



Texas Department *of* Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.

Motor Vehicle Industry Regulation Advisory Committee

9:00 A.M.
Tuesday, June 25, 2024

Contents

TxDMV MVIRAC Meeting Agenda.....	3
Petition for Rulemaking from the TADA	6
Executive Director Daniel Avitia’s Memo to MVIRAC re: Petition for Rulemaking from the Texas Automobile Dealers Association (TADA).....	10
Draft Proposed Amendments to 43 TAC Chapter 215, Motor Vehicle Distribution; §215.245, Availability of Motor Vehicles.....	12

AGENDA
MOTOR VEHICLE INDUSTRY REGULATION ADVISORY COMMITTEE MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR CONFERENCE ROOM
AUSTIN, TEXAS 78731
OPEN MEETING VIA
TELECONFERENCE CALL
PURSUANT TO GOVERNMENT CODE, §551.125
TUESDAY, JUNE 25, 2024
9:00 A.M.

THIS MEETING WILL BE HELD REMOTELY VIA TELECONFERENCE CALL

The physical location of the meeting will be the Lone Star Conference Room of Building 1, 4000 Jackson Avenue, Austin, Texas 78731, where the teleconference call will be audible to the public.

Teleconference Instructions:

Attendee Join Link:

<https://texasdmv.webex.com/texasdmv/j.php?MTID=m7e54288e78827961a89dda2743c57f74>

Webinar number:

2630 378 3925

Webinar password:

MVIRAC (684722 from phones and video systems)

Phone number for accessing the meeting via phone:

1-650-479-3208 United States Toll

Access code:

263 037 83925

Link to June 25, 2024, TxDMV Motor Vehicle Industry and Regulation Advisory Committee Meeting Documents: <https://www.txdmv.gov/about-us/txdmv-board-meetings>

All agenda items are subject to possible discussion, questions, consideration, and action by the Motor Vehicle Industry Regulation Advisory Committee of the Texas Department of Motor Vehicles (Advisory Committee). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of consideration by the Advisory Committee. A quorum of the Board of the Texas Department of Motor Vehicles (board) may be present at this meeting for information-gathering purposes and discussion. However, board members will not vote on any Advisory Committee agenda items, nor will any board action be taken.

1. CALL TO ORDER

- A. Roll Call and Establishment of Quorum

2. DISCUSSION, BRIEFING, AND ACTION ITEMS

- A. Discuss Texas Automobile Dealers Association (TADA) Rulemaking Petition to Adopt New Rules to Define “Reasonable Quantity” and “Reasonable Time” in Occupations Code, §2301.452(a) - TxDMV Staff (BRIEFING AND DISCUSSION ONLY)
- B. Consider Rule Amendments to 43 TAC Chapter 215, Motor Vehicle Distribution; §215.245, Availability of Motor Vehicles - TxDMV Staff (BRIEFING AND DISCUSSION ONLY)
- C. Recommendations of Advisory Committee for Presentation to the Board on Texas Automobile Dealers Association (TADA) Rulemaking Petition; and Amendments to 43 TAC Chapter 215, Motor Vehicle Distribution; §215.245, Availability of Motor Vehicles - Presiding Officer (DISCUSSION AND ACTION ITEM)

3. PUBLIC COMMENT**4. ADJOURNMENT**

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

Public comment on any agenda item (including an open comment under the agenda item for Public Comment) will only be accepted as follows: 1) in person at the Advisory Committee meeting; or 2) by written comment submitted to GCO_General@txdmv.gov.

If you want to comment in person at the Advisory Committee meeting, you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Advisory Committee or send an email to GCO_General@txdmv.gov to register by providing the required information prior to the agenda item being taken up by the Advisory Committee:

- 1. a completed [Public Comment Registration Form](#); or
- 2. the following information:

Motor Vehicle Industry Regulation Advisory Committee
Texas Department of Motor Vehicles
Agenda: June 25, 2024

Page 3

- a. the agenda item you wish to comment on;
- b. your name;
- c. your address (optional), including your city, state, and zip code; and
- d. who you are representing.

If you make your public comment in person at the Advisory Committee meeting, you must wait for the presiding officer to call on you before you verbally make your comment. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

If you want to submit your public comment in writing, submit your comment to GCO_General@txdmv.gov five business days in advance of the Advisory Committee meeting, along with the following information:

1. the agenda item you wish to comment on;
2. your name;
3. your address (optional), including your city, state, and zip code; and
4. who you are representing.

Agenda items may be presented by the named presenters or other Advisory Committee members.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact Carrie Fortner by telephone at (512) 465-3044.

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

CERTIFYING OFFICIAL: Laura Moriaty, General Counsel, (512) 465-5665.



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

May 14, 2024

Mr. Daniel Avitia
Executive Director
Texas Department of Motor Vehicles
4000 Jackson Avenue.
Austin, TX 78731
Sent via email: daniel.avitia@txdmv.gov

Re: Rule Petition

Dear Director Avitia:

In accordance with §2001.021, Government Code, please accept this petition to the Texas Department of Motor Vehicles (TxDMV) on behalf of the Texas Automobile Dealers Association (TADA) to adopt a rule clarifying §2301.452(a), Occupations Code.

The proposed rule will give transparency and notice to the department's license holders with respect to the number of new motor vehicles that are necessary to allocate and deliver to a franchised dealer with respect a manufacturer's, distributor's, or representative's reasonable and communicated sales goals, objectives, and standards, as required by §2301.452.

In addition, the proposed rule will allow each Texas same line-make franchised dealer the ability to provide their customers with an adequate inventory from which to purchase a new motor vehicle, which will encourage competition for all licensees.

TxDMV Rule Provisions

The Legislature gave the board the authority to adopt a rule under 2301.155, Occupations Code:

The authority to adopt rules under this chapter is vested in the board. In accordance with this chapter and the rules, decisions, and order of the board, the board shall adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

Mr. Daniel Avitia
May 14, 2024
page 2

The board's authority to adopt a rule is also set out in §2301.153(a)(8), Occupations Code, which provides that the board has "the power to adopt rules and issue conclusions of law and decisions, including declaratory decisions or orders." The board is also given rulemaking authority in Chapter 1002.001, Transportation Code: "The board may adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state."

A "rule" is defined in §2301.002(31), Occupations Code:

"Rule":

- (A) means a statement by the board of general applicability that:
 - (i) implements, interprets, or prescribes law or policy; or
 - (ii) describes the procedure of practice requirements of the board;
- (B) includes the amendments or repeal of a prior rule; and
- (C) does not include a statement regarding only the internal management or organization of the board and not affecting the rights of a person not connected with the board.¹

As provided by the above cited statutes, the board has the authority to adopt rules to govern practice and procedure and to administer applicable law or policy.

§2301.452. Delivery of Motor Vehicle or Part

A manufacturer or distributor is required to deliver a reasonable quantity of new motor vehicles, parts, or accessories to its franchised dealers and delivery is to occur within a reasonable time if the vehicle, part, or accessory is publicly advertised as being available for delivery or is actually being delivered. The specific statute states:

§2301.452. Delivery of Motor Vehicle or Part

(a) A manufacturer, distributor, or representative shall deliver in

¹The definition of a "rule" in the Government Code provides: "Rule": (A) means 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; (B) includes the amendment or repeal of a prior rule; and (C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures." (TEX. GOV'T CODE ANN., §2001.003(6) (Vernon 2016).

Mr. Daniel Avitia
May 14, 2024
page 3

a reasonable quantity and within a reasonable time to a franchised dealer who holds a franchise for a motor vehicle sold or distributed by the manufacturer, distributor, or representative any new motor or part or accessory for a new motor vehicle as covered by the franchise if the vehicle, part, accessory is publicly advertised as being available for delivery or is actually being delivered.

In order to bring transparency and clarity with respect to §2301.452(a), Occupations Code, on behalf of the franchised dealers, manufacturers, distributors, and representatives, TADA requests the following rule adoption in Title 43 of the Texas Administrative Code (TAC):

(1) Reasonable Quantity. In order to deliver a new motor vehicle “in a reasonable quantity,” a manufacturer, distributor, or representative shall, at a minimum, deliver to a franchised dealer at least the number of that new motor vehicle by model necessary for the dealer to meet any sales goals, objectives, or standards (including those relating to sales efficiency or sales effectiveness) communicated to the dealer by the manufacturer, distributor, or representative for that new motor vehicle.

(2) Reasonable Time. In order to deliver a new motor vehicle “within a reasonable time,” a manufacturer, distributor, or representative shall, at a minimum, deliver the new motor vehicle to a franchised dealer with sufficient time to allow the dealer to sell the number of that new motor vehicle necessary to meet any sales goals, objectives, or standards (including those relating to sales efficiency or sales effectiveness) communicated to the dealer by the manufacturer, distributor, or representative for that new motor vehicle.

The above proposal is suggested language to clarify and assist the industry with respect to complying with §2301.452(a). In addition, the proposal will promote competition by enabling all dealers to have adequate inventory to satisfy buyer’s needs and desires.

TADA is available to discuss any amendment to the proposal such as how the department suggests a notice is to be communicated to the dealer from the manufacturer or distributor as well as whether to include parts and accessories into the proposal at this time.

Mr. Daniel Avitia
May 14, 2024
page 4

I look forward to working with the department and if you have any question, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Phillips", with a long, sweeping flourish extending to the right.

Karen Phillips
General Counsel/EVP



Date: 5/22/2024

To: Motor Vehicle Industry Regulation Advisory Committee (MVIRAC)

From: Daniel Avitia, Executive Director

Subject: Petition for Rulemaking from the Texas Automobile Dealers Association

The Texas Department of Motor Vehicles (TxDMV or department) is requesting assistance and advice from the MVIRAC related to a petition for rulemaking (petition) received from the Texas Automobile Dealers Association (TADA). In the petition, TADA requested that the department further clarify and define in rule “reasonable quantity” and “reasonable time” in Texas Occupations Code §2301.452.

The department has called a meeting of MVIRAC to get feedback on the necessity of rulemaking in this area, and on the draft language proposed by TADA. To help facilitate this discussion, the department has put together the questions below. I wanted to make them available to you in advance to allow you time to consider them fully. Department staff will walk through these questions with you to get your feedback during the discussion and briefing section of the upcoming MVIRAC meeting. MVIRAC will also have an opportunity at the meeting to vote on whether to make formal recommendations to the board regarding the petition.

Text of Texas Occupations Code §2301.452:

(a) A manufacturer, distributor, or representative shall deliver in a **reasonable quantity** and within a **reasonable time** to a franchised dealer who holds a franchise for a motor vehicle sold or distributed by the manufacturer, distributor, or representative any new motor vehicle or part or accessory for a new motor vehicle as covered by the franchise if the vehicle, part, or accessory is publicly advertised as being available for delivery or is actually being delivered.

(b) This section does not apply to a delivery prevented by:

- (1) an act of God;
- (2) a work stoppage or delay because of a strike or labor dispute;
- (3) a freight embargo; or
- (4) another cause beyond the control of the manufacturer, distributor, or representative.

Questions for MVIRAC Meeting:

- What inventory allocation methods or strategies do manufacturers and distributors use in Texas?
- Is there a benefit to further defining “reasonable quantity” and “reasonable time” in Texas Occupations Code §2301.452?
- Is the draft language too vague for a manufacturer, distributor or dealer to determine exactly how many vehicles and exactly when a manufacturer or distributor is required to deliver to a dealer? How would you make the definitions more specific?



Texas Department of Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.

- If the definition is based on the dealer's sales goals, which sales goals should be considered to determine "reasonable quantity" and "reasonable time"? Weekly, monthly, quarterly, or yearly sales goals? Goals based on sales incentives?
- Does the language "sales goals, objectives or standards...communicated to the dealer by the manufacturer..." need further definition? Do the goals need to be in writing? Are these only contractual goals, incorporated into a franchise agreement?
- How could a franchised dealer's refusal of inventory delivery from a manufacturer impact "reasonable quantity" and "reasonable time" for subsequent deliveries? Will this rule impact the right of Texas dealers to refuse inventory delivery from a manufacturer?
- Would a more specific definition of "reasonable quantity" or "reasonable time" eliminate existing inventory allocation methods or strategies?
- Would it be preferable to allow the TxDMV board to interpret "reasonable quantity" and "reasonable time" on a case-by-case basis, from the ALJ's specific findings of fact in each case?
- Is there any other fact-finding you would recommend that the department undertake before deciding whether to make new rules on this issue?

TITLE 43. TRANSPORTATION
Part 10. Texas Department of Motor Vehicles
Chapter 215 - Motor Vehicle Distribution

Proposed Section
Page 1 of 2

1 **TEXT.**

2 **SUBCHAPTER F. ADVERTISING**

3 **43 TAC §215.245**

4 §215.245. Availability of Motor Vehicles.

5 (a) A dealer may advertise a specific new motor vehicle or line-make of vehicles for sale if the
6 specific motor vehicle or line-make is in the possession of the dealer at the time the advertisement is
7 placed.

8 (b) If the specific motor vehicle or line-make is not in the possession of the dealer at the time the
9 advertisement is placed, the dealer must clearly and conspicuously disclose that fact in the advertisement
10 and state that the motor vehicle may be obtained from the manufacturer, distributor, or some other
11 source. The advertisement must set forth the number of motor vehicles available at the advertised price,
12 if a price is advertised, at the time the advertisement is placed or the dealer can show that it has the
13 number of motor vehicles available to meet the reasonable expectable public demand based on prior
14 experience.

15 (c) If an advertised price pertains to only one specific motor vehicle, then the advertisement must
16 also disclose the motor vehicle's stock number, which must be unique to the specific motor vehicle
17 advertised, or the last four digits of the VIN.

18 (d) This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer
19 advertising association, or distributor, nor does it prohibit the inclusion of the names and addresses of
20 the dealers selling such motor vehicles in the particular area.

21 (e) A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

22 (1) the specific used motor vehicle is in the possession of the dealer at the time the
23 advertisement is placed; and

TITLE 43. TRANSPORTATION
Part 10. Texas Department of Motor Vehicles
Chapter 215 - Motor Vehicle Distribution

1 (2) the title certificate to the used motor vehicle has been assigned to the dealer.

2

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

5 Filed with the Office of the Secretary of State on M DD, YYYY.

6

7

8

DRAFT