] the department will [shall] set a hearing date and give notice to the license applicant, license holder, or other person [or the licensee] of the date, time, and location of the hearing. [where it will be held. The hearing shall be conducted under the provisions set forth in this chapter by an administrative law judge of the State Office of Administrative Hearings.]

(g) [(f)] If the license applicant, license holder, or other person [or the licensee] does not make a timely request for a [an administrative] hearing or enter into a settlement agreement within 27 days of the date of [before the 27th day after the date] the Notice of Department Decision, the department [is mailed the department's] decision becomes final.

§215.501. *Final Decisions and Orders; Motions for Rehearing.*

(a) If a department decision becomes final under a Notice of Department Decision issued under §215.500 of this title (relating to Administrative Sanctions and Procedures), the matter will be forwarded to the [department or] final order authority for issuance of [shall issue] a final order incorporating the decisions, findings, and administrative sanctions imposed by the Notice of Department Decision. The department will send a copy of the final order to the parties.

(b) The provisions of Government Code, Chapter 2001, Subchapter F govern: [(Administrative Procedure Act); Subchapter F (Contested Cases: Final Decisions and Orders; Motions for Rehearing) govern]

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

(2) motions for rehearing filed in response to a final order [thereto-]

§215.502. *Judicial Review of Final Order.*

The provisions of Government Code, Chapter 2001, Subchapter G [(Administrative Procedure Act); Subchapter G (Contested Cases: Judicial Review)] govern the appeal of a final order issued under this subchapter.

§215.503. *Refund of Fees.*

In the absence of director approval, the [The] department will not refund a fee [fees] paid by a license applicant, license holder, or other person if: [or a licensee if]

(1) the application or license is:

(A) denied;[;]

(B) suspended;[;] or

(C) revoked; or [under this subchapter.]

(2) the license applicant, license holder, or other person is subject to an unpaid civil penalty imposed against the license applicant, license holder, or other person by a final order.

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

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◆ ◆ ◆

Figure: 43 TAC §215.139(c)

<u>If a new license applicant is:</u>	<u>Maximum number of metal dealer's license plates issued during the first license term is:</u>
<u>1. a franchised motor vehicle dealer</u>	<u>5</u>
<u>2. a franchised motorcycle dealer</u>	<u>5</u>
<u>3. an independent motor vehicle dealer</u>	<u>2</u>
<u>4. an independent motorcycle dealer</u>	<u>2</u>
<u>5. a franchised or independent travel trailer dealer</u>	<u>2</u>
<u>6. a trailer or semi-trailer dealer</u>	<u>2</u>
<u>7. an independent mobility motor vehicle dealer</u>	<u>2</u>
<u>8. a wholesale motor vehicle dealer</u>	<u>1</u>

Figure: 43 TAC §215.139(e)

<u>If a vehicle dealer is:</u>	<u>Maximum number of metal dealer's license plates issued per license term is:</u>
<u>1. a franchised motor vehicle dealer</u>	<u>30</u>
<u>2. a franchised motorcycle dealer</u>	<u>10</u>
<u>3. an independent motor vehicle dealer</u>	<u>3</u>
<u>4. an independent motorcycle dealer</u>	<u>3</u>
<u>5. a franchised or independent travel trailer dealer</u>	<u>3</u>
<u>6. a trailer or semi-trailer dealer</u>	<u>3</u>
<u>7. an independent mobility motor vehicle dealer</u>	<u>3</u>
<u>8. a wholesale motor vehicle dealer</u>	<u>1</u>

Figure: 43 TAC §215.139(f)(1)

<u>If a vehicle dealer is:</u>	<u>Number of additional metal dealer's license plates issued to a dealer that demonstrates a need through proof of sales is:</u>
<u>1. a wholesale motor vehicle dealer</u>	<u>1</u>
<u>2. a dealer selling fewer than 50 vehicles during the previous 12-month period</u>	<u>1</u>
<u>3. a dealer selling 50 to 99 vehicles during the previous 12-month period</u>	<u>5</u>
<u>4. a dealer selling more than 200 vehicles during the previous 12-month period</u>	<u>any number of metal dealer's license plates the dealer requests.</u>

Figure: 43 TAC §215.153(c)(2)(A) [§215.153(e)(1)]

APPENDIX A-1

TEXAS DEALER																							
VEHICLE OWNED BY JOHN DOE AUTO SALES																							
<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</small>																							
<table border="1" style="width: 100%; height: 30px;"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																							
EXPIRES				<table border="1" style="width: 100%; height: 30px;"><tr><td></td><td></td><td></td><td>-</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>											-								
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<table border="1" style="width: 100%; height: 30px;"><tr><td></td><td></td><td></td><td></td><td colspan="8"></td></tr></table>																							
VIN _____																							
<small>FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE BY CHARITABLE ORGANIZATIONS</small>																							

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO SPECIFIC VEHICLE

Figure: 43 TAC §215.153(c)(2)(B) [§215.153(e)(2)]

APPENDIX A-2

<p>● TEXAS DEALER ●</p> <p>VEHICLE OWNED BY JOHN DOE AUTO SALES</p> <p>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</p> <table border="1"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table> <p>EXPIRES <table border="1"><tr><td> </td><td> </td><td>-</td><td> </td><td>-</td><td> </td><td> </td><td> </td></tr></table></p> <p>Authorized Agent Tag</p> <p>FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE</p> <p>BY CHARITABLE ORGANIZATIONS ●</p>																-		-			
		-		-																	

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(2)(C) [§215.153(e)(3)]

APPENDIX B-1

TEXAS BUYER																							
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #																							
<table border="1"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>																							
EXPIRES				<table border="1"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px; text-align: center;">-</td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px; text-align: center;">-</td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table>										-			-						
		-			-																		
<table border="1"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td colspan="8" style="width: 200px; height: 20px;"></td></tr></table>																							
VIN _____				SELLER: ABC FANTASTIC FABULOUS AUTO SALES																			

BUYER'S TEMPORARY TAG

APPENDIX B-2

TEXAS BUYER – INTERNET											
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #											
4587650											
EXPIRES					-			-			
VIN _____											
SELLER: ABC FANTASTIC FABULOUS AUTO SALES											

PREPRINTED INTERNET-DOWN TEMPORARY [INTERNET-DOWN BUYER'S] TAG

Figure: 43 TAC §215.153(c)(2)(E) [§215.153(e)(5)]

APPENDIX C-1

TEXAS CONVERTER
VEHICLE OWNED BY JOHN DOE CONVERSIONS
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER PERMIT #

--	--	--	--	--	--	--

EXPIRES

		-			-				
--	--	---	--	--	---	--	--	--	--

--	--	--	--

VIN _____
FOR INTRANSIT, ROAD TESTING, DEMONSTRATION

CONVERTER'S TEMPORARY [CONVERTER] TAG

Figure: 43 TAC §215.250(h)(1) [§215.250(e)(1)]

Dealer Discount with Sales Price:

MSRP	\$20,000
Less Dealer Discount	1,000
<u>Sales [Sale] Price</u>	\$19,000

Dealer Discount without Sales Price:

"\$1,000 Discount Off MSRP"

Figure: 43 TAC §215.250(h)(2) [~~§215.250(e)(2)~~]

Customer Rebate with Sales Price:

<u>MSRP</u> [Advertised Price]	\$18,000
Less Rebate	<u>500</u>
<u>Sales</u> [Sale] Price	\$17,500

Customer Rebate without Sales Price:

"\$500 Rebate Off MSRP"

Figure: 43 TAC §215.250(h)(3) [~~§215.250(e)(3)~~]

Customer Rebate and Dealer Discount with Sales Price:

MSRP	\$20,000
Less Rebate	500
Less Dealer Discount	<u>500</u>
<u>Sales</u> [Sale] Price	\$19,000

Customer Rebate and Dealer Discount without Sales Price:

"1,000 Savings Off MSRP (\$500 Rebate and \$500 Dealer Discount)"

Figure: 43 TAC §215.250(i) [~~§215.250(d)~~]

<u>Option Package Discount with Sales Price:</u>	
Total [Motor] Vehicle Plus Options	\$10,995
Option Package Discount	1,000
MSRP	9,995
Less Rebate	500
Less Dealer Discount	<u>500</u>
<u>Sales [Sale] Price</u>	\$8,995

Option Package Discount without Sales Price:

"Total Savings \$2,000 (\$1,000 Option Package Discount; \$500 rebate, and \$500 dealer discount off MSRP)"

Figure: 43 TAC §215.250(j) [~~§215.250(e)~~]

MSRP	<u>\$20,000</u> [\$9,995]
Less Rebate	<u>1,000</u> [500]
Less Dealer Discount	<u>1,000</u> [500]
Sales [Sale] Price	<u>\$18,000</u> [\$8,995]

FIRST TIME BUYERS RECEIVE
ADDITIONAL \$500 OFF

Figure 43 TAC §215.250(k)

Additional Available Limited Rebates (Click the applicable box or boxes for Sales Price)

See Dealer for Eligibility Terms

- HISD Teachers Receive Additional \$500 Discount
- Active Duty Military Receive Additional \$500 Discount
- Dallas Metro Residents Receive Additional \$500 Discount
- Loyalty Owner Receive Additional \$500 Discount
- "X" Financing Receive Additional \$500 Discount

Sales Price with Selected Discounts \$ _____

Figure: 43 TAC 215.250(l)

<u>MSRP</u>	<u>\$20,000.00</u>
<u>Total Dealer Installed Factory Options</u>	<u>\$1,000.00</u>
<u>Total</u>	<u>\$21,000.00</u>
<u>Less Dealer Discount</u>	<u>\$500.00</u>
<u>Sales Price</u>	<u>\$20,500.00</u>

Figure: 43 TAC 215.250(m)

<u>MSRP</u>	<u>\$20,000.00</u>
<u>Total Distributor Installed Options</u>	<u>\$1,000.00</u>
<u>Total</u>	<u>\$21,000.00</u>
<u>Less Manufacturer Discount</u>	<u>\$500.00</u>
<u>Less Dealer Discount</u>	<u>\$100.00</u>
<u>Sales Price</u>	<u>\$20,400.00</u>