



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Board Meeting

9:00 a.m.

Thursday, August 8, 2024

AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR CONFERENCE ROOM
AUSTIN, TEXAS 78731
THURSDAY, AUGUST 8, 2024
9:00 A.M.

The presiding officer of the Board of the Texas Department of Motor Vehicles (Board) will be physically present in the Lone Star Conference Room of Building 1, 4000 Jackson Avenue, Austin, Texas 78731. Some Board members may attend via videoconferencing.

Link to August 8, 2024, Board 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 Board. Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff, Board member, or other personnel as needed. The Board reserves the right to discuss any items in closed session where authorized by the Open Meetings Act.

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1. **Roll Call and Establishment of Quorum**
2. **Pledges of Allegiance - U.S. and Texas**
3. **Chair's Reports - Chairman Bacarisse (BRIEFING ONLY)**
 - A. Global Technology Outage Response
 - B. Recognition of 30 Years of State Service for Daniel Avitia
4. **Executive Director's Reports - Daniel Avitia (BRIEFING ONLY)**
 - 7 A. [American Association of Motor Vehicle Administrators \(AAMVA\) 2024 Region 2 Conference](#)
 - 8 B. [Texas Independent Automobile Dealers Association \(TIADA\) Conference Update](#)
 - 9 C. [Awards, Recognition of Years of Service, and Announcements](#)

CONTESTED CASE

- 10 5. **Proposal for Decision: Franchised Dealer's Notice of Protest of Dealership License Application; SOAH Docket No. 608-22-0643.LIC; Texas Department of Motor Vehicles No. 21-0018-LIC; [Tommie Vaughn Motors, Inc., Protestant v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford, Applicant](#) - Laura Moriarty (ACTION ITEM)**
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- 140 **6. Consideration and Approval of Proposed Final Order on Enforcement Case Docket No. 23-0012668.ENF; SOAH Docket No. 608-23-24732.ENF; *Texas Department of Motor Vehicles v. Whaley Boy, Inc.*; d/b/a *WB Motors Inc.* - Laura Moriaty (ACTION ITEM)**

RULE ADOPTIONS

- 215 **7. Chapter 223, Compliance and Investigations Division - Corrie Thompson (ACTION ITEM)**
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New: §223.5
Repeal: Subchapter B
(Relating to Cleanup)
(Published 4/26/24 - 49 TexReg 2690)

- 229 **8. Rule Review**
Rule Review Adoption under Government Code §2001.039: Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division - Laura Moriaty (ACTION ITEM)
(Published 4/26/24 - 49 TexReg 2790)

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- 231 **9. Rule Review**
Rule Review Proposal under Government Code, §2001.039: Chapter 218, Motor Carriers - Laura Moriaty (ACTION ITEM)

- 233 **10. Advisory Committee Recommendations: Motor Carrier Regulation Advisory Committee (MCRAC) - Aline Aucoin (BRIEFING ONLY)**

- 236 **11. Chapter 218, Motor Carriers - Jimmy Archer (ACTION ITEM)**
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Repeal: §218.58
(Relating to Cleanup)

- 350 **12. Chapter 224, Adjudicative Practice and Procedure - Corrie Thompson (ACTION ITEM)**
Amendments: §224.27 and §224.54
(Relating to Cleanup)

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- 362 **13. Finance and Audit Committee Update - Committee Chair Brett Graham**
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- 438 **16. Motor Vehicle Crime Prevention Authority (MVCPA) Update** - William Diggs
(BRIEFING ONLY)

CLOSED SESSION

- 17. The Board may enter into closed session under one or more provisions of the Texas Open Meetings Act, Government Code, Chapter 551, including but not limited to:**

Section 551.071 - Consultation with and advice from legal counsel regarding:

- pending or contemplated litigation, or a settlement offer;
- a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code Chapter 551; or
- any item on this agenda; or
- *Lucid Group USA, Inc. vs. Monique Johnston, in her official capacity as Director of the Motor Vehicle Division of the Texas Department of Motor Vehicles, et al.* Case No. 1:22-cv-01116; in the United States District Court for the Western District of Texas, Austin Division.

Section 551.074 - Personnel matters.

- Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
- Performance evaluation of Executive Director, including any modifications to compensation

Section 551.076 - Deliberation Regarding Security Devices or Security Audits.

- the deployment, or specific occasions for implementation, of security personnel or devices; or
-

- a security audit.

Section 551.089 - Deliberation Regarding Security Devices or Security Audits.

- security assessments or deployments relating to information resources technology;
- network security information as described by Government Code Section 2059.055(b); or
- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

18. Action Items from Closed Session

Performance evaluation of Executive Director, including any modifications to compensation

19. Public Comment

20. Adjournment

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

If you would like to comment on any agenda item (including an open comment under the agenda item for Public Comment), you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board 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 Board:

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

Public comment will only be accepted in person. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker

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.



Board Meeting Date: 8/8/2024
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.A
Subject: Executive Director's Report - American Association of Motor Vehicle Administrators (AAMVA) 2024 Region 2 Conference

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

In June 2024, several members of our staff attended the American Association of Motor Vehicle Administrators (AAMVA) Region 2 Conference in New Orleans where they participated in industry discussions on current topics and solutions in one-on-one meetings and jurisdiction roundtables. TxDMV brought home the well-deserved 2024 Regional Improvement Through Efficiencies Award for the TxDMV Consumer Relations Automation Project.

Deputy Executive Director Shelly Mellott and Consumer Relations Division (CRD) Director Amanda Collins joined AAMVA President Ian Grossman on the association's podcast to explain the automation project.

Thanks to CRD, Government and Strategic Communications and Information Technology Services divisions for working together to improve our service to customers in this meaningful way.

FINANCIAL IMPACT

N/A

Board Meeting Date: 8/8/2024
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.B
Subject: Executive Director’s Report – Texas Independent Automobile Association (TIADA) 2024 Conference

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Provide information on the department’s participation in stakeholder events.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

TxDMV staff participated in the Texas Independent Automobile Dealer (TIADA)’s 2024 Annual Conference from July 21-23. The conference brings together independent dealers from across the state to network and attend educational sessions on operational, financial, regulatory, and administrative matters of importance to the motor vehicle industry.

Department staff participated in the conference in various ways, including attending the conference to network with dealers and continue building a productive relationship with the association. Motor Vehicle Division staff managed a booth in the conference exhibit hall and provided dealers with information on licensing processes, administrative requirements, and system operations specific to their needs, with assistance from VTR and ENF staff. Enforcement Division Director Corrie Thompson educated attendees on best practices related to securing both data and physical items, such as tags and plates, within a dealership. Department executive staff, led by Deputy Executive Director Roland Luna, Sr., closed out the conference with a progress update on House Bill 718 implementation.

The department appreciates these opportunities to meet with large numbers of our core stakeholder communities and learn more about their needs as we provide information on TxDMV requirements and processes.

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.C
Subject: Executive Director’s Report – Awards, Recognition of Years of Service, Announcements

RECOMMENDATION

Briefing Only. Board Chair and members offer congratulations to employees receiving recognition for an award, reaching a state service milestone, or retirement.

PURPOSE AND EXECUTIVE SUMMARY

The Executive Director announces the name of individuals who retired from the agency and recognizes employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the August 8, 2024, Board Meeting for state service awards and retirements include:

- Bryan Elliott – Motor Carrier Division – achieved 20 years of state service.
- Denise Cagle – Motor Carrier Division – achieved 25 years of state service.
- Cynthia Mendoza – Human Resources Division – achieved 25 years of state service.
- Daniel Avitia, Jr. – Executive Director’s Office – achieved 30 years of state service.
- J. Scott Prevratil – Information Technology Services Division – achieved 30 years of state service.
- C. David Richards – Office of General Counsel – achieved 30 years of state service.

The following individuals recently retired from the agency:

- Jamie Jaquez – Vehicle Titles and Registration Division – achieved 20 years of state service.
- Tonya Graef – Motor Carrier Division – achieved 22 years of state service.
- Tania Sanders – Vehicle Titles and Registration Division – achieved 27 years of state service.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

No additional background and discussion.

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 5
Subject: Proposal for Decision: Franchised Dealer’s Notice of Protest of Dealership License Application; SOAH Docket No. 608-22-0643.LIC; Texas Department of Motor Vehicles No. 21-0018-LIC; *Tommie Vaughn Motors, Inc. v. Protestant v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford, Applicant*

RECOMMENDATION

No staff recommendation is being made. The contested matter is between two license holders.

PURPOSE AND EXECUTIVE SUMMARY

This contested case involves the protest of an application to relocate operations filed by Chastang Enterprises-Houston, LLC, d/b/a Chastang Ford (Chastang). The protest was filed by Tommy Vaughn Motors, Inc. (Tommy Vaughn), a licensed Ford dealer. Tommy Vaughn is licensed to sell and perform warranty service on vehicles within the Ford light truck and medium truck line-makes and also the Ford passenger automobile line-make.

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD). The parties submitted to the Board a Joint Motion to Dismiss and for Entry of an Agreed Final Order of Dismissal with Prejudice. The Board is required to issue a final order in this case.

The Board may:

1. accept the Agreed Final Order of Dismissal with Prejudice; or
2. consider the PFD to determine whether Chastang established good cause for the relocation as required by Texas Occupations Code §2301.652 and issue an order in accordance with that determination.

Both parties provided timely notice of their intent to make oral presentations to the board but did not submit written materials.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

On or about October 10, 2019, Chastang Ford submitted its application to TxDMV to relocate its Ford dealership from 6200 North Loop East, Houston, Texas 77026 (current site), to 3625 & 3669 Eastex Freeway, Houston, Texas 77026 (relocation site).

Tommy Vaughn filed a protest with TxDMV, challenging Chastang Ford’s application to relocate. The TxDMV referred Tommy Vaughn’s protest to the State Office of Administrative Hearings (SOAH) for a contested case hearing and issued a Notice of Hearing to the parties on November 3, 2021.

A SOAH administrative law judge (ALJ) conducted a hearing on the merits on July 24-28, 2023. The ALJ closed the record on November 17, 2023, and issued the PFD on January 16, 2024. The PFD found that Chastang met its burden of showing good cause for the relocation of its Ford dealership from its current site to the relocation site.

On January 31, 2024, both Chastang and Tommy Vaughn filed exceptions to the PFD. Chastang filed a reply to Tommy Vaughn's exceptions on February 8, 2024. Tommy Vaughn filed a reply to Chastang's exceptions on February 14, 2024. The ALJ considered the exceptions and replies and issued her exceptions letter on April 15, 2024, recommending no changes to the PFD.

The Board has jurisdiction to consider the contested case and to enter a final order. In determining whether Chastang established good cause for its relocation, Texas law requires the Board to consider seven factors listed in Texas Occupations Code §2301.652(a)(1)-(7).

Board Authority in this Contested Case

1. Texas Government Code §2001.056 allows for informal disposition of a contested case by an agreed Settlement.
2. 43 Texas Administrative Code §224.19 provides that upon receipt of an agreed order, the board may adopt the settlement and issue a final order, reject the settlement, or take other action that the board finds just.
3. Texas Occupations Code §2301.652 (a)(1)-(7) sets out the requirements for a dealer to establish good cause for a license application following a protest:
 - a. whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;
 - b. whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with this chapter;
 - c. the desirability of a competitive marketplace;
 - d. any harm to the protesting franchised dealer;
 - e. the public interest;
 - f. any harm to the applicant; and
 - g. current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.
4. Texas Occupations Code §2301.709 requires the Board to issue a final order in this case.
5. Texas Government Code §2001.058(e) allows an agency to change a finding of fact or a conclusion of law made by the ALJ only if the ALJ:
 - a. misapplied or misinterpreted applicable law, agency rules, written policies provided to the ALJ by the agency, or prior administrative decisions,
 - b. relied on a prior administrative decision that is incorrect or should be changed, or
 - c. made a technical error in a finding of fact that should be changed.

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

Attachments

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

1. January 16, 2024 SOAH ALJ PFD
2. January 31, 2024 Chastang's Exceptions to the PFD



3. January 31, 2024 Tommy Vaughn's Exceptions to the PFD
4. February 8, 2024 Chastang's Reply to Tommy Vaughn's Exceptions to the PFD
5. February 14, 2024 Tommy Vaughn's Reply to Chastang's Exceptions to the PFD
6. April 15, 2024 ALJ's Exceptions Letter
7. July 19, 2024 Joint Motion to Dismiss and Proposed Agreed Final Order of Dismissal with Prejudice

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

January 16, 2024

Leon Komkov

VIA EFILE TEXAS

Mark Bankston

VIA EFILE TEXAS

**RE: Docket Number 608-22-0643.LIC;
Texas Department of Motor Vehicles No. 21-0018;
*Tommie Vaughn Motors, Inc. v. Chastang Enterprises-Houston, LLC
d/b/a Chastang Ford***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

SOAH Docket No. 608-22-0643

Suffix: LIC

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TOMMIE VAUGHN MOTORS, INC.,
PROTESTANT
V.
CHASTANG ENTERPRISES-HOUSTON, LLC D/B/A
CHASTANG FORD,
APPLICANT**

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SOAH Docket No. 608-22-0643**Suffix: LIC**

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TOMMIE VAUGHN MOTORS, INC.,
PROTESTANT
v.
CHASTANG ENTERPRISES-HOUSTON, LLC D/B/A
CHASTANG FORD,
APPLICANT**

PROPOSAL FOR DECISION

Chastang Enterprises-Houston, LLC, d/b/a Chastang Ford, a franchised Ford Motor Company (Ford) truck dealer in Houston, filed an application with the Texas Department of Motor Vehicles (Department) for the license required to relocate to a site slightly more than two miles west of its current dealership. Chastang Ford's application was protested by Tommie Vaughn Motors, Inc. d/b/a Tommie Vaughn Ford (Tommie Vaughn), the closest franchised Ford dealer to the proposed relocation site, and the protest was referred to the State Office of Administrative Hearings (SOAH). After evaluating the evidence under the factors

set out in Texas Occupations Code section 2301.652, the Administrative Law Judge (ALJ) concludes that Chastang Ford established good cause for the relocation. Accordingly, the ALJ recommends that the Department dismiss Tommie Vaughn's protest and continue processing Chastang Ford's application.

I. NOTICE, JURISDICTION, PROCEDURAL HISTORY, AND OVERVIEW

Chastang Ford holds a franchised-motor-vehicle-dealer license authorizing it to sell and provide warranty service on the Ford light truck and Ford medium truck line-makes at 6200 North Loop East (also called Loop 610) in Houston, Harris County, Texas.¹ Chastang Ford submitted an application to the Department, in which it seeks to relocate its dealership operations to 3625 and 3669 Eastex Freeway (also called Interstate 69 and U.S. 59), also in Houston.² In connection with the application, Ford issued an Evidence of Relocation Approval certifying to the Department its approval of the proposed relocation.³ Ford also issued initial and superseding Conditional Letters of Approval to Chastang Ford, the second of which sets a deadline of December 31, 2025, for Chastang Ford to complete and occupy the new dealership facilities.⁴

Tommie Vaughn is also a franchised Ford dealer that holds a license to sell and perform warranty service on Ford light trucks, medium trucks, and passenger

¹ Ex. A-80. Chastang Ford's exhibits are identified by the letter A (for Applicant), while Tommie Vaughn's are identified by the letter P (for Protestant).

² Ex. P-4.

³ Ex. A-12; *see* Tex. Occ. Code § 2301.464.

⁴ Ex. A-11.

cars from its location at 1201 North Shepherd Drive in Houston, Texas.⁵ Tommie Vaughn filed its protest with the Department on May 12, 2021, and the matter was docketed with SOAH on November 1, 2021.⁶ The Department issued a Notice of Hearing on November 3, 2021. Notice and jurisdiction were uncontested and are addressed in the findings of fact and conclusions of law without further discussion.

The hearing on the merits was held via Zoom videoconference on July 24-28, 2023, before ALJ Rebecca S. Smith. Chastang Ford was represented by attorneys Leon V. Komkov and J. Bruce Bennett. Tommie Vaughn was represented by attorneys Mark Allan Bankston and Mark King.

In its direct case, Chastang Ford presented the live testimony of (1) its Dealer Principal Joe Chastang; (2) its General Manager, Patrick Chastang; (3) its Parts Manager, John Smith; (4) its Vice President of Sales, Dan Miller; (5) and expert witness Joseph R. Roesner. Tommie Vaughn presented the live testimony of (1) its President, James Janke; (2); its Co-General Manager Kirby Janke; (3) its other Co-General Manager Kyle Janke; (4) its Controller, Joe Blair; and (5) expert witness Cristina Benton, Ph.D. In rebuttal, Chastang presented (1) additional testimony from Joe Chastang; (2) live testimony from expert witness Stephen Pearse; and (3) further expert testimony from Mr. Roesner.

⁵ Ex. A-81.

⁶ Another dealer, Doggett Ford, also filed a protest of Chastang Ford's application, separately docketed under SOAH Docket No. 608-22-0344. Following a separate hearing, a Proposal for Decision (PFD) was issued in that matter on October 17, 2023. The Department's governing board had not ruled on that PFD as of the record-close date in this case.

In addition to the live testimony, each party's exhibits also included excerpts of deposition testimony from these witnesses and others. Chastang Ford presented deposition testimony from two Ford Motor Company employees, Adam Tidwell and Kevin McGuirk; from its employees Mr. Miller and Mr. Smith; from additional Chastang Ford employees Greg Whitworth, Amanda Chastang Venghaus, and Dennis Venghaus; from James Janke, Kyle Janke and Kirby Janke; and from Dr. Benton.⁷ Tommie Vaughn presented deposition testimony from James, Kyle, and Kirby Janke and from Mr. Blair; from Dr. Benton; from Chastang personnel Joe Chastang, Patrick Chastang, the Venghauses, Mr. Miller, Mr. Rodriguez, Mr. Smith, Mr. Whitworth, and Tony Rodriguez; and from Ford employees Mr. Tidwell and Mr. McGuirk.⁸

The record closed on November 17, 2023, with the filing of Chastang Ford's response brief.

II. APPLICABLE LAW

Chapter 2301 of the Texas Occupations Code defines a "franchised dealer" as a person or entity who is engaged in the business of buying, selling, or exchanging new motor vehicles, or repairing or servicing motor vehicles under a

⁷ Exs. A-105 (Tidwell), A-106 (McGuirk), A-108 (Whitworth), A-109 (Miller), A-110 (Smith), A-111 (Ms. Venghaus), A-112 (Mr. Venghaus), A-113 (James Janke), A-114 (Kyle Janke), A-115 (Kirby Janke), and A-116 (Benton).

⁸ Exs. P-131 (Benton), P-132 (Joe Chastang), P-133 (Patrick Chastang), P-134 (Ms. Venghaus), P-135 (Mr. Venghaus), P-136 (Miller), P-137 (Rodriguez), P-138 (Smith), P-139 (Whitworth), P-140 (Tidwell), P-141 (McGuirk), P-142 (James Janke), P-143 (Kyle Janke), P-144 (Kirby Janke), and P-145 (Blair).

manufacturer’s warranty, at an established and permanent place of business, pursuant to a contract—a franchise—with the manufacturer.⁹ To engage in those activities, a franchised dealer must obtain a general distinguishing number under Chapter 503 of the Transportation Code and apply for and obtain a license from the Department under Chapter 2301 of the Occupations Code permitting it to sell and/or service the particular line-make covered by its franchise.¹⁰ A franchised dealer must obtain a separate license for each separate and distinct physical premise and business facility where it conducts those operations, termed a “dealership.”¹¹ The term “dealership” includes premises or facilities where only repair work is performed if that repair work is performed under a franchise and a vehicle manufacturer’s warranty.¹² Before making any change in the location of a dealership, a franchised dealer must apply for and obtain a license for the new location.¹³

A franchised dealer of the same line-make has standing to protest an application to relocate if that protesting dealer’s dealership is located either in the same county in which the proposed dealership is to be located or within a 15-mile radius of the proposed dealership.¹⁴ A dealer may not protest a relocation application “if the proposed relocation site is not: (1) more than two miles from the

⁹ Tex. Occ. Code § 2301.002(16), (27).

¹⁰ Tex. Occ. Code §§ 2301.251(a)–(b), .252(a).

¹¹ Tex. Occ. Code §§ 2301.002(8), .257(c), .355.

¹² Tex. Occ. Code § 2301.002(8).

¹³ Tex. Occ. Code § 2301.257(c); 43 Tex. Admin. Code §§ 215.104(g), .108, .110.

¹⁴ Tex. Occ. Code § 2301.652(b).

site where the dealership is currently located; or (2) closer to the franchised dealer than the site from which the dealership is being relocated.”¹⁵

An applicant must establish good cause for its application. The Department is to consider the following factors when determining good cause:

1. whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;
2. whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer’s franchise, to the extent that the franchise is not in conflict with . . . chapter [2301];
3. the desirability of a competitive marketplace;
4. any harm to the protesting franchised dealer;
5. the public interest;
6. any harm to the applicant; and
7. current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.¹⁶

Section 2301.652 does not set out the particular weight to be given any factor or factors. Instead, weighing of the good cause factors is left to the Department’s discretion.¹⁷ Typically, less weight is given to adequacy of representation and the desirability of a competitive marketplace in relocation cases, where a dealer is

¹⁵ Tex. Occ. Code § 2301.652(c).

¹⁶ Tex. Occ. Code § 2301.652(a).

¹⁷ See *Meier Infiniti Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 100 (Tex. App.—Austin 1996, writ denied).

already in the market, than in cases involving an application to add a dealer location, or point, to the marketplace.¹⁸

Instead, in relocation cases, greater significance is placed on potential harm to the protesting dealer and the public interest.¹⁹

Chastang Ford, as the applicant, has the burden of proving that good cause exists for the relocation, although each party would bear the burden of production for any evidence relevant to a good-cause factor that would be favorable to it.²⁰ The standard of proof is by a preponderance of the evidence.²¹

III. FACTUAL BACKGROUND

A. CHASTANG FORD

Chastang Ford is a franchised Ford truck dealer whose dealership is located off the access road to North Loop 610 in Houston in the Kashmere Gardens neighborhood, which is generally an area of modest homes.²² It is authorized to sell and provide warranty service on the Ford light and medium truck lines. It is not

¹⁸ *Momentum BMW, Ltd. v. Don McGill Imports, Inc.*, MVD Docket No. 91-091 (1991) (PFD at 3-4) (found at Tab 6 to the appendix to Applicant's (App.) Opening Brief). References to App. Opening Brief are to the corrected version of that brief.

¹⁹ *Momentum BMW* (PFD at 3).

²⁰ See Tex. Occ. Code § 2301.652; 1 Tex. Admin. Code § 155.427.

²¹ See *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).

²² Transcript (Tr.) of the Hearing on the Merits, Volume (Vol.) 1 at 38-39, 41; Ex. A-1.

authorized to sell Ford cars,²³ although the parties agree that Ford primarily manufactures trucks, not cars.²⁴ Chastang Ford is a Ford-designated truck center, one of four in Texas.²⁵ This designation will disappear because of a change to Ford policy. Going forward, Chastang Ford will be given a more specific retail dealer locality, as opposed to its current dealership locality, which covers all of Harris County and includes parts of Fort Bend, Montgomery, Brazoria, and Galveston Counties.²⁶

Ford divides Texas into regions and the regions into zones. Chastang Ford, like Tommie Vaughn, is in Zone A of the Houston Region. The Houston Region, also known as Region 33, encompasses much more than just Houston, including much of the southern half of the state.²⁷ Zone A consists of 13 dealerships, mostly in the Houston metropolitan area along with a few rural dealerships.²⁸

Since its beginning, Chastang Ford has focused on trucks. In 1994, Joe Chastang (Mr. Chastang), now Chastang Ford's Dealer Principal, purchased the Volvo heavy truck dealership where he had been working.²⁹ The Volvo truck

²³ Tr. Vol. 2 at 96.

²⁴ Tr. Vol. 1 at 112.

²⁵ Tr. Vol. 1 at 77.

²⁶ Tr. Vol. 1 at 87; Ex. A-2; Tommie Vaughn has challenged the new Ford retail dealer locality in a separate SOAH matter. Under its franchise agreement with Ford, Chastang Ford currently has the responsibility to "promote vigorously and aggressively the sale at retail . . . of TRUCKS to private and fleet customers within the DEALER'S LOCALITY." Ex. A-1 at 9 (capitalization in original).

²⁷ Tr. Vol. 1 at 60, Tr. Vol. 5 at 37.

²⁸ Tr. Vol. 5 at 71-75; Ex. A-26 at 0035.

²⁹ Tr. Vol. 1 at 30-31.

dealership was located at Chastang Ford's current location.³⁰ He stopped being a Volvo dealer in 2003, shortly before he purchased the assets of Bayou City Ford, which was also a truck center that sold Ford light and medium duty trucks.³¹ Chastang Ford is and has been focused on fleet sales and larger accounts.³² From 2019 through 2022, around one-third of Chastang Ford's sales were retail; the remaining two-thirds were fleet sales.³³ This method of sales is more relationship-driven, as opposed to relying on a customer coming into the dealership.³⁴

At the time of the purchase, and for approximately 30 years before that, Bayou City Ford was located at 3625 Eastex (also called I-69), which is also the proposed Chastang Ford relocation site.³⁵ Mr. Chastang decided to move the dealership from the original site to its current site because he had recently redone the facility on North Loop and the facility on Eastex was rundown and too big for the size of the dealership at that time.³⁶

The dealership's business has grown since 2004, and now Chastang Ford contends it has outgrown its current location. In 2004, Chastang Ford sold 485 new

³⁰ Tr. Vol. 1 at 31.

³¹ Tr. Vol. 1 at 32-33.

³² Tr. Vol. 1 at 207.

³³ Tr. Vol. 1 at 207; Ex. A-22 at 15.

³⁴ Tr. Vol. 1 at 207; Tr. Vol. 2 at 103.

³⁵ Tr. Vol. 1 at 34.

³⁶ Tr. Vol. 1 at 35.

vehicles; its 2022 new vehicle sales were a little under 2200.³⁷ Yet, given the size of the dealership lot, the dealership only can display approximately 50 new vehicles.³⁸ According to Patrick Chastang, the dealership's General Manager, it has space for about 30 to 35 used vehicles.³⁹ Similarly, Mr. Chastang testified that Chastang Ford lacks the space to stock the number of vehicles necessary "to be really in the used vehicle business."⁴⁰ For example, in 2022, Chastang Ford sold 318 used vehicles, whereas the average dealer in the Houston Zone A region sold 956 used vehicles.⁴¹

Although the lot consists of 5.992 acres, not all the space is usable for the dealership business; around one acre is used as a retention pond.⁴² Mr. Chastang testified that he is unaware of any Ford dealerships in the Houston metro area with a physically smaller dealership facility than Chastang Ford has.⁴³ Because of the size of the trucks Chastang Ford services and sells, multistory facilities are not feasible. Patrick Chastang testified that "just the ramp alone was not going to work for our style of vehicles."⁴⁴

³⁷ Tr. Vol. 1 at 47.

³⁸ Tr. Vol. 1 at 58.

³⁹ Tr. Vol. 2 at 101. Mr. Chastang testified that the dealership could display 30 used vehicles or "maybe if they are really small, 40." Tr. Vol. 1 at 58.

⁴⁰ Tr. Vol. 1 at 59-60.

⁴¹ Tr. Vol. 1 at 60-61.

⁴² Tr. Vol. 1 at 37.

⁴³ Tr. Vol. 1 at 41.

⁴⁴ Tr. Vol. 2 at 87.

Trying to work around the property's limitations, Chastang Ford built a mezzanine for the parts department, but that was "a stop-gap."⁴⁵ The dealership also added some parts storage containers and enclosed a small building for parts as well.⁴⁶

Chastang Ford presented evidence about difficulties, apart from just size, that exist at its current location. Although the dealership's address is on the North Loop, it does not have direct access from the highway.⁴⁷ Instead, there is only a single point of entrance, about 30 feet wide, on a cross street, Blaffer Street.⁴⁸ The dealership is located next to a pallet company, warehouses, and a gasoline and diesel distributor.⁴⁹ As a result, heavy trucks travel up and down Blaffer Street going to and from those businesses, sometimes hitting the concrete while trying to make a tight turn on a short corner.⁵⁰ The road is not in good condition.⁵¹

Because of the space constraints and the single entrance, delivery of new vehicles directly to the dealership would either clog up Blaffer Street if the delivery driver parked on the street or "clog our lot completely up" if the delivery driver

⁴⁵ Tr. Vol. 1 at 46.

⁴⁶ Tr. Vol. 1 at 46.

⁴⁷ Tr. Vol. 1 at 41.

⁴⁸ Tr. Vol. 1 at 41.

⁴⁹ Tr. Vol. 1 at 42-43.

⁵⁰ Tr. Vol. 1 at 42-43.

⁵¹ Tr. Vol. 1 at 42-43.

pulled into the lot.⁵² Delivery drivers would either park right in front of the gate or would pull into the lot to deliver vehicles. Pulling into the lot would fully or partially block customer access to both sales and service.⁵³

Around 2013, Mr. Chastang purchased a 3.1-acre piece of property on Eastpark that the dealership originally used as storage to alleviate some of the overcrowding.⁵⁴ This property is approximately 1.1 miles away from the dealership.⁵⁵ The dealership later built a building on it where they could wash vehicles and accept deliveries, and it now takes delivery of new vehicles there. The Eastpark facility is also used for storing used vans that would be displayed at the dealership if there was space for them. Employees bring those vans to the dealership if a customer wants to look at them.⁵⁶ The Eastpark facility is also used as an overflow lot for service vehicles that are waiting for the customer to pick them up or for vehicles that have not yet been worked on.⁵⁷ Two Chastang Ford employees work full-time moving vehicles between the dealership and the Eastpark facility, and a third performs that work part-time.⁵⁸ Chastang Ford pays around \$10,500 in rent each month for the Eastpark facility.⁵⁹

⁵² Tr. Vol. 1 at 41.

⁵³ Tr. Vol. 1 at 54-55.

⁵⁴ Tr. Vol. 1 at 53-54, Vol. 2 at 86.

⁵⁵ Tr. Vol. 1 at 186.

⁵⁶ Tr. Vol. 2 at 83-84.

⁵⁷ Tr. Vol. 2 at 84.

⁵⁸ Tr. Vol. 2 at 91.

⁵⁹ Tr. Vol. 2 at 91.

Mr. Chastang testified that Chastang Ford reached the limits of its service capacity in 2014 or 2015, earlier than it reached capacity for other departments.⁶⁰ He testified that the service department cannot get trucks in and out fast enough, and they have to double- or triple-stack trucks, which requires moving trucks to access the trucks in the back of the stack.⁶¹ For some of those trucks, the dealership has to use a forklift to push or pull trucks around.⁶² Chastang Ford has 33 repair stalls, which according to Patrick Chastang is an insufficient number to handle its current business.⁶³ He testified that the conditions hurt Chastang Ford's ability to recruit technicians, both because of the physical layout, but also because technicians get paid based on their efficiency, which is reduced when they have to wait for triple-stacked trucks to be moved before they can look at them.⁶⁴

Additionally, service turnaround time is particularly important to Chastang Ford's largely commercial customers. Chastang Ford's Vice President for Sales Dan Miller testified:

when a commercial customer brings their vehicle in to us and it's broken down or it needs mechanical repair, they're not making a living, it's how they feed their families, so it's so vitally important for a quick turnaround to get that truck back on the road. We have a number of commercial customers too that cannot go out and just rent

⁶⁰ Tr. Vol. 1 at 48.

⁶¹ Tr. Vol. 1 at 49.

⁶² Tr. Vol. 2 at 78.

⁶³ Tr. Vol. 2 at 53, 62.

⁶⁴ Tr. Vol. 2 at 64.

a vehicle on a short-term basis to allow them to fill in because they might be a DOT certified driver of a truck hauling a hazardous material or something like that.⁶⁵

These service issues can hurt the relationship with a commercial or fleet customer, which can in turn affect Chastang Ford's sales.⁶⁶ Mr. Miller also testified that the dealership lacks the space to stock a sufficient number of emergency-needs work trucks.⁶⁷

The size limitations, plus the large size of some of the trucks Chastang Ford services, create other risks as well. Small vehicles needing service are lined up with large commercial trucks in the service drive.⁶⁸ Parts delivery drivers also park in the same drive, daily creating "an unsafe cluster."⁶⁹

Additionally, according to Patrick Chastang, the crowded storage situation leads to lot damage.⁷⁰ He testified that industry average for lot damage on an insurance policy is 2-3%. He testified that, as of the July hearing date, Chastang Ford was at 4% for the year, which did not count two significant incidents the previous month, for which he estimated the dealership would be responsible for

⁶⁵ Tr. Vol. 2 at 220.

⁶⁶ Tr. Vol. 2 at 219.

⁶⁷ Tr. Vol. 2 at 222-23.

⁶⁸ Tr. Vol. 2 at 93.

⁶⁹ Tr. Vol. 2 at 93.

⁷⁰ Tr. Vol. 2 at 94.

around \$10,000.⁷¹ He agreed that lot damage is an issue for every dealership, but stated that Chastang Ford's is more significant, given the bigger trucks and the tight space.⁷²

Ford is moving away from the truck center designation, which is evolving into a Ford Pro Elite program.⁷³ This program requires a dealer to build a separate facility for commercial service and parts and to have 30 service bays just for Ford Pro Elite.⁷⁴ Although this program is replacing the truck center concept, any dealer, not just truck centers, may participate in it by building the appropriate facility.⁷⁵ Mr. Chastang testified that his current facility lacks the space to build improvements that meet the Pro Elite standard.⁷⁶ He testified that this inability to qualify harms Chastang Ford because service to their commercial customers is their "core business."⁷⁷

The lack of space affects the parts department, as well. In addition to using parts in servicing vehicles, Chastang Ford also wholesales parts to independent

⁷¹ Tr. Vol. 2 at 95.

⁷² Tr. Vol. 2 at 96.

⁷³ Tr. Vol. 1 at 63.

⁷⁴ Tr. Vol. 1 at 63-64.

⁷⁵ Tr. Vol. 1 at 63-64.

⁷⁶ Tr. Vol. 1 at 64.

⁷⁷ Tr. Vol. 1 at 65.

repair shops, municipalities with shops, and other dealerships.⁷⁸ Its parts department has 31 employees.⁷⁹

Patrick Chastang testified that the dealership does not have sufficient space to carry the depth of parts it needs, so many times per day, it must buy parts instead of having the parts on the shelf.⁸⁰ For their wholesale parts business, Chastang Ford tries to get parts to the wholesale customer the same day, a goal that is complicated by their lack of storage.⁸¹ The dealership either has to buy the part, which makes them less competitive, or the dealership could lose the business to a parts wholesaler that has the part immediately available.⁸² Patrick Chastang testified that the Ford warehouse delivers parts daily, but he “needs parts on the shelf.”⁸³

For the last several years, roughly 80 to 85% of Chastang’s new vehicle sales have been commercial retail or fleet sales.⁸⁴ And many of its consumer sales are to employees of its commercial customers. According to Mr. Miller, those employees are “comfortable [enough] based on their company or their employer’s decision to

⁷⁸ Tr. Vol. 2 at 57.

⁷⁹ Tr. Vol. 2 at 57.

⁸⁰ Tr. Vol. 2 at 60.

⁸¹ Tr. Vol. 2 at 61.

⁸² Tr. Vol. 2 at 62.

⁸³ Tr. Vol. 2 at 61.

⁸⁴ Tr. Vol. 2 at 98-99.

come to Chastang Ford that they will also.”⁸⁵ Patrick Chastang testified that the dealership does not intend to ask to add cars to its license⁸⁶ and has no intention to change the dealership’s business model, which focuses on commercial retail and fleet sales, into a dealership based on consumer retail sales.⁸⁷ He emphasized that Chastang Ford will not stop focusing on commercial sales, saying “that’s our identity, that’s our bread and butter.”⁸⁸

Patrick Chastang further testified that internet shopping has not had a significant impact on Chastang Ford’s relationship-based commercial business; only about 3% of its business comes through Ford online leads.⁸⁹ The dealership obtains that business by visits or calls. The dealership also uses governmental fleet and commercial bidding sites.⁹⁰

B. TOMMIE VAUGHN FORD

Tommie Vaughn is a franchised Ford dealer located at 1201 N. Shepherd Drive, in the Heights neighborhood of Houston.⁹¹ The dealership’s president is James Janke, who is married to the daughter of the dealership’s founder.⁹² The

⁸⁵ Tr. Vol. 2 at 224.

⁸⁶ Tr. Vol. 2 at 97.

⁸⁷ Tr. Vol. 2 at 77.

⁸⁸ Tr. Vol. 2 at 74.

⁸⁹ Tr. Vol. 2 at 103, 106.

⁹⁰ Tr. Vol. 2 at 104.

⁹¹ Tr. Vol. 3 at 17, 19.

⁹² Tr. Vol. 3 at 6-7, 13.

Jankes' two sons, Kyle and Kirby, serve as the dealership's Co-General Managers.⁹³

Tommie Vaughn's current sales focus is on retail sales, but when Mr. Janke began working there in 1976, the dealership had a sizable fleet focus.⁹⁴ Mr. Janke testified that the dealership increased its retail consumer focus following pressure from Ford.⁹⁵ The dealership still makes fleet sales, but significantly fewer than Chastang Ford does.⁹⁶

Like Chastang Ford, Tommie Vaughn does not have freeway frontage.⁹⁷ It is the closest Ford dealer to downtown Houston, although that would change if Chastang Ford moves to its proposed location.⁹⁸ Also, like Chastang Ford, Tommie Vaughn is a standalone dealership, as opposed to one located in a dealership cluster with dealerships from competing brands.⁹⁹ Unlike Chastang Ford, however, Tommie Vaughn is in an area where the population has an average household income of \$100,000 or higher.¹⁰⁰

⁹³ Tr. Vol. 3 at 7-8.

⁹⁴ Tr. Vol. 3 at 20-21.

⁹⁵ Tr. Vol. 3 at 116.

⁹⁶ Tr. Vol. 3 at 162-63. In 2022, Tommie Vaughn sold about 1,160 fewer fleet vehicles than Chastang Ford did.

⁹⁷ Tr. Vol. 3 at 25.

⁹⁸ Tr. Vol. 3 at 27, 31.

⁹⁹ Ex. P-2; Tr. Vol. 1 at 235.

¹⁰⁰ Tr. Vol. 3 at 19.

Tommie Vaughn's total dealership facilities consist of a little over 15 acres.¹⁰¹ When Mr. Janke began working at the dealership, the fleet business was operating at a property in the 900 block of N. Shepherd Drive, and the truck shop was located at 1145 N. Shepherd.¹⁰² The dealership acquired some additional property in the 1200 block of N. Shepherd and began the process of constructing new facilities.¹⁰³ After construction finished, the dealership moved to the location at 1201 N. Shepherd and used the 1145 N. Shepherd location, after also rebuilding on it, for used car sales.¹⁰⁴ The 900 block and 1201 N. Shepherd locations, although on the same street, are not contiguous; they are approximately 0.6 miles apart.¹⁰⁵ Warranty service work is performed at both locations, and some medium new truck sales and all new fleet sales are made at the 900 block of N. Shepherd location.¹⁰⁶ Tommie Vaughn does not have a separate license number for the 900 block location but instead uses the franchise number it uses for 1201 North Shepherd.¹⁰⁷

Tommie Vaughn has about 55 to 60 service bays and carries around \$3 million in parts.¹⁰⁸ Mr. Janke testified that Tommie Vaughn has signed up for Ford's electric vehicle program, which requires installing chargers and service

¹⁰¹ Tr. Vol. 3 at 36.

¹⁰² Tr. Vol. 3 at 36-37.

¹⁰³ Tr. Vol. 3 at 37-38.

¹⁰⁴ Tr. Vol. 3 at 38.

¹⁰⁵ Tr. Vol. 4 at 10.

¹⁰⁶ Tr. Vol. 3 at 69-72.

¹⁰⁷ Tr. Vol. 4 at 8. Additional facts and arguments about Tommie Vaughn's license and its locations will be discussed in Section IV.G.

¹⁰⁸ Tr. Vol. 3 at 42.

stalls.¹⁰⁹ He testified that the dealership is also looking into participating in the Ford Pro Elite program.¹¹⁰

In 2019, Tommie Vaughn received notification from Ford about its 2018 new sales performance deficiencies.¹¹¹ In particular, Ford notified the dealership that it failed to meet expected registration and sales effectiveness in its locality. As Kirby Janke described it, this measure compares the expected registrations in the assigned locality to actual sales.¹¹² For this measurement, it does not matter where the sales occur.¹¹³ Tommie Vaughn received a similar letter in 2021.¹¹⁴ Although the numbers remained below what Ford wanted, the sales numbers had increased.¹¹⁵ Kirby Janke attributes some of Tommie Vaughn's difficulties with meeting its truck and SUV sales to having Chastang Ford in its dealership locality.¹¹⁶

Despite any issues with sales effectiveness, Joe Blair, Tommie Vaughn's controller, testified that the dealership's working capital has consistently been well above Ford's recommended guidelines, and that as of December 2022, the

¹⁰⁹ Tr. Vol. 3 at 41.

¹¹⁰ Tr. Vol. 3 at 41.

¹¹¹ Ex. P-94; Tr. Vol. 3 at 141-42.

¹¹² Tr. Vol. 3 at 143.

¹¹³ Tr. Vol. 1 at 84, 86.

¹¹⁴ Tr. Vol. 3 at 152.

¹¹⁵ Tr. Vol. 3 at 153.

¹¹⁶ Tr. Vol. 3 at 156.

dealership had \$12.4 million in cash.¹¹⁷ It is a financially strong dealership, but Mr. Blair thinks it will be “more difficult” to remain so if Chastang Ford is allowed to move closer to it.¹¹⁸

C. THE NEED TO RELOCATE AND THE PROPOSED RELOCATION SITE

Realizing the dealership needed to grow, Mr. Chastang looked at options before deciding to move 2.02 miles west back to the original Bayou Ford location on Eastex. He testified that he considered remodeling and had Ford look at it, but the remodeling suggestions could not give them more room; it “was like shuffling chairs around.”¹¹⁹ The idea of remodeling was abandoned. According to Mr. Chastang, he looked at several other properties before deciding on the relocation site. He talked to his neighbors, searched on internet sites, and had real estate professionals looking for properties. He testified that he did not limit his search to the immediate vicinity; he “looked everywhere” and visited around 30 properties.¹²⁰ He testified that the proposed location was “the only property that was big enough and was as close as we could possibly find to the dealership.”¹²¹

¹¹⁷ Tr. Vol. 4 at 18-19.

¹¹⁸ Tr. Vol. 4 at 19, 26.

¹¹⁹ Tr. Vol. 1 at 53.

¹²⁰ Tr. Vol. 1 at 51, 52.

¹²¹ Tr. Vol. 1 at 53.

The current and proposed locations are 2.02 miles apart, with the proposed location being west of the current location.¹²² The proposed location consists of about 11.8 acres, and almost all that acreage would be useable.¹²³ It is located in the same neighborhood, Kashmere Gardens, and ZIP code as Chastang Ford's current location.¹²⁴ The surrounding area is commercial, with "lower priced homes and apartments" on the opposite side of the freeway.¹²⁵ Mr. Chastang testified that the dealership would not need to retain the Eastpark off-site facilities if it moved.¹²⁶ The new location would have multiple entry and exit points, and the layout of the surrounding streets would allow for vehicles to be delivered directly to the location.¹²⁷

Measured by air distance, Tommie Vaughn is 6.3 miles from Chastang Ford's current location. The driving distance between Tommie Vaughn and the current Chastang Ford location is 7.8 miles; the driving distance between Tommie Vaughn and the proposed relocation site is 5.2 miles.¹²⁸ Chastang Ford's expert Joseph Roesner testified that driving from Tommie Vaughn to the relocation site would be 30 seconds faster than driving to Chastang Ford's current location.¹²⁹

¹²² Ex. A-20 at 72.

¹²³ Tr. Vol. 1 at 37.

¹²⁴ Tr. Vol. 1 at 38.

¹²⁵ Tr. Vol. 1 at 38.

¹²⁶ Tr. Vol. 1 at 73.

¹²⁷ Tr. Vol. 1 at 63.

¹²⁸ Ex. A-20 at 72.

¹²⁹ Tr. Vol. 1 at 201-02, Ex. A-20.

D. FORD DEALER LOCALITIES AND THE HOUSTON MARKET

Ford assigns to its retail dealers a “dealer locality” made up of the closest census tracts to that dealer.¹³⁰ As a truck center, Chastang Ford was not assigned a standard retail dealer locality, and in fact, Chastang Ford is located in the eastern half of Tommie Vaughn’s current retail dealer locality.¹³¹ Ford reconfigured its dealer localities in 2022 based on 2020 census data.¹³² At the same time, Ford decided to assign retail dealer localities to all its truck centers, including Chastang Ford.¹³³ Some of Chastang Ford’s new retail dealer locality will consist of census tracts that make up the eastern part of Tommie Vaughn’s dealer locality. Tommie Vaughn has filed a protest to Ford’s assignment of Chastang Ford’s dealer locality. That protest is pending in a separate SOAH docket.¹³⁴ Because of the pending protest, Chastang Ford’s dealer locality has not gone into effect.

A dealer locality is not a sales territory, and sales effectiveness is not measured by sales in the dealer’s locality.¹³⁵ No other dealer is prohibited from advertising or selling to potential customers in another dealer’s locality.¹³⁶ Nor are customers aware of dealer locality.¹³⁷ Ford does, in fact, use the dealer locality to

¹³⁰ Tr. Vol. 3 at 51-52; Ex. P-102.

¹³¹ Tr. Vol. 1 at 79; Tr. Vol. 3 at 54-55.

¹³² Ex. P-102.

¹³³ Ex. P-141 at 53; Tr. Vol. 1 at 88.

¹³⁴ The protest to the dealer locality is SOAH Docket No. 608-23-09094.

¹³⁵ Tr. Vol. 1 at 82.

¹³⁶ Tr. Vol. 1 at 82-83.

¹³⁷ Tr. Vol. 1 at 90.

determine sales effectiveness. However, sales effectiveness is based on nationwide sales, not on sales within the locality itself. Ford uses the dealer locality to calculate expected sales by that dealer and then it compares the dealer's nationwide sales to that expectation.¹³⁸ Kirby Janke testified that if Chastang Ford gets assigned their dealer locality, "Ford is going to go to them and make them up their game on their retail sales, so, therefore, they're going to have to, you know, pick out of my current dealer locality to get their retail sales up to what's going to be expected of them."¹³⁹

Ford designates sales as retail sales unless they are made to a fleet customer with a fleet identification number.¹⁴⁰ Mr. Chastang testified that based on that definition, Chastang Ford is "already doing retail" with its non-fleet commercial truck sales.¹⁴¹ He noted that Chastang Ford's retail sales have increased in the last few years without it changing its business model.¹⁴²

Mr. Chastang described the Ford dealerships in Houston as "some of the biggest and most profitable dealerships in the country."¹⁴³ He also testified, however, that Ford sales are a little lower in Houston than in the rest of the state.¹⁴⁴

¹³⁸ Tr. Vol. 5 at 146.

¹³⁹ Tr. Vol. 3 at 123.

¹⁴⁰ Tr. Vol. 1 at 39.

¹⁴¹ Tr. Vol. 1 at 39.

¹⁴² Tr. Vol. 1 at 39.

¹⁴³ Tr. Vol. 1 at 93.

¹⁴⁴ Tr. Vol. 1 at 91.

Tommie Vaughn’s expert Dr. Benton noted that Ford sales are slightly better in Houston than they are nationally.¹⁴⁵

E. EXPERT REPORTS AND TESTIMONY

1. Chastang Ford’s Expert Testimony

Chastang Ford presented the expert testimony of Joseph Roesner and Stephen Pearse at hearing.

Mr. Roesner is the president of the Fontana Group, which performs consulting work for automobile dealers.¹⁴⁶ Mr. Roesner prepared a report in April 2022, an updated report in December 2022, a rebuttal report in August 2022, and then an updated rebuttal report in February 2023.¹⁴⁷

Mr. Roesner initially emphasized the differences between Chastang Ford and Tommie Vaughn. He stated that the two dealerships “are serving two different sets of the market” — the majority of Chastang Ford’s sales are to fleet customers instead of retail, whereas for Tommie Vaughn, the reverse is true.¹⁴⁸ He also emphasized the difference in the types of vehicles sold. He noted that Chastang Ford sells a greater mix of heavier vehicles than Tommie Vaughn does.

¹⁴⁵ Tr. Vol. 4 at 55.

¹⁴⁶ Tr. Vol. 1 at 176-77.

¹⁴⁷ Tr. Vol. 1 at 180-81; Exs. A-20-A-23.

¹⁴⁸ Tr. Vol. 1 at 208; Ex. A-22 at 15 (showing that for the period of 2019 through October 2022, 32.7% of Chastang Ford’s sales and 78.2% of Tommie Vaughn’s sales were retail).

Between 2019 and October 2022, for the two heaviest truck weight categories, Chastang Ford sold 75 trucks, whereas Tommie Vaughn sold one.¹⁴⁹ Similarly, Chastang Ford vastly outsold Tommie Vaughn in the two next-highest weight categories.¹⁵⁰ The reverse is true for the lighter weight trucks. Tommie Vaughn outsold Chastang Ford for the lowest weight category.¹⁵¹

As for proximity, Mr. Roesner testified that Chastang Ford's retail sales are spread throughout the Houston area, whereas Tommie Vaughn's retail sales are clustered around it, like a standard dealer.¹⁵² He testified that a lot of Chastang Ford's retail sales are "side effects of the fleet accounts."¹⁵³ His updated report contained maps showing the difference. The first map shows Chastang Ford's retail sales, with each blue dot showing a retail sale:¹⁵⁴

¹⁴⁹ Ex. A-22 at 16.

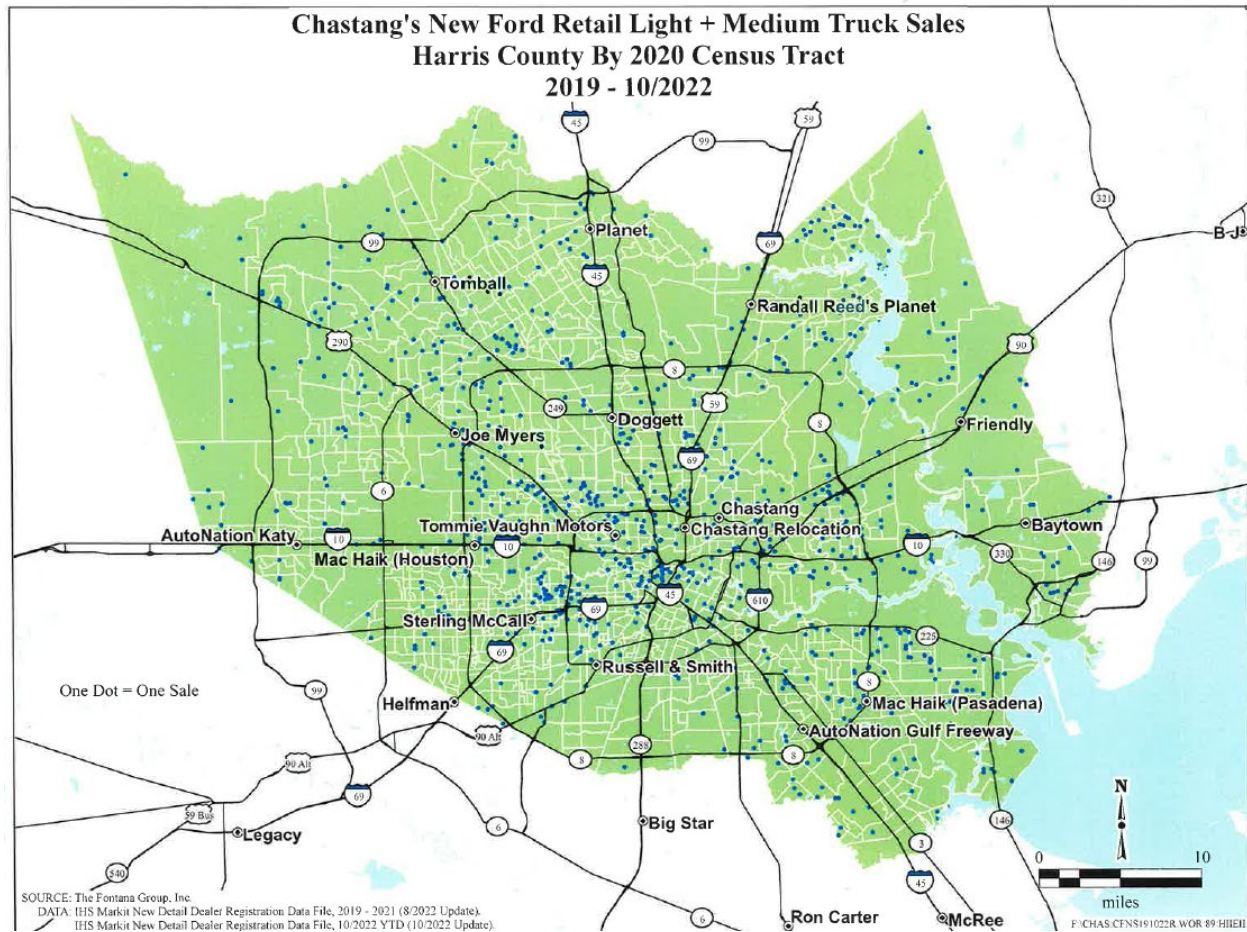
¹⁵⁰ Ex. A-22 at 16. The weight categories are labeled 1 through 8, with 8 being the heaviest. These categories exclude cars. For categories 5 and 6, Chastang Ford sold 773 vehicles, whereas Tommie Vaughn sold 273.

¹⁵¹ Ex. A-22 at 16. For weight category 1, Chastang Ford sold 603 vehicles, and Tommie Vaughn sold 1122.

¹⁵² Tr. Vol. 1 at 211, 215.

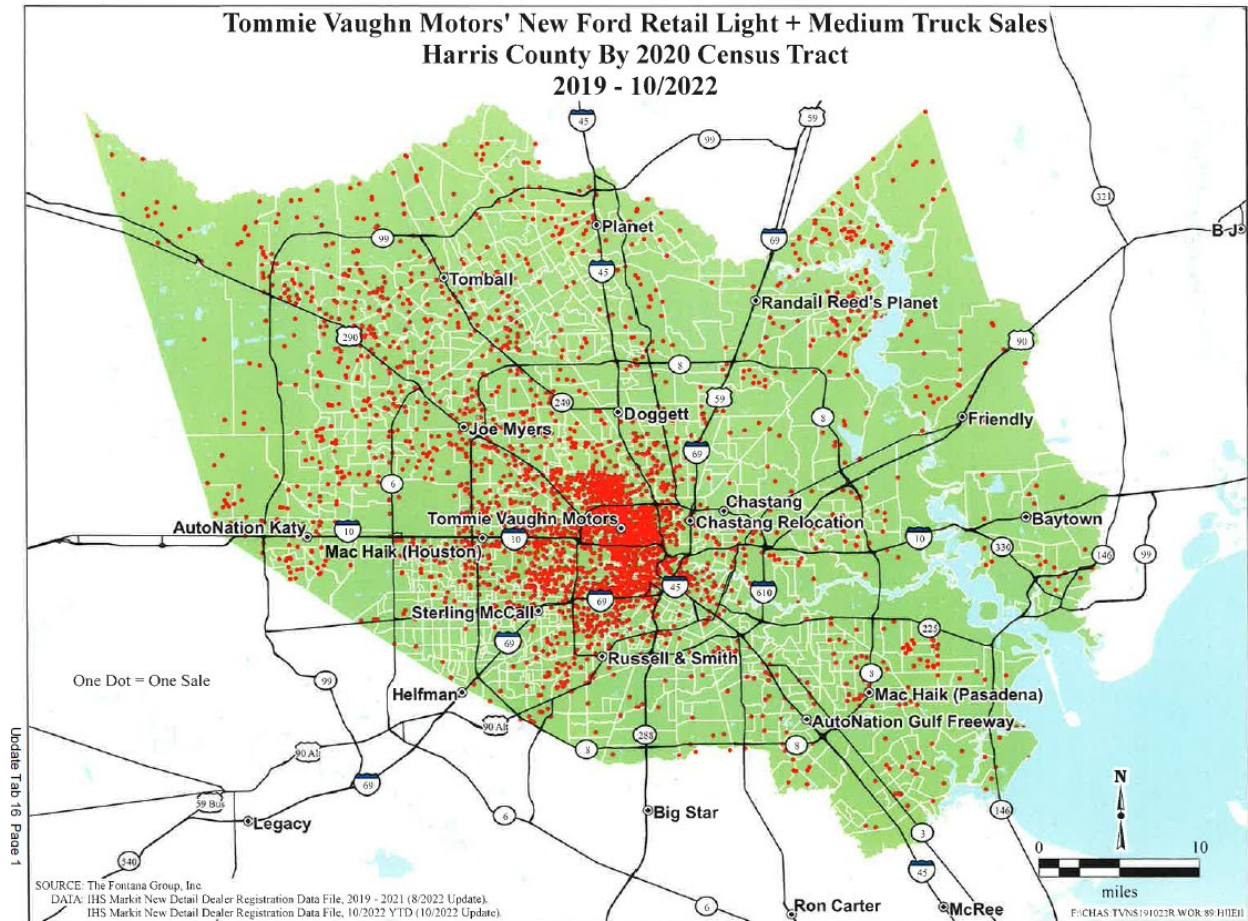
¹⁵³ Tr. Vol. 1 at 212.

¹⁵⁴ Ex. A-22 at 18.



A separate map shows a tighter cluster of Tommie Vaughn's retail sales for the same period.¹⁵⁵

¹⁵⁵ Ex A-22 at 22.



Mr. Roesner testified that a similar pattern existed for repairs, as well. Chastang Ford services trucks throughout the area, whereas Tommie Vaughn's repairs are more locally based.¹⁵⁶

Mr. Roesner also described the gravity model he performed to consider any changes that might occur if Chastang Ford became more proximity driven. In the dealership context, a gravity model is based on the idea that as a dealer moves closer to a potential customer, the likelihood that the customer would go to that

¹⁵⁶ Tr. Vol. 1 at 214-15, 216.

dealer, as opposed to another, increases.¹⁵⁷ As part of that modeling, he performed a regression analysis and determined that proximity is a significant part of Tommie Vaughn's sales; in fact, drive-time distance explains about 54% of those sales.¹⁵⁸ Looking at Chastang Ford's move, he concluded, again based on drive time, that there would be little impact on Tommie Vaughn; the move would affect 11 out of 3,426 sales.¹⁵⁹ He called this "virtually no impact."¹⁶⁰ Mr. Roesner testified that he believed that drive time, instead of drive distance, is more relevant when examining urban markets.¹⁶¹ Nevertheless, he conducted a similar analysis using drive distance and found a slightly greater impact of 2-3% on Tommie Vaughn's sales.¹⁶²

Chastang Ford's second expert witness, Mr. Pearse, testified that Tommie Vaughn has the financial capacity to respond to the proposed relocation and continue to operate profitably.¹⁶³ He testified that from 2018-2021, Tommie Vaughn sold fewer retail vehicles than the Zone A average, but greater than the Houston Region average.¹⁶⁴ Despite having lower sales than the Zone A

¹⁵⁷ Tr. Vol. 1 at 223.

¹⁵⁸ Tr. Vol. 1 at 223-24.

¹⁵⁹ Tr. Vol. 1 at 224.

¹⁶⁰ Tr. Vol. 1 at 224.

¹⁶¹ Tr. Vol. 1 at 230. Mr. Roesner testified that in urban areas, "[p]eople make their decisions on how long it will take me to get somewhere versus how many miles will spin on my odometer."

¹⁶² Tr. Vol. 1 at 227.

¹⁶³ Tr. Vol. 5 at 37.

¹⁶⁴ Tr. Vol. 5 at 37; Ex. A-26 at 20.

average, Tommie Vaughn has a strong cash position and can handle the ebbs and flows of business.¹⁶⁵

Mr. Pearse also performed a break-even analysis and determined that Tommie Vaughn breaks even at 240 vehicles sold per year; sales beyond that number result in profit.¹⁶⁶ Tommie Vaughn's 2021 sales were 1,578. Thus, even if the dealership loses between 87-90 new vehicle sales each year, as its expert Dr. Benton predicts, it would affect the dealership's margins, but would not threaten its ability to operate profitably or to continue to serve the public.¹⁶⁷ Mr. Pearse also noted that Tommie Vaughn has historically priced its vehicles higher than the Zone A average.¹⁶⁸ He testified that lowering its prices is an option for increasing sales.¹⁶⁹

Mr. Pearse also described Chastang Ford's options, other than taking sales away from Tommie Vaughn, to increase profits, and thus offset the cost of a new facility. He testified that the dealership could take market share from other manufacturers, could expand its service capacity, and could expand its used vehicle department.¹⁷⁰

¹⁶⁵ Tr. Vol. 5 at 41.

¹⁶⁶ Tr. Vol. 5 at 45.

¹⁶⁷ Tr. Vol. 5 at 45-46.

¹⁶⁸ Tr. Vol. 5 at 53.

¹⁶⁹ Tr. Vol. 5 at 53.

¹⁷⁰ Tr. Vol. 5 at 62.

Finally, Mr. Pearse testified that, based on 2016-2020 data from the National Automotive Dealer Association, dealership profit does not move in lockstep with new vehicle sales.¹⁷¹ In his years of dealer analysis, he has never seen new vehicle revenues and parts, service, used, and body shop revenues rising and falling at the same rates.¹⁷²

2. Tommie Vaughn's Expert Testimony

Tommie Vaughn presented the expert testimony of Dr. Cristina R. Benton, who is the director of market and industry analysis practice for Anderson Economic Group.¹⁷³ Dr. Benton provided an original report on the good cause factors as well as an updated report.¹⁷⁴ As part of her analysis, in addition to reviewing the Texas good cause factors, she testified that she looked at the proposed relocation, the distances between the dealers, sales patterns, market demographics, full representation in the market, and the financial information of both Tommie Vaughn and Chastang Ford.¹⁷⁵ She also visited Houston to examine the locations and the roadways and traffic as part of her analysis.¹⁷⁶

In her report, Dr. Benton noted that Ford is already well-represented in Harris County and has 15 franchised dealerships in the county, equal to the number

¹⁷¹ Tr. Vol. 5 at 59; Ex. A-27 at 19.

¹⁷² Tr. Vol. 5 at 64.

¹⁷³ Tr. Vol. 4 at 28.

¹⁷⁴ Exs. P-128, P-129.

¹⁷⁵ Tr. Vol. 4 at 31.

¹⁷⁶ Tr. Vol. 4 at 36.

of Chevrolet and Stellantis dealerships.¹⁷⁷ In her testimony, she referred to Chevrolet and the Stellantis brands as the “main competitors for Ford in the market.”¹⁷⁸

A significant portion of Dr. Benton’s report and testimony focused on the idea of customer convenience. She began by defining a convenient dealership as one within a 10 road-mile drive.¹⁷⁹ She then testified that with the current Ford dealer locations, 1,523,522 households (or 94% of the households in Harris County) have a convenient Ford dealership under this definition.¹⁸⁰ This is the second most convenient dealership network in the county, following the Stellantis brands.¹⁸¹ She testified that the move would worsen customer convenience under this definition because 21,000 fewer households in Harris County would have a Ford dealer within a 10 road-mile drive.¹⁸² This would reduce the percentage of households in Harris County within a 10 road-mile drive of a Ford dealer from 94.0% to 92.7%.

Dr. Benton also looked at convenience in the context of a 15-minute drive time.¹⁸³ Under the 15-minute drive time definition of convenience, currently 1,545,429 households in Harris County have a convenient Ford dealership, and if

¹⁷⁷ Ex. P-128 at 10. The Stellantis brands are the Chrysler Dodge Jeep RAM brands. Tr. Vol. 4 at 49.

¹⁷⁸ Tr. Vol. 4 at 49.

¹⁷⁹ Tr. Vol. 4 at 52.

¹⁸⁰ Ex. P-128 at 10.

¹⁸¹ Tr. Vol. 4 at 54.

¹⁸² Ex. P-128 at 11.

¹⁸³ Tr. Vol. 4 at 52.

Chastang Ford moves, 8,645 fewer households would have a convenient Ford dealership.¹⁸⁴ This would reduce the percentage of households in Harris County within a 15-minute drive time of a Ford dealer from 91.5% to 91.0%.¹⁸⁵ Dr. Benton testified that because of this reduced convenience, the proposed move would not improve the Ford dealer network relative to other brands.¹⁸⁶ She agreed, however, that her report showed that if Chastang Ford moved, the average drive time to a Ford dealer in Houston would increase by about 1.8 seconds.¹⁸⁷

Dr. Benton also set out her views of the harm to Tommie Vaughn that would come from Chastang Ford's cannibalization of its sales. "Cannibalization" refers to a reduction in sales as a consequence of a same-brand competitor in the market.¹⁸⁸ Dr. Benton's report sets out a total percentage amount of that reduction of sales and the same number for its reduction in service customers:

in my professional judgment based on four indicators of cannibalization of sales, we can reasonably expect that Tommie Vaughn would lose at least 7.5% of its annual new vehicle retail truck sale units and at least 7.5% of its service customers due to Chastang's move to the proposed location on I-69.¹⁸⁹

¹⁸⁴ Ex. P-128 at 40.

¹⁸⁵ Ex. P-128 at C-36.

¹⁸⁶ Tr. Vol. 4 at 58-59.

¹⁸⁷ Tr. Vol. 4 at 125, Ex. P-128 at C-34.

¹⁸⁸ Tr. Vol. 4 at 59-61.

¹⁸⁹ Tr. Vol. 4 at 84; Ex. P-128 at 13.

Although Dr. Benton testified that a loss of new sales does not necessarily equate to the same amount of loss for other departments, she added that “it will be a 1-to-1 loss in opportunity.”¹⁹⁰ She testified that the loss of service would increase with the age of the vehicle because older vehicles tend to need more repairs than newer ones.¹⁹¹

As set out above, Dr. Benton reached her estimated 7.5% loss in sales and service based on four indicators of cannibalization. The first of those indicators, direct encroachment, is essentially proximity based on the move. In other words, certain customers who were closer to Tommie Vaughn will be closer to the proposed location.¹⁹² Dr. Benton determined that this direct encroachment from the move would have an approximately 1% impact on Tommie Vaughn’s sales.¹⁹³

The second indicator of cannibalization Dr. Benton discussed is “loss of dealer locality to moving dealer.” This indicator concerns Ford’s assignment of part of Tommie Vaughn’s retail dealer locality to Chastang Ford’s new retail dealer locality.¹⁹⁴ Dr. Benton testified that having to meet Ford’s retail benchmarks will influence how Chastang Ford will behave in the market.¹⁹⁵ In particular, she stated that with Chastang Ford’s new retail dealer locality, it will be expected to sell more

¹⁹⁰ Tr. Vol. 4 at 84-85.

¹⁹¹ Tr. Vol. 4 at 85-86.

¹⁹² Tr. Vol. 4 at 87.

¹⁹³ Tr. Vol. 4 at 88, Ex. P-128 at 14.

¹⁹⁴ Tr. Vol. 4 at 89.

¹⁹⁵ Tr. Vol. 4 at 89.

vehicles at retail and meet the benchmarks that Ford sets.¹⁹⁶ In analyzing this indicator, Dr. Benton did not assume that Chastang Ford would move; her analysis is based on the current location.¹⁹⁷ She estimated this indicator would have a 15% impact on sales.¹⁹⁸ She explained how she calculated the 15% impact in the following way:

We have—we have done analysis looking at what that reassignment of the—some census tracts in Tommie Vaughn’s dealer locality to Chastang, what that means for the dealerships. So we do have some information and we have information about what that population will be now assigned to Chastang, how many households, and what that percentage is from Tommie Vaughn’s dealer locality. So we have some information to allow us to make a judgment what will be the approximate impact on Tommie Vaughn sales because of this reassignment of the dealer locality.¹⁹⁹

The third indicator Dr. Benton discussed was increased highway visibility and daytime population of competing dealer.²⁰⁰ The proposed location would be on a north-south highway that connects downtown Houston to a significant number of commuters traveling to the north.²⁰¹ Dr. Benton testified that given the highway visibility, “we can reasonably expect that any Ford customer driving to and from downtown Houston on that highway will see Chastang Ford if they move . . . and this includes workers or residents commuting to and from downtown Houston

¹⁹⁶ Tr. Vol. 4 at 65.

¹⁹⁷ Tr. Vol. 4 at 90-91.

¹⁹⁸ Tr. Vol. 4 at 89.

¹⁹⁹ Tr. Vol. 4 at 90.

²⁰⁰ Tr. Vol. 4 at 91.

²⁰¹ Tr. Vol. 4 at 82.

from various directions, and that will include Tommie Vaughn's customers."²⁰² She added that these customers' travels will make them proximate to Chastang Ford's proposed location for a portion of the day, making them more likely to shop or service a vehicle there.²⁰³ She assigned 10% impact on sales to this factor. She testified the 10% calculation was based on information on commute patterns and her professional judgment.²⁰⁴

Dr. Benton's final indicator of cannibalization is "increased cost and related sales pressure on relocating dealer," which concerns the increased cost for Chastang Ford and the increased sales it must make to break even given that increase in cost.²⁰⁵ She testified that the move to a new facility would result in Chastang Ford having higher dealership fixed costs and to cover those costs, the dealership will have to increase sales.²⁰⁶ She conducted a break-even analysis assuming a \$10 million construction cost and concluded that, assuming the facility became operational in 2024, during the first three years of operation, Chastang Ford would need to sell an additional 856 total new vehicles to break even after relocation.²⁰⁷ She did not consider other sources of increased revenues, such as used vehicle sales, because Chastang Ford's "main contractual obligation" is to

²⁰² Tr. Vol. 4 at 91-92.

²⁰³ Tr. Vol. 4 at 92.

²⁰⁴ Tr. Vol. 4 at 92.

²⁰⁵ Tr. Vol. 4 at 93.

²⁰⁶ Tr. Vol. 4 at 68.

²⁰⁷ Ex. P-128 at 50-51.

sell new vehicles at retail.²⁰⁸ She testified that she did not assume that all the additional sales would be “taken from” Tommie Vaughn, but a portion of them would be.²⁰⁹ She estimated, again based on her professional judgment, that this factor’s impact on Tommie Vaughn’s sales would be 6%.²¹⁰

Dr. Benton ultimately concluded that the combination of the four factors would result in Tommie Vaughn losing 7.5% of its retail sales.²¹¹ This final amount is not based on a mathematical calculation.²¹² Instead, she testified:

Based on our professional judgment, we can look at those four categories and come up with what we think is a very reasonable combined effect of 7.5 percent. And we don’t add them up because we are looking at the same universe of Tommie Vaughn’s customers here, and these are not set in buckets of customers. So I wouldn’t add them up. They refer to—they refer to the same customers, there is an overlap between the four different categories of cannibalization that we looked at, there is some overlap, so that’s why we don’t add them up. We have a combined effect.²¹³

She also estimated this 7.5% loss would result in a loss of over \$700,000 in earnings per year.²¹⁴ Under her analysis, Tommie Vaughn would remain profitable even with this loss.²¹⁵

²⁰⁸ Tr. Vol. 4 at 71.

²⁰⁹ Tr. Vol. 4 at 93.

²¹⁰ Tr. Vol. 4 at 93.

²¹¹ Tr. Vol. 4.

²¹² The average of 1%, 15%, 10%, and 6% is 8%.

²¹³ Tr. Vol. 4 at 93-94.

²¹⁴ Tr. Vol. 4 at 95.

Dr. Benton also testified that she foresees challenges to dealers in the next few years, given economic conditions, and does not see any support for the idea that Ford could grow 18 % in the Houston market.²¹⁶

IV. ANALYSIS

Because harm to the protesting dealer and public interest are of particular significance in relocation cases, those two good cause factors will be addressed first. Discussion of the remaining factors will follow.

A. HARM TO THE PROTESTING DEALER

The first factor to be discussed is “any harm to the protesting franchised dealer.”²¹⁷ Tommie Vaughn emphasizes the use of the word “any” in this factor to argue against a bright-line minimum standard. In other words, Tommie Vaughn argues that any harm, no matter how slight, must be weighed against the other factors in determining good cause.²¹⁸ In Tommie Vaughn’s view the degree of harm is not dispositive.²¹⁹

²¹⁵ Tr. Vol. 5 at 56; Ex. P-130 at C-4, C-5 (showing projected profits of \$3,545,905 in 2025, of \$3,689,160 in 2026, and \$3,838,202 in 2027 if the application is denied; and showing projected profits of \$2,764,033 in 2025, of \$2,875,700 in 2026, and \$2,991,879 in 2026 if the application is granted).

²¹⁶ Tr. Vol. 4 at 105.

²¹⁷ Tex. Occ. Code § 2301.652(a)(4).

²¹⁸ Protestant’s (Prot.) Closing Brief at 54, citing *Grubbs Nissan Mid-Cities, Ltd. v. Nissan North America*, 2007 WL 1518115 at *7-8 (Tex. App.—Austin May 23, 2007, pet. denied).

²¹⁹ Prot. Closing Brief at 55.

In its response brief, Chastang Ford argues that the Department has consistently used concepts of material or substantial harm when weighing this factor.²²⁰

The two parties' positions are not that dissimilar. Both parties suggest the harm, including the weight of the harm, should be weighed against the other factors. This is consistent with precedent,²²¹ and the ALJ will consider the seriousness of harm, not just the existence of some harm, in discussing this factor.

Regardless, Tommie Vaughn argues that it will be harmed. Its arguments rely on both Dr. Benton's projections that it would lose 7.5% of its sales and service business if the application is approved and other witnesses' testimony about harm. It argues that the proposed relocation would create an existential threat to its business.

1. Dr. Benton's Opinions

Because much of Tommie Vaughn's evidence of harm is based on Dr. Benton's opinions, her analysis will be addressed first. Dr. Benton concluded that Tommie Vaughn will suffer a 7.5% reduction in both new sales and in service opportunities if Chastang Ford's application is granted. Her analysis is based on the four indicators of cannibalization she discussed, with the final 7.5% amount

²²⁰ App. Resp. Brief at 39-40.

²²¹ See, e.g., *RNDM Lonestar Farm & Ranch Supply v. Piekarski*, MVD Docket No. 08-0025.LIC (2009), SOAH Docket No. 601-08-3705.LIC (PFD at 14 [FF # 22], 15 [CL # 6]) (found at Tab 11 of the appendix to App. Opening Brief); *UV Country, Inc. v. Mainland Cycle Center, LLC*, MVD Docket No. 10-0045-LIC, SOAH Docket No. 608-10-5390.LIC (Final Order April 26, 2011) (Final Order at 12 [FF # 29A]) (found at Tab 16 of the appendix to App. Opening Brief).

based, not on a mathematical calculation, but on her professional judgment of the value of the four indicators.

The indicator of cannibalism to which Dr. Benton gives the greatest weight is Ford's assignment of a new retail dealer locality to Chastang Ford. She determined that the new retail dealer locality would have a 15% impact on Tommie Vaughn's sales and service because it would increase the pressure on Chastang Ford to increase its retail sales.²²² She specifically testified that this indicator does not consider Chastang Ford's proposed move at all.²²³

The dealership locality is relevant to understand what is occurring between these two neighboring dealerships in the Houston market. Yet the assignment of the dealership locality is the subject of a separate proceeding. Additionally, this assignment would take place without a relocation. For these reasons, the ALJ does not find that the assignment of a dealer locality, in and of itself, should be considered as harm to the protesting dealer in the context of the relocation application.

But even if it were considered, the ALJ does not find persuasive Dr. Benton's explanation of how she determined that the assignment of a dealer locality to Chastang would have a 15% effect on Tommie Vaughn's sales. As set out previously, Dr. Benton testified that her conclusion was based on her examination of the reassigned census tracts: "we have information about what that population

²²² Tr. Vol. 4 at 91.

²²³ Tr. Vol. 4 at 91.

will be now assigned to Chastang, how many households, and what that percentage is from Tommie Vaughn's dealer locality."²²⁴ She provided no greater detail in her testimony.

Dr. Benton's expert report provided only slightly more information. Her report's discussion about the effect of dealer locality on Tommie Vaughn's sales consists of (1) excerpts from Ford's Sales and Service Agreement Standard Provisions about a dealer's responsibilities to aggressively sell within its locality²²⁵ and (2) a note that as a result of the reassignment, "Tommie Vaughn's market will be reduced by 33.0% in population and 26.8% in households," with a citation to a map showing the proposed localities, but without population information.²²⁶

Although Dr. Benton has extensive experience in the automotive industry, that experience alone cannot support her professional judgment that the assignment of a dealer locality would cause a 15% (or any specific percentage) effect on Tommie Vaughn's sales. To be persuasive, an expert opinion must be based on more than the expert's say-so.²²⁷

²²⁴ Tr. Vol. 4 at 90.

²²⁵ Ex. P-128 at B-6 ("The Dealer shall promote vigorously and aggressively the sale at retail (and if the Dealer elects, the leasing and rental) of CARS and TRUCKS to private and fleet customers within the DEALER'S LOCALITY, and shall develop energetically and satisfactory [sic] the potentials for such sales and obtain a reasonable share thereof; but the Dealer shall not be limited to the DEALER'S LOCALITY in making sales.") (capitalization in original).

²²⁶ Ex. P-128 at 33.

²²⁷ *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009).

Additionally, the ALJ finds credible the testimony from Joe and Patrick Chastang that they do not intend to change Chastang Ford's business model from a relationship-driven model with repeat large customers to one that depends on walk-in customer sales. Both testified that they currently have good sales numbers, and that there is no reason for them to change their approach to the business because of the assignment of a retail dealer locality.²²⁸

In her testimony and report, Dr. Benton also provides percentages for the other three indicators of cannibalization without much explanation of how she reached those numbers. She testified that she expects proximity—in many ways, the indicator most closely aligned with the actual move—to have a 1% effect on Tommie Vaughn's sales.

Dr. Benton explained that she arrived at the 1% calculation by first determining primary service areas “that will change based on the location of the dealerships.”²²⁹ She continued, “there will be some residents that were originally closer to Tommie Vaughn that will now become closer to Chastang, and there's an analysis — a graphic analysis that we . . . conducted in this case.”²³⁰ Her report defines a primary service area, which is different from a dealer locality, as “the area in which a dealership is expected to have the greatest geographic advantage relative

²²⁸ Chastang Ford's ability to meet its sales expectations while remaining focused on fleet and commercial sales is also supported by the excerpt from Ford's Sales and Service Agreement Standard Provisions that Dr. Benton quotes, which requires a dealer to “promote vigorously and aggressively the sale at retail . . . of CARS and TRUCKS to private *and fleet* customers.” (Ex. P- 128 at B-6) (capitalization in original, bold emphasis added).

²²⁹ Tr. Vol. 4 at 87.

²³⁰ Tr. Vol. 4 at 87.

to competitors offering the same products and services” based on proximity and convenience.²³¹ According to her report, with the proposed move, Tommie Vaughn’s primary service area would see a 9.3% reduction in population and a 10% reduction in households.²³² The report notes that Tommie Vaughn’s primary service area would have higher population growth (both past and projected) and a higher median household income.²³³ The report also notes that “[c]ustomers do not decide where to purchase a vehicle based solely on proximity to their primary residence. Other considerations factor into this choice, including where they commute to work, where they shop, dealership experiences, and others.”²³⁴ Using this information and her professional judgment, Dr. Benton reached the approximately 1% calculation.

Dr. Benton assigned increased highway visibility and daytime population a 10% impact. Dr. Benton agreed that this factor includes proximity but also looks at increased visibility.²³⁵ When asked how she reached her 10% calculation, she testified, in total:

So here we do have information on commute patterns for various areas of the market, including downtown. So we know how many people are in downtown Houston on a regular basis and how they are commuting in what directions, including north/northwest, and it’s our

²³¹ Ex. P-128 at 35.

²³² Ex. P-128 at 35.

²³³ Ex. P-128 at 36-37.

²³⁴ Ex. P-128 at 35.

²³⁵ Tr. Vol. 4 at 92.

professional judgment here that about—there will be about 10 percent impact on Tommie Vaughn sales.²³⁶

This is not much explanation for how she reached 10% impact, particularly given that Chastang Ford is already visible from a highway, albeit a different one.

Dr. Benton's final indicator was increased cost and related sales pressure on the relocating dealer. Dr. Benton determined that this indicator would have an approximately 6% effect on sales. In explaining this indicator, Dr. Benton testified that Chastang Ford would have higher dealership fixed costs from the move to a new facility and that to cover those costs, the dealership will have to increase sales.²³⁷ To determine the amount necessary to cover the costs, Dr. Benton conducted a break-even analysis assuming a \$10 million construction cost. From this analysis, she concluded that, assuming the facility became operational in 2024, during the first three years of operation, Chastang Ford would need to sell an additional 856 total new vehicles to break even after relocation.²³⁸ She alternatively described this as an additional 290 sales per year to cover the additional expenses from the new facility.²³⁹ She agreed that not all those sales would come from Tommie Vaughn.²⁴⁰ Dr. Benton did not consider other sources of increased

²³⁶ Tr. Vol. 4 at 92.

²³⁷ Tr. Vol. 4 at 68.

²³⁸ Ex. P-128 at 50-51.

²³⁹ Tr. Vol. 4 at 93.

²⁴⁰ Tr. Vol. 4 at 93.

revenue, such as used vehicle sales, because Chastang Ford’s “main contractual obligation” is to sell new vehicles at retail.²⁴¹

Dr. Benton’s testimony and report does not explain how she determined that the portion of sales that would otherwise be made by Tommie Vaughn but for Chastang Ford’s need to cover its increased cost were 6% of Tommie Vaughn’s sales. That lack of explanation is not the only concern with this calculation, however. By excluding sources of revenue that Chastang Ford’s witnesses testified that they would pursue, such as increased used vehicle sales and increased service work, Dr. Benton placed too much emphasis on new vehicle sales. Because of this emphasis, her testimony about the effect of these costs on Tommie Vaughn’s new vehicle sales is unreliable.

Dr. Benton’s conclusion that the four indicators of cannibalization would result in a total 7.5% reduction in Tommie Vaughn’s sales is also based solely on her professional judgment. She did not provide any explanation other than professional judgment for how she used the underlying percentages (1%, 15%, 10% and 6%) to reach that final percentage amount. Her testimony—that cannibalization would have a 7.5% effect on Tommie Vaughn’s sales—would be unreliable, even in the absence of the issues with the calculation of the underlying factors. Given those issues, however, the ALJ cannot give any weight to Dr. Benton’s analysis that Tommie Vaughn would suffer a 7.5% impact on its sales if Chastang is permitted to move.

²⁴¹ Tr. Vol. 4 at 71.

2. Other Evidence of Harm

Tommie Vaughn also points to non-expert evidence of harm. Relying on Kirby Janke’s testimony, it argues that unhealthy competition among the three nearby standalone Ford dealerships—Chastang Ford, Tommie Vaughn, and Doggett Ford—“is going to get nasty” on pricing, which would cause lower profit margins.²⁴² Although Kirby Janke agreed that lower prices are better for the consumer, he testified that they were not better for the dealer.²⁴³ Tommie Vaughn’s closing brief argues that the expected damage to its profit margins from the move “will be an existential threat to Tommie Vaughn’s business.”²⁴⁴

Relatedly, Tommie Vaughn argues that, given Chastang Ford’s location surrounded by lower-income census tracts, it “will have to attract customers at the perimeters and outside its dealer locality to meet planning volumes and sales expectancies.”²⁴⁵ After noting that the closest affluent tracts are in the Heights neighborhood surrounding Tommie Vaughn, Tommie Vaughn argues that Chastang Ford “will have to compete head-to-head with Tommie Vaughn for new vehicle purchases from customers in the Heights, which will cause real, tangible, and long-lasting harm to Tommie Vaughn.”²⁴⁶

²⁴² Prot. Closing Brief at 1, citing Tr. Vol. 3 at 157-58.

²⁴³ Tr. Vol. 3 at 158.

²⁴⁴ Prot. Closing Brief at 27.

²⁴⁵ Prot. Closing Brief at 55.

²⁴⁶ Prot. Closing Brief at 55.

The ALJ does not find that an existential threat from price wars was shown, particularly given the evidence that Tommie Vaughn has generally priced its vehicles higher than the Zone A average.²⁴⁷ Having to make adjustments, such as modifying prices or advertising, to maintain profitability is not the same as harm.²⁴⁸ Nor does some increased competition establish harm, particularly when the dealership already exists in the market.

3. Conclusion

Section 2301.652 does not require an applicant to show a complete lack of harm to the protesting dealer.²⁴⁹ Although the language of the statute refers to any harm, the magnitude and nature of the harm shapes how this factor is weighed.²⁵⁰ And here, although concerns about harm were discussed at length, evidence of significant harm was lacking.

For the reasons set out above, Dr. Benton's determination that Tommie Vaughn would see a 7.5% impact on its sales (and then a similar impact in its service business) is unreliable. It cannot be used to show the impact on sales.

²⁴⁷ Tr. Vol. 5 at 53.

²⁴⁸ *North Arlington Automotive Co. d/b/a Performance Chevrolet v. Graff Chevrolet Co.*, MVD Docket No. 97-777 (1999) (PFD at 33)).

²⁴⁹ *Grubbs Nissan Mid-Cities*, 2007 WL 1518115 at *6.

²⁵⁰ *RNDM Lonestar Farm*, MVD Docket No. 08-0025.LIC (2009) (PFD at 14 [FF # 22], 15 [CL # 6]).

The undisputed evidence is that Tommie Vaughn is profitable and has sizable working capital and cash. Even using Dr. Benton's unreliable 7.5% decrease in sales, her report shows that Tommie Vaughn would remain profitable.²⁵¹ Mr. Pearse similarly testified that Tommie Vaughn would remain profitable with that amount of a reduction in sales.²⁵²

Mr. Roesner's gravity model, which was based on a regression analysis, showed a minimal impact on Tommie Vaughn's sales from both a move plus a change in Chastang Ford's business model.²⁵³ Even under Mr. Roesner's alternative drive distance gravity model, as opposed to the drive time model, the maximum effect on sales from both a move and a change in business model would not be greater than 2-3%, which is not out of line with Dr. Benton's estimated 1% effect from the move to a closer location.²⁵⁴ The evidence does not establish a specific level of harm to weigh against granting the application.

B. PUBLIC INTEREST

The public interest is served when a proposed move would provide consumers with increased competition—and thus lower prices and higher quality

²⁵¹ Ex. P-130 at C-4, C-5 (subtracting the “potential lost profits before fixed expenses” on C-5 from the base case “net profit before fixed expenses” on C-4).

²⁵² Tr. Vol. 5 at 45-46.

²⁵³ Tr. Vol. 1 at 224. The ALJ has found the testimony that Chastang Ford does not intend to change its business model to be credible.

²⁵⁴ Tr. Vol. 1 at 227.

service.²⁵⁵ It is also in the public interest to provide consumers with better and safer access to service and warranty facilities.²⁵⁶ Similarly, shorter driving distances for customers to reach a dealership is in the public interest.²⁵⁷

Chastang Ford argues that the move would further the public interest in four ways. First, it argues that the move would provide the public with better access to Ford service because it would improve the public's ability to actually access the dealership and because it would allow the dealership to provide things like "Quick Lane" service²⁵⁸ that it currently lacks the physical space to provide. Relatedly, Chastang Ford argues that the move would provide customers with safer access to service because it would alleviate safety concerns that arise when dealership traffic backs up into Blaffer Street.²⁵⁹ Additionally, Chastang Ford contends that the public interest would be served by allowing it to have the space to display more new and used cars and to have more replacement trucks available for commercial customers to use when their cars break down or need servicing.²⁶⁰ Chastang Ford

²⁵⁵ *Gene Hamon Ford, Inc. v. David McDavid Nissan, Inc.*, 997 S.W.2d 298, 308-09 (Tex. App. Austin 1999, pet. denied).

²⁵⁶ See, e.g., *Four Way Chevrolet, Inc. v. Courtesy Chevrolet, Inc.*, MVD Docket No. 303 (Final Order Aug. 14, 1984) (PFD at 19 [FF # 13]) ("The relocation of the Applicant's dealership, which presently is an old and inconveniently located facility, will result in a greatly improved dealership with greater capability in terms of space, equipment, and personnel to serve the public . . .") (found at Tab 22 of the appendix to App. Opening Brief).

²⁵⁷ *Gene Hamon Ford*, 997 S.W.2d at 309.

²⁵⁸ Mr. Chastang described "Quick Lane" as Ford's quick oil change service. Tr. Vol. 1 at 74.

²⁵⁹ App. Opening Brief at 39.

²⁶⁰ App. Opening Brief at 40.

contends it would also be able to provide customers with parts more quickly in a larger facility.²⁶¹

In response Tommie Vaughn contends that the public interest factor should be solely focused on the move closer to it and should not address issues such as the new facilities and related improved working conditions.²⁶² Yet, it also argues that “[i]f Chastang’s application is approved and it hires more salespersons and technicians, its improved employment conditions will result in increased unhealthy competition for Ford sales and service with Tommie Vaughn.”²⁶³ It continues that if Tommie Vaughn is driven out of business, then the public would suffer the loss of a dealership and its jobs.²⁶⁴ Tommie Vaughn also argues that claims of excessive lot damage and public safety concerns are overblown and unsupported by the evidence.²⁶⁵

Finally, citing Dr. Benton’s testimony, Tommie Vaughn argues that if Chastang Ford moves, 21,533 Harris County households would no longer have a convenient Ford dealership, as defined as a dealership within 10 miles of them.²⁶⁶ The percentage of households in Harris County within a 10 road-mile drive of a Ford dealer would be reduced from 94.0% to 92.7%. Using a different definition of

²⁶¹ App. Opening Brief at 41.

²⁶² Prot. Closing Brief at 52.

²⁶³ Prot. Closing Brief at 52.

²⁶⁴ Prot. Closing Brief at 52.

²⁶⁵ Prot. Closing Brief at 47-48.

²⁶⁶ Prot. Closing Brief at 53.

convenience—that a dealership is convenient if it is within a 15-minute drive—if Chastang Ford moves, 8,645 fewer households would have a convenient Ford dealership.²⁶⁷ This would reduce the percentage of households in Harris County within a 15-minute drive of a Ford dealer from 91.5% to 91.0%.²⁶⁸ Throughout Houston, the average drive time to a Ford dealer would increase by about 1.8 seconds.²⁶⁹

The ALJ finds that the public interest factor weighs in favor of the move. The ALJ credits the evidence that the proposed location would be easier and safer for the public to access, and that at the new location, Chastang Ford would be able to provide not only better service but also options such as quick oil changes that it cannot currently provide to the public. As discussed above, no credible evidence suggests that Tommie Vaughn would be driven out of business by Chastang Ford moving 2.02 miles closer to it. Finally, although driving distance is a relevant public interest factor, neither a slight decrease of households either 10 miles or 15 minutes away from a Ford dealer nor a city-wide increase of 1.8 seconds of driving time to a Ford dealer suggests that the move would be against the public interest.

C. HARM TO THE APPLICANT

Chastang Ford argues that denying its application would result in harm because it would remain stuck in a location it has outgrown and from which it cannot make necessary changes to keep up with the competition. Additionally, it

²⁶⁷ Ex. P-128 at 40.

²⁶⁸ Ex. P-128 at C-36.

²⁶⁹ Tr. Vol. 4 at 125; Ex. P-128 at C-34.

argues that its space limitations restrict its ability to sell used vehicles. Chastang Ford only has space for about 30 to 35 used vehicles, an insufficient number to effectively be in the used vehicle business.²⁷⁰ Its used vehicle business is significantly less than the Zone A average.²⁷¹

Similarly, Chastang Ford argues that its service department is also hampered by a lack of space. Chastang Ford cites to its three years of service department losses from 2020, in contrast to the Zone A dealership average profits from service departments, which ranged from \$132,278 in 2020 to \$1,067,582 in 2022. Chastang Ford notes that it needs more than 50 repair stalls to handle its current service business, but it only has 33 stalls.²⁷² This number of stalls is lower than both Tommie Vaughn's number and the Zone A average.

Finally, Chastang Ford argues that if other dealers build Ford Pro Elite facilities, but Chastang Ford cannot because of the lack of space, it will ultimately be harmed by losing both business and employees.²⁷³ Its core business would be affected.²⁷⁴

Tommie Vaughn argues that, in contrast to other cases in which the Department has authorized relocation, Chastang Ford's business is not in a dire

²⁷⁰ Tr. Vol. 1 at 59-60, Tr. Vol. 2 at 101.

²⁷¹ Tr. Vol. 1 at 60-61.

²⁷² Tr. Vol. 2 at 62-63.

²⁷³ App. Opening Brief at 95, citing Tr. Vol. 1 at 100.

²⁷⁴ Tr. Vol. 1 at 65.

state.²⁷⁵ In fact, as Tommie Vaughn argues, Chastang Ford is successful and thriving and not at risk.

Tommie Vaughn additionally argues that moving to the proposed location is not the only method for resolving Chastang Ford's issues and suggests that the dealership's difficulties are not caused by the lack of space at the current location.²⁷⁶ Tommie Vaughn also argues that Chastang Ford could still enroll in the Ford Pro Elite program because it could "apply for a service-only facility license at another location and, if approved, build service and parts facilities without relocating its retail showroom."²⁷⁷ Tommie Vaughn alternatively argues that Chastang Ford could simply build an off-site parts storage facility.²⁷⁸

The ALJ finds that Chastang Ford has presented evidence of genuine issues with its current location, including an inability to upgrade to a Ford Pro Elite facility while its competitors are able to do so. Although Tommie Vaughn suggests alternative methods to solve this problem, those suggestions are not practical,

²⁷⁵ Prot. Closing Brief at 2 (citing *Gene Hamon Ford, Inc. d/b/a Hamon Nissan v. David McDavid Nissan, Inc.*, MVD Docket No. 96-151, (PFD at 9, Aug. 1, 1997); *Jupiter Chevrolet-Geo, Inc. d/b/a Newman Chevrolet v. Young Chevrolet, Inc.*, MVD Docket No. 93-130 (PFD at 21, July 8, 1994); *Maund, Inc. d/b/a Maund Toyota v. Apple Imports, Inc. d/b/a Apple Toyota*, MVD Docket No. 93-126, (PFD at 9-11, Sept. 2, 1991). These cases may be found, respectively, at Tabs 8, 7, and 3 of the appendix to App. Opening Brief (cross-referenced in appendix to Prot. Closing Brief).

²⁷⁶ Prot. Closing Brief at 43-46.

²⁷⁷ Prot. Closing Brief at 45. But note that at page 69 of its Closing Brief, Tommie Vaughn argued that "[i]f Chastang increases its repair orders by increasing the number of service bays, hiring more technicians and clearing space for customers, it will harm Tommie Vaughn's service business." This argument does not suggest that Tommie Vaughn would have accepted an application for a larger service-only facility without protest. See 43 Tex. Admin. Code § 215.103(c) (stating "[a] service-only facility is a dealership subject to protest under [Texas] Occupations Code, Chapter 2301").

²⁷⁸ Prot. Closing Brief at 51.

particularly given the dealer protests that could be filed against a new service-only facility. This factor weighs in favor of granting Chastang Ford's application.

D. ADEQUACY OF REPRESENTATION

Chastang Ford argues that allowing it to move will improve Ford's representation in Houston by increasing the brand's visibility, thus improving the brand's competitiveness, and generally helping it capture sales from other brands.²⁷⁹ It cites to previous decisions finding that a relocation from a small, aging, and inefficient dealership to a new and larger one can improve the adequacy of representation.²⁸⁰ For similar reasons to those previously discussed, Chastang Ford also argues that the move and the new facility will improve Ford's sales and service in the market.

In contrast, Tommie Vaughn argues that the move would only increase intrabrand competition by having three standalone Ford dealers (Chastang Ford, Doggett Ford, and Tommie Vaughn) closer together. Tommie Vaughn argues that its future existence will be put in jeopardy from the move and that if it is forced to close, Ford's brand representation in the market will not be enhanced.²⁸¹

The ALJ finds that Ford is well-represented in the Houston area, but that its representation could be enhanced by the greater sales and service opportunities available at the proposed location. Again, the ALJ does not find Tommie Vaughn's

²⁷⁹ App. Opening Brief at 95.

²⁸⁰ See *Maund, Inc. v. Apple Imports*, MVD Docket No. 93-126 (1993) (PFD at 6).

²⁸¹ Prot. Closing Brief at 82.

assertions that it will be driven out of business to be supported by the evidence at hearing. This factor, while less significant than harm or public interest, supports granting the application.

E. DESIRABILITY OF A COMPETITIVE MARKETPLACE

When arguing that that Chastang Ford's move would harm competition, Tommie Vaughn cites precedent that states, "[w]hile it can be assumed, in general, that a competitive marketplace is good for the consumer, opening a second dealership in a marketplace that can support only one dealer could result in one or both dealers going out of business."²⁸² Tommie Vaughn further analogizes to a rural setting, in which dealers must struggle for every sale.²⁸³ It argues that as family-owned dealerships, both Tommie Vaughn and Chastang Ford must compete against larger, corporate-owned dealers.²⁸⁴ Tommie Vaughn also contends that Chastang Ford's sales pattern does not show a relationship-driven business model, but instead shows that Chastang Ford must cannibalize new vehicle retail sales from other Ford dealers throughout Houston because there is insufficient opportunity to sell new vehicles to Kashmere Gardens residents.²⁸⁵

Tommie Vaughn also points to the proximity of Doggett Ford and argues that no evidence in the record shows sufficient retail opportunity in the competitive

²⁸² Prot. Closing Brief at 36, citing *Desmo Moto, LLC d/b/a Houston Superbikes v. MPH Cycles, Inc.*, MVD Docket No. 12-0024 LIC, 2013 WL 1856229 at *8 (SOAH Apr. 22, 2013).

²⁸³ Prot. Closing Brief at 36.

²⁸⁴ Prot. Closing Brief at 36.

²⁸⁵ Prot. Closing Brief at 36-37.

market to support three standalone Ford dealerships in such proximity to each other, especially if one moves closer to the others.²⁸⁶ Tommie Vaughn also argues, without support, that “[c]ompetition in Houston will not benefit from Chastang moving to the Eastex Freeway, closer to Tommie Vaughn, because only intrabrand competition will result.”²⁸⁷ Tommie Vaughn argues that only dealers in dealership clusters have the benefit of interbrand competition.²⁸⁸

In contrast, Chastang Ford argues that permitting it to move to a site with adequate space and a newer facility will foster competition.

For similar reasons to those set out with respect to the adequacy of representation, the ALJ finds that allowing Chastang Ford to move to a larger location with more space for sales and service would help foster a competitive marketplace. No evidence suggests that Houston cannot support the number of Ford dealers it has, nor is there any evidence suggesting that the three standalone Ford dealers struggle to compete or that they only compete with each other. Relatedly, no evidence in the record supports the idea that interbrand competition only exists for dealerships physically located in a dealership cluster.

And in fact, the evidence suggests that denying the relocation application would harm competition. Chastang Ford has limited space to expand at its current location and has difficulty meeting the demand for service. Additionally, it cannot

²⁸⁶ Prot. Closing Brief at 37.

²⁸⁷ Prot. Closing Brief at 82.

²⁸⁸ Prot. Closing Brief at 83.

build a Ford Pro Elite facility at the current location, which limits competition for truck sales and service. This factor weighs in favor of granting the application.

F. CURRENT AND REASONABLY FORESEEABLE PROJECTIONS OF ECONOMIC CONDITIONS, FINANCIAL EXPECTATIONS, AND THE MARKET FOR NEW MOTOR VEHICLES IN THE RELEVANT MARKET AREA

Chastang Ford argues that the evidence shows that Houston is an already large market that is expected to grow about 60% in the next 20 years.²⁸⁹ Mr. Chastang testified that Ford's market share is currently a little less than it is in the rest of Texas, giving it room to grow.²⁹⁰ Mr. Chastang also testified that his biggest competitors are not other Ford dealers, but Chevrolet, Ram, and Toyota SUVs.²⁹¹

In contrast, Tommie Vaughn's expert Dr. Benton testified that

we looked at the current economic conditions at the local and national level, and we see challenges for dealers and consumers in the years ahead. We looked at quite a few economic indicators, we looked at interest rates, inflation, and we see challenges for dealers, for consumers in the automotive industry.²⁹²

²⁸⁹ App. Opening Brief at 100, citing Tr. Vol. 1 at 95.

²⁹⁰ Tr. Vol. 1 at 91.

²⁹¹ Tr. Vol. 1 at 91-92.

²⁹² Tr. Vol. 4 at 104.

She added that Ford has lost some market share in Harris County over the last few years.²⁹³ On the other hand, Dr. Benton also predicted that Tommie Vaughn's sales would increase, both with and without Chastang Ford's move.²⁹⁴

As both parties' witnesses predicted at least some level of growth, the evidence does not suggest that the market for vehicles in Houston will collapse or that it will not be able to support the number of dealers in the market. And again, this is not a case involving adding a new dealership. Instead, it is a case involving an existing dealership moving 2.02 miles to the west. Based on the evidence, the Houston market can support this move, and this factor weighs in favor of granting the application.

G. PROTESTING DEALER'S SUBSTANTIAL COMPLIANCE WITH THE FRANCHISE

Chastang Ford argues that Tommie Vaughn is not in compliance with its franchise because it is operating a second location—its facilities in the 900 block of N. Shepherd—without a Department-issued license for that location. According to Chastang Ford, Tommie Vaughn violated its franchise agreement by not complying with state law requiring a separate license for each separate and distinct physical premises and business facility where it sells new vehicles or services them under a

²⁹³ Tr. Vol. 4 at 105.

²⁹⁴ Ex. P-130 at C-4, C-5.

manufacturer's warranty.²⁹⁵ Chastang Ford also questions whether Tommie Vaughn's license to sell and service medium-duty trucks is valid.

Tommie Vaughn makes fleet sales and performs some warranty work at the facility in the 900 block of N. Shepherd, although its license lists the dealership's location as 1201 N. Shepherd.²⁹⁶ It is undisputed that Tommie Vaughn does not have a separate license for a facility in the 900 block of N. Shepherd.

Tommie Vaughn's most recent license that was introduced at hearing expired on November 30, 2023, and listed the dealership's physical location as 1201 N. Shepherd Dr. It noted no additional locations. In fact, the license form indicates that additional locations are "[f]or used vehicle sales only." This license provides that Tommie Vaughn is authorized to sell Ford medium trucks, Ford passenger cars, and Ford light trucks.²⁹⁷ Tommie Vaughn's licenses that expired November 30, 2021; November 30, 2019; November 30, 2017; November 30, 2015; and November 30, 2013, all contained the same information about location and product lines.²⁹⁸ Tommie Vaughn's license that expired November 30, 2011, was very similar, but no "for used vehicle sales only" language followed the space for

²⁹⁵ Tex. Occ. Code §§ 2301.002(8), .257(c), .355. Ford's standard terms state "[t]he Dealers shall comply with all applicable federal, state, and local law, rules, and regulations in the ordering, sale and service of COMPANY PRODUCTS." Ex. A-53-A at 24 (capitalization in original).

²⁹⁶ Ex. P-85 at 1.

²⁹⁷ Ex. P-85 at 1.

²⁹⁸ Ex. P-85 at 2-6.

additional locations. However, that license did not include any additional locations.²⁹⁹

Tommie Vaughn's license that expired November 30, 2009, only listed Tommie Vaughn as authorized to sell Ford automobiles and Ford light trucks and listed two additional locations at 1221 N. Shepherd and at 908-914 N. Shepherd.³⁰⁰ Tommie Vaughn's license that expired November 30, 2008, was the same.³⁰¹ The license that expired November 30, 2007, listed 1221 N. Shepherd and 908-914 N. Shepherd as supplemental locations.³⁰²

Although Tommie Vaughn suggests that the Department limited the meaning of "supplemental location" during the time between the first of the licenses and later licenses, its 2007 license renewal form asked, "have there been any changes in supplemental locations (additional used car sales locations within the same city as the franchise license)?"³⁰³ This language indicates that the term "supplemental location" meant used car location before that limitation was expressly included on the license.

Mr. Blair testified that he drafted a letter for Mr. Vaughn to sign requesting that the Department's predecessor agency treat all of the N. Shepherd locations as

²⁹⁹ Ex. P-85 at 7.

³⁰⁰ Ex. P-85 at 8.

³⁰¹ Ex. P-85 at 9.

³⁰² Ex. P-85 at 10.

³⁰³ Ex. P-86 at 2.

one contiguous location, but he does not have the letter Tommie Vaughn sent nor a response from the agency.³⁰⁴ He said that all he knows is that the supplemental locations were listed on the earlier licenses.³⁰⁵

Tommie Vaughn suggests that both the omission of medium duty trucks for a few years and the omission of supplemental locations on later licenses were the result of computer glitches at the Department or its predecessor.³⁰⁶ At hearing, Mr. Blair suggested that both Ford and the Department were aware of the locations and fine with them.³⁰⁷ Yet in his deposition, Ford's Houston regional manager, Adam Tidwell, testified that if Tommie Vaughn performed warranty work outside of the 1201 N. Shepherd location, it would be out of compliance with its franchise.³⁰⁸

Additionally, Tommie Vaughn admits that after the hearing on the merits, it received a Notice of Department Decision proposing to assess a \$10,000 penalty arising from the licensing issue. According to its brief, Tommie Vaughn requested an administrative hearing, which remains pending. Additionally, Ford sent Tommie Vaughn a cease-and-desist letter regarding the facilities in the 900 block of N. Shepherd.³⁰⁹ Despite that, Tommie Vaughn argues that there is no evidence

³⁰⁴ Tr. Vol. 3 at 222.

³⁰⁵ Tr. Vol. 3 at 222.

³⁰⁶ Prot. Closing Brief at 85.

³⁰⁷ Tr. Vol. 3 at 243-44.

³⁰⁸ Ex. A-106 at 0076.

³⁰⁹ Prot. Closing Brief at 31 n. 288.

that its operations in the 900 block of N. Shepherd fail to comply with its franchise agreement.

It appears from the evidence that the temporary dropping of medium trucks from the license, which has since been resolved, was an actual error.³¹⁰ Nonetheless, it appears that Tommie Vaughn is not in compliance with its franchise agreement by operating a facility that performs warranty work in the 900 block of N. Shepherd without a license to cover that facility. The evidence does not suggest that the noncompliance resulted from ill intent, but it remains the case that Tommie Vaughn lacks the appropriate license for that facility. This factor weighs in favor of granting Chastang Ford's application.

H. CONCLUSION

After weighing the statutory factors, the ALJ concludes that Chastang Ford has established good cause for its proposed relocation. In further support of that conclusion, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

Procedural Background

1. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford is a franchised Ford Motor Company (Ford) dealer, licensed by the Texas Department of Motor Vehicles (Department) to sell and perform warranty service on vehicles within the Ford light truck line-make and the Ford Medium Truck line-make.

³¹⁰ Contrary to Chastang Ford's arguments, no evidence suggests that the correction of that error was an attempt to mislead or to avoid a protest hearing while adding a new Ford truck line. App. Opening Brief at 98.

2. Chastang Ford's current licensed dealership location is 6200 North Loop East, Houston, Texas 77026 (the Current Location).
3. On September 20, 2019, Ford issued an Evidence of Relocation certifying to the Department that it approved Chastang Ford's relocation of its Ford dealership from the Current Location to 3625 & 3669 Eastex Freeway, Houston, Texas 77026 (the Relocation Site).
4. Sometime after that, Chastang Ford submitted its application to the Department for the license required to relocate its Ford dealership to the Relocation Site.
5. On May 5, 2020, Ford issued a conditional letter of approval for Chastang Ford's relocation. Ford subsequently issued a superseding conditional letter of approval dated July 19, 2022, and extending until December 31, 2025, the deadline by which Chastang Ford must complete and occupy its facilities at the Relocation Site.
6. Tommie Vaughn Motors, Inc. d/b/a Tommie Vaughn Ford (Tommie Vaughn) is a franchised Ford dealer licensed by the Department to sell and perform warranty service on vehicles within the Ford light truck and medium truck line-makes and also the Ford passenger auto line-make.
7. Tommie Vaughn's licensed location is 1201 North Shepherd Drive in Houston, Texas.
8. Tommie Vaughn filed a protest with the Department of Chastang Ford's application to relocate.
9. Tommie Vaughn's protest was docketed with the State Office of Administrative Hearings (SOAH) on November 1, 2021.
10. The Department issued a Notice of Hearing on November 3, 2021, that provided a statement nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and short, plain statement of the factual matters asserted. SOAH Order No. 2 and the May 19, 2023 order granting continuance set out the time and place of the hearing.

11. The hearing on the merits was held via Zoom videoconference on July 24-28, 2023, before Administrative Law Judge (ALJ) Rebecca S. Smith. Chastang Ford was represented by attorneys Leon V. Komkov and J. Bruce Bennett. Tommie Vaughn was represented by attorneys Mark Allan Bankston and Mark King.
12. The record closed on November 17, 2023.

Chastang Ford

13. Chastang Ford became a franchised Ford truck dealer in 2003, when it purchased the assets of Bayou City Ford.
14. When Chastang Ford purchased its assets, Bayou City Ford had been located at 3625 Eastex Freeway—part of the Relocation Site—for over thirty years.
15. At the time of purchase, the Bayou City Ford dealership facilities were rundown.
16. At the time of purchase, Chastang Ford’s principal, Joe Chastang, owned realty and improvements at the Current Location that had formerly housed a Volvo heavy-truck dealership.
17. The Current Location was sufficiently large to handle the volume of business the dealership was doing in 2003.
18. Chastang Ford was successfully relocated to the Current Location in 2003.
19. Ford divides Texas into regions and the regions into zones. Chastang Ford, like Tommie Vaughn, is in Zone A of the Houston Region. The Houston Region encompasses much more than just Houston, including much of the southern half of the state. Zone A consists of 13 dealerships, mostly in the Houston metropolitan area along with a few rural dealerships.
20. Under both its Bayou City Ford and Chastang Ford iterations, the dealership has been classified by Ford as a “truck center,” a specialized type of Ford dealership dedicated exclusively to selling and servicing trucks.

21. Chastang Ford is the sole Ford truck center in the Greater Houston area and one of only four in Texas.
22. From its beginning, Chastang Ford has focused on fleet sales and larger accounts.
23. Ford defines a fleet sale as a sale to a fleet customer with a fleet identification number. Any other sale is referred to as a retail sale.
24. Approximately 80 to 85 percent of Chastang Ford's sales are commercial retail or fleet sales.
25. Many of Chastang Ford's noncommercial retail sales are to employees of its fleet customers.
26. Most of Chastang Ford's retail sales are to commercial customers without a fleet number or are side effects of the fleet accounts, in other words, to customers with whom it already has some relationship.
27. Chastang Ford's business has grown. In 2004, Chastang Ford sold 485 new vehicles; its 2022 new vehicle sales were a little under 2200.
28. Given the size of the Current Location, the Chastang Ford only can display approximately 50 new vehicles. The dealership also only has space for about 30 to 35 used vehicles.
29. In 2022, Chastang Ford sold 318 used vehicles, whereas the average dealer in the Houston Zone A region sold 956 used vehicles.
30. The Current Location consists of a 5.992-acre lot, but not all the space is usable for the dealership business. Approximately one acre of the lot is used as a retention pond.
31. Because of the size of the trucks Chastang Ford services and sells, multistory facilities are not feasible.
32. Although the Current Location's address is on the North Loop, the dealership does not have direct access from the highway. Instead, there is

- only a single point of entrance, about 30 feet wide, on a cross street, Blaffer Street.
33. Delivery of vehicles to the Current Location often blocked the single entrance, creating difficulties.
 34. Around 2013, Mr. Chastang purchased a 3.1-acre piece of property on Eastpark, approximately 1.1 miles away from the Current Location, originally to use for storage. The dealership later built a building on it where they could wash vehicles and accept deliveries. Chastang Ford now takes delivery of new vehicles there and uses it for overflow and storage.
 35. The Current Location has 33 repair stalls, an insufficient number for the dealership's service business.
 36. At the Current Location, trucks awaiting repair must be double- or triple-stacked.
 37. The combination of the small lot, single entrance, and the large size of some of the trucks Chastang Ford services, creates a potentially unsafe situation.
 38. The dealership's rate of lot damage at the Current Location is significant, exceeding the industry average.
 39. Ford is moving to a Ford Pro Elite program for its commercial truck business. This program requires a dealer to build a separate facility for commercial service and parts and to have 30 service bays just for Ford Pro Elite. The Current Location lacks the space to build improvements that meet the Pro Elite standard.
 40. The Current Location lacks adequate space for parts for repair and the dealership's wholesale parts business.

Tommie Vaughn

41. Tommie Vaughn is located in the Heights neighborhood of Houston, a wealthier area than the Current Location or the Relocation Site.

42. Tommie Vaughn's current sales focus is on retail sales, but in the past the dealership had a sizable fleet focus. Tommie Vaughn still makes fleet sales, but significantly fewer than Chastang Ford does.
43. Tommie Vaughn does not have freeway frontage.
44. Tommie Vaughn is currently the closest Ford dealer to downtown Houston, although that would change if Chastang Ford moves to the Relocation Site.
45. Neither Tommie Vaughn nor Chastang Ford are located in dealership clusters.
46. Tommie Vaughn's total dealership facilities consist of a little over 15 acres. The showroom is located at 1201 N. Shepherd. Tommie Vaughn also has facilities at 1145 N. Shepherd and facilities in the 900 block of N. Shepherd. The locations at 1201 N. Shepherd and in the 900 block, although on the same street, are not contiguous; they are approximately 0.6 miles apart.
47. Tommie Vaughn performs warranty service work at both the 1201 and 900block locations, and some new medium truck sales and all new fleet sales are made at the 900 block of N. Shepherd location.
48. Tommie Vaughn does not have a separate license for the 900-block location.
49. Tommie Vaughn has about 55 to 60 service bays and carries around \$3 million in parts.
50. Tommie Vaughn has signed up for Ford's electric vehicle program, which requires installing chargers and service stalls.
51. Tommie Vaughn is looking into participating in the Ford Pro Elite program.
52. Ford has notified Tommie Vaughn of sales performance deficiencies.
53. Tommie Vaughn's working capital has consistently exceeded Ford's guidelines.
54. Tommie Vaughn is a financially strong dealership.

The Need to Relocate and the Relocation Site

55. Chastang Ford considered options short of moving from the Current Location and considered many locations before deciding on the Relocation Site.
56. The Current Location and Relocation Site are 2.02 miles apart.
57. Measured by air distance, Tommie Vaughn is 6.3 miles from the Current Location.
58. The driving distance between Tommie Vaughn and the Current Location is 7.8 miles; the driving distance between Tommie Vaughn and the Relocation Site is 5.2 miles. Driving from Tommie Vaughn to the relocation site would be 30 seconds faster than driving to Chastang Ford's current location.
59. The Relocation Site consists of about 11.8 acres, almost all of which would be useable for the dealership. It is located in the same neighborhood, Kashmere Gardens, and ZIP code as the Current Location.
60. Chastang Ford would not need to retain the Eastpark off-site facilities if it moved to the Relocation Site. The Relocation Site would have multiple entry and exit points, and the layout of the surrounding streets would allow for vehicles to be delivered directly to the location.

Retail Dealer Locality

61. Ford assigns to its retail dealers a "dealer locality" made up of the closest census tracts to that dealer.
62. As a truck center, Chastang Ford was not assigned a standard retail dealer locality, and in fact, Chastang Ford is currently located in the eastern half of Tommie Vaughn's current retail dealer locality.
63. Ford reconfigured its dealer localities in 2022 based on 2020 census data. At the same time, Ford decided to assign retail dealer localities to all its truck centers, including Chastang Ford.
64. Some of Chastang Ford's new proposed retail dealer locality will consist of census tracts that make up the eastern part of Tommie Vaughn's dealer locality.

65. A dealer locality is not a sales territory, and sales effectiveness is not measured by sales in the dealer's locality.
66. No dealer is prohibited from advertising or selling to potential customers in another dealer's locality.

Differences Between the Dealerships

67. The majority of Chastang Ford's sales are to fleet customers rather than retail sales, whereas for Tommie Vaughn, the reverse is true.
68. Chastang Ford sells a greater mix of heavier vehicles than Tommie Vaughn does.
69. Between 2019 and October 2022, Chastang Ford sold significantly more of the heaviest weight trucks than Tommie Vaughn did.
70. Between 2019 and October 2022, Tommie Vaughn sold significantly more of the lightest weight trucks than Chastang Ford did.

Harm to Tommie Vaughn

71. Tommie Vaughn's expert testimony—to the effect that it would suffer a 7.5% loss in sales from Chastang Ford's move to the Relocation Site—was primarily based on the expert's professional judgment and thus conclusory and unreliable.
72. Tommie Vaughn is profitable and would remain so even if it suffered a 7.5% loss in sales.
73. Tommie Vaughn's potential need to adjust prices is not harm.
74. The only potential harm established from the move to the Relocation Site is minimal.

Public Interest

75. The Relocation Site would be easier and safer for the public to access.

76. At the Relocation Site, Chastang Ford would be able to provide better service and to provide service options like quick oil changes that it cannot provide at the Current Location.
77. Neither a slight decrease of households that are either 10 miles away from or within a 15-minute drive of a Ford dealer nor a city-wide increase of 1.8 seconds of driving time to a Ford dealer suggests that the move would be against the public interest.

Harm to Applicant

78. Denying the application would harm Chastang Ford, which would remain in a too-small location. This would affect Chastang Ford's new and used sales, as well as its service department.
79. Chastang Ford would be unable to participate in the Ford Pro Elite program at the Current Location, which would harm its core commercial and fleet business.

Adequacy of Representation

80. Ford's representation would be enhanced by the greater sales and service opportunities available at the Relocation Site.
81. No evidence suggests that Chastang Ford's move to the Relocation Site would cause Tommie Vaughn to go out of business.

Desirability of a Competitive Marketplace

82. No evidence suggests that Houston cannot support the number of Ford dealers it has.
83. Chastang Ford does not seek to add a sales point.
84. Allowing Chastang Ford to move to a larger location with more space for sales and service would help foster a competitive marketplace.
85. Preventing Chastang Ford's move would harm competition for trucks, particularly since Chastang Ford could not establish a Ford Pro Elite facility at the Current Location.

Current and Reasonably Foreseeable Projections of Economic Conditions, Financial Expectations, and the Market for New Motor Vehicles

86. The Houston market is predicted to grow in the future.
87. Tommie Vaughn's sales are expected to grow, with or without Chastang Ford's relocation.

Protesting Dealer's Compliance with the Franchise

88. Tommie Vaughn does not have a license allowing it to perform warranty work at its location in the 900 block of N. Shepherd.
89. Under Ford's Sales and Service Agreement Standard Provisions, Ford dealers, such as Tommie Vaughn, must comply with applicable federal, state, and local laws, rules, and regulations in the sale and service of Ford products.
90. While there is no evidence that Tommie Vaughn acted with ill intent, by performing warranty work at an unlicensed location, Tommie Vaughn is not in compliance with its franchise agreement, which requires compliance with state law.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction and authority over the subject matter of this case. Tex. Occ. Code ch. 2301, subchs. N, O.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 2301.704; Tex. Gov't Code ch. 2003.
3. Tommie Vaughn timely filed its notice of protest. 43 Tex. Admin. Code § 215.106.
4. Notice of hearing was properly provided to Tommie Vaughn. Tex. Occ. Code §§ 2301.705, .707; Tex. Gov't Code §§ 2001.051-.052; 43 Tex. Admin. Code § 215.34.

5. Chastang Ford bears the burden to prove that good cause exists for its proposed relocation to the Relocation Site. Tex. Occ. Code § 2301.652(a).
6. In determining whether good cause exists, Texas Occupations Code section 2301.652(a) requires the Department and ALJ to consider:
 - (1) whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;
 - (2) whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with . . . [C]hapter [2301];
 - (3) the desirability of a competitive marketplace;
 - (4) any harm to the protesting franchised dealer;
 - (5) the public interest;
 - (6) any harm to the applicant; and
 - (7) current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for the new motor vehicles in the relevant market area.
7. Weighing of the good cause factors is left to the Department's discretion. *Meier Infiniti Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 100 (Tex. App.—Austin 1996, writ denied).
8. Typically, less weight is given to adequacy of representation and the desirability of a competitive marketplace in relocation cases, where a dealer is already in the market, than in cases involving an application to add a dealer location, or point, to the marketplace. *Momentum BMW, Ltd. v. Don McGill Imports, Inc.*, MVD Docket No. 91-091 (1991) (Proposal for Decision at 3-4).
9. The standard of proof on the ultimate issue of good cause is by a preponderance of the evidence. *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Servs. Co. v.*

- Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213–14 (Tex. App.—Austin 1998, pet. denied). However, each party had the burden of production with respect to any evidence favorable to it on a given factor. 1 Tex. Admin. Code § 155.427.
10. The relocation of Chastang Ford to the Relocation Site will improve Ford's representation as to sales and service in the Houston market. Tex. Occ. Code § 2301.652(a)(1).
 11. A franchised dealer must obtain a separate license for each separate and distinct physical premises and business facility where it sells new vehicles or services them under a manufacturer's warranty. Tex. Occ. Code §§ 2301.002(8), .257(c), .355.
 12. The relocation of Chastang Ford to the Relocation Site will promote a competitive marketplace. Tex. Occ. Code § 2301.652(a)(3).
 13. The relocation of Chastang Ford to the Relocation Site will not cause any significant harm to Tommie Vaughn that would impede competition by financially debilitating it or preventing it from continuing to serve the public. Tex. Occ. Code § 2301.652(a)(4).
 14. The relocation of Chastang Ford to the Relocation Site is in the public interest. Tex. Occ. Code § 2301.652(a)(5).
 15. Chastang Ford will suffer financial and competitive harm if its application to relocate is denied. Tex. Occ. Code § 2301.652(a)(6).
 16. Current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area favor the relocation of Chastang Ford. Tex. Occ. Code § 2301.652(a)(7).
 17. Chastang Ford met its burden of demonstrating good cause for the relocation of its Ford dealership from its Current Site to the Relocation Site. Tex. Occ. Code § 2301.652(a).
 18. Chastang Ford's application to relocate to the Relocation Site should be processed by the Department.

Signed January 16, 2024.

ALJ Signature:



Rebecca S. Smith

Rebecca Smith

Presiding Administrative Law Judge

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Filing Description: PROPOSAL FOR DECISION

Status as of 1/16/2024 12:19 PM CST

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Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a Chastang Ford

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TOMMIE VAUGHN MOTORS, INC. §
Protestant, §
v. §
CHASTANG ENTERPRISES-HOUSTON, §
LLC d/b/a CHASTANG FORD, §
Applicant. §

SOAH DOCKET NO. 608-22-0643.LIC
MVD DOCKET NO. 21-0018-LIC

ACCEPTED
608-22-0643
1/31/2024 5:03:48 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

**APPLICANT’S EXCEPTION
TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Applicant Chastang Enterprises-Houston, LLC d/b/a Chastang Ford (“Chastang”) respectfully submits the following exception to the Proposal for Decision (“PFD”) issued January 16, 2024, recommending the granting of Chastang’s license application.

Applicant’s Exception No. 1

The PFD correctly states at page 19 that Protestant Tommie Vaughn Motors, Inc. (“Tommie Vaughn”) makes “some medium new truck sales and all new fleet sales . . . at the 900 block of N. Shepherd location.” The PFD also correctly states at page 59 that:

“Tommie Vaughn makes fleet sales and performs some warranty work at the facility in the 900 block of N. Shepherd, although its license lists the dealership’s location as 1201 N. Shepherd. It is undisputed that Tommie Vaughn does not have a separate license for a facility in the 900 block of N. Shepherd.”¹

However, Findings of Fact Nos. 88 and 90 do not include the finding that Tommie Vaughn is making vehicle sales at its unlicensed location in the 900 block of N. Shepherd.

¹ Conclusion of Law No. 11 correctly states, “A franchised dealer must obtain a separate license for each separate and distinct physical premises and business facility where it sells new vehicles or services them under a manufacturer’s warranty. Tex. Occ. Code. §§2301. 002 (8), .257(c), .355.” (PFD at page 73).

Chastang respectfully requests that Findings of Fact Nos. 88 and 90 be amended to include the italicized language and provide that:

“88. Tommie Vaughn does not have a license allowing it to perform warranty work *or to sell new motor vehicles* at its location in the 900 block of N. Shepherd.”

“90. While there is no evidence that Tommie Vaugh acted with ill intent, by performing warranty work *and making new vehicle sales* at an unlicensed location, Tommie Vaugh is not in compliance with its franchise agreement, which requires compliance with state law.”

CONCLUSION AND PRAYER

For these reasons, Chastang prays that its exception be sustained and that your Honor amend Findings of Fact No. 88 and 90 in the PFD to reflect that Vaughn is making new vehicle sales at its unlicensed location in the 900 block of N. Shepherd.

Respectfully submitted,

/s/ Leon V. Komkov

Leon V. Komkov

State Bar No. 11670500

J. Bruce Bennett

State Bar No. 02145500

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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above foregoing has been served on the counsel of record listed below by email and by e-service on this 31st day of January 2024.

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Philip C. Brashier
Johnson DeLuca, Kurisky and Gould, P.C.
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ATTORNEYS FOR PROTESTANT

/s/ J. Bruce Bennett
J. Bruce Bennett

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 Filing Code Description: Exceptions to PFD
 Filing Description: Applicant's Exception to PFD
 Status as of 1/31/2024 5:04 PM CST

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Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a Chastang Ford

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**SOAH DOCKET NO. 608-22-0643.LIC
MVD DOCKET NO. 21-0018-LIC**

TOMMIE VAUGHN MOTORS, INC.

Protestant,

v.

**CHASTANG ENTERPRISES-HOUSTON,
LLC d/b/a CHASTANG FORD,**

Applicant.

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**BEFORE THE STATE OFFICE
OF ADMINISTRATIVE HEARINGS**

ACCEPTED
608-22-0643
2/14/2024 5:10:05 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

**PROTESTANT’S REPLY TO APPLICANT’S EXCEPTIONS
TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Tommie Vaughn Motors, Inc. d/b/a Tommie Vaughn Ford (“Tommie Vaughn” or “Protestant”) and files Protestant’s Reply to Applicant’s Exceptions to the Proposal for Decision signed on January 16, 2024 (the “PFD”), pursuant to 1 TEX. ADMIN. CODE § 155.507(b), and in support hereof, would respectfully show the Administrative Law Judge (“ALJ”) as follows:

**I.
APPLICANT’S EXCEPTION NO. 1 SHOULD BE OVERRULED**

1. Applicant’s Exception No. 1 to the Proposal for Decision (“PFD”) should be overruled because there was no evidence to establish that Tommie Vaughn was not in compliance with its franchise agreement by operating a fleet office at 908-914 North Shepherd (the “Supplemental Location”). Tommie Vaughn is not violating Texas law by operating a fleet office at the Supplemental Location because no evidence in the record establishes that Tommie Vaughn has a showroom at the Supplemental Location or that it is both (1) selling and (2) titling and registering new motor Vehicles there.

2. Section 2301.257 of the Texas Occupations code requires a franchised dealer to apply for a separate license for each separate and distinct dealership **showroom** as determined by the department. TEX. OCC. CODE § 2301.257. The term “showroom” is not defined in the Occupations Code, Chapter 503 of the Transportation Code or in the Administrative Code. TEX. OCC. CODE §2301.002; TEX. TRANSP. CODE § 503.001; 43 TEX. ADMIN. CODE § 215.140 (providing premises requirements for an established and permanent place of business). It is undisputed that Tommie Vaughn has only one showroom, which is located at 1201 N. Shepherd, its licensed location where its retail sales department, service, parts **and business offices** are located.

3. Under Texas law, **a franchised dealer may conduct business at more than one location**, except that the dealer may establish and maintain a separation location for the display and sale of new motor vehicles only if expressly authorized by the dealers’ franchise and license. TEX. OCC. CODE § 2301.355(a) (emphasis added). The phrase “display and sale of new motor vehicles” in Section 2301.355(a) must be read in conjunction with Section 2301.257 which uses the term “showroom.” Franchised dealers display and sell new motor vehicles from a showroom. It is undisputed that the Supplemental Location where it conducts some fleet business appeared on Tommie Vaughn’s franchise license for decades until 2009, when it mysteriously vanished. Regardless, Tommie Vaughn has only one retail showroom at 1201 N. Shepherd.

4. A franchised dealer must hold a separate license for each separate and distinct dealership as required by section 2301.257. TEX. OCC. CODE § 2301.355(a). Under Board rules and regulations, a dealer that holds a GDN for a particular type of vehicle¹ may operate from

¹ TEX. TRANSP. CODE § 503.029 defines the six categories of general distinguishing numbers, which includes a franchised motor vehicle dealer.

more than one location within the limits of a city, provided each location is operated by the same legal entity and meets the requirements of § 215.140. 43 TEX. ADMIN. CODE § 215.135; TEX. TRANSP. CODE § 503.027 (providing that “[i]f a person is not otherwise prohibited from doing business as a dealer at more than one location in the territory of a municipality, a person may buy, sell, or exchange a motor vehicle of the type for which the person holds a dealer general distinguishing number from more than one location in the territory of the municipality without obtaining an additional dealer general distinguishing number). When read together, these statutes make it clear that a separate license is required for each showroom that a franchised dealer operates, and Tommie Vaughn does not have a showroom at the Supplemental Location. For these reasons, Tommie Vaughn does not need a separate license to operate a fleet office at 908-914 N. Shepherd.

4. In terms of sales, there was no evidence in the record that Tommie Vaughn does anything more than operate a fleet office at the Supplemental Location. Mr. Janke testified that employees in the fleet office talk to customers, but sales people use their cell phones at home and “all over the city” when talking to customers.² While there are some vehicles “displayed,” Tommie Vaughn does not have a showroom at the Supplemental Location and does not deliver vehicles there.³ No evidence in the record establishes that any necessary documentation to title and register new vehicles is processed in the fleet office as opposed to 1201 N. Shepherd where the business offices are located.⁴

5. Under Texas law, there are two elements that must be satisfied to constitute the first sale of a new motor vehicle: (1) the bargain, sale, transfer, or delivery of a motor vehicle, other than an assembled vehicle, that has not been previously registered or titled, with intent to

² 3 RR 69:22 – 70:10.

³ *Id.*

⁴ *Id.*; 3 RR 37:21 – 38:14; 3 RR 215:2 – 215:19; 3 RR 225:9 – 226:6; 3 RR 248:16 – 249:13.

pass an interest in the motor vehicle, other than a lien, **regardless of where the bargain, sale, transfer, or delivery occurred;** **and** (2) the registration and titling of that vehicle. TEX. TRANSP. CODE § 501.002(8) (emphasis added). Without evidence that Tommie Vaughn is also registering and titling vehicles at the Supplemental Location, there can be no Finding of Fact or Conclusion of Law that Tommie Vaughn is engaging in the sale of new motor vehicles at the Supplemental Location. In other words, if Tommie Vaughn's fleet sales associates are talking to customers at the Fleet Office, there is no violation of Texas law because they are allowed to conduct business from more than one location so long as there is not a showroom at that location. Fleet sales associates can talk to customers from anywhere, including at the customer's place of business, which is one way both Tommie Vaughn and Chastang's fleet sales departments operate, without violating Texas law. As long as sales of new motor vehicles are registered and titled at the licensed location, 1201 N. Shepherd, where its business office is located, Tommie Vaughn is in compliance with Texas law. There is no evidence in the record to establish that Tommie Vaughn's operation of a fleet office fails to comply with the Occupations Code, Transportation Code or Administrative Code. For these reasons, Applicant's Special Exception No. 1 to the PFD should be overruled.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Tommie Vaughn respectfully requests the ALJ sustain overrule Applicant's Exception No. 1 to the PFD issued on January 16, 2024, and for such and further relief, at law or in equity, to which Tommie Vaughn may show itself to be justly entitled.

Respectfully Submitted,

JOHNSON DELUCA KURISKY & GOULD, P.C.

By: _____

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TOMMIE VAUGHN FORD**

CERTIFICATE OF SERVICE

This is to certify that pursuant to TEX. R. CIV. P. 21 and 21a, a true and correct copy of the foregoing document was served on the following on February 14, 2024.

Via Email Transmission: leonkomkov@gmail.com; jbb.chblaw@me.com

Mr. Leon V. Komkov

Mr. J. Bruce Bennett

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Mark Allan Bankston

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Marni Blythe on behalf of George Kurisky Jr

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Envelope ID: 84525127

Filing Code Description: Reply to Exceptions

Filing Description: Protestant's Reply to Applicant's Exceptions to Proposal for Decision

Status as of 2/14/2024 5:10 PM CST

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FILED TxDMV Board Meeting eBook
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ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

August 8, 2024

**SOAH DOCKET NO. 608-22-0643.LIC
MVD DOCKET NO. 21-0018-LIC**

TOMMIE VAUGHN MOTORS, INC.	§	
	§	
Protestant,	§	
	§	
v.	§	BEFORE THE STATE OFFICE
	§	OF ADMINISTRATIVE HEARINGS
CHASTANG ENTERPRISES-HOUSTON, LLC d/b/a CHASTANG FORD,	§	
	§	
Applicant.	§	

PROTESTANT’S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Tommie Vaughn Motors, Inc. d/b/a Tommie Vaughn Ford (“Tommie Vaughn” or “Protestant”) and files Protestant’s Exceptions to the Proposal for Decision signed on January 16, 2024 (the “PFD”), pursuant to 43 TEX. ADMIN. CODE § 155.507(b), and in support hereof, would respectfully show the Administrative Law Judge (“AJLs”) as follows:

**I.
PRELIMINARY STATEMENT**

1. Tommie Vaughn excepts to multiple paragraphs of the PFD’s Section V. Findings of Fact (the “Findings”) and Section VI. Conclusions of Law (the “Conclusions”) because certain Findings and Conclusions were not supported by the substantial evidence adduced at the Final Hearing on July 24-28, 2023 (the “Final Hearing”).

2. Specifically, Tommie Vaughn excepts to Findings paragraphs 20-22 for failure to include the undisputed fact that Ford Motor Company (“Ford”) is phasing out the “truck center” designation for stores like Chastang and transitioning to the Ford Pro Elite model, a program which all Ford stores will have the opportunity to enroll in. Contrary to Chastang’s stated intentions, Chastang’s business model is changing to a more traditional retail outlet because

Ford's business decisions are forcing it to do so. The assignment of a retail dealer locality is further evidence establishing that Ford will expect Chastang to increase its focus on retail sales. If Chastang moves to 3625 and 3669 Eastex Freeway, Houston, Texas 77026 (the "Proposed Location"), it will build a new Signature design Ford dealership with freeway frontage on Tommie Vaughn's doorstep and enjoy the competitive retail advantages to Tommie Vaughn's detriment.

3. Findings Paragraph 52 omits any mention of the fact Chastang was located within Tommie Vaughn's dealer locality when Ford notified it of sales performance deficiencies. The uncontroverted testimony from Kirby Janke was that Tommie Vaughn would have hit their sales expectancy numbers but for the fact Chastang's retail sales made within Tommie Vaughn's dealer locality were not credited to Tommie Vaughn. .

4. Findings Paragraph 64 erroneously finds that "some" of Chastang's new proposed dealer locality will consist of census tracts that make up the eastern part of Tommie Vaughn's dealer locality when the substantial evidence established that **most** of Chastang's new proposed dealer locality will be comprised of census tracts formerly assigned to Tommie Vaughn. A comparison of the proposed locality maps drawn by Ford show that **all** the census tracts in the eastern half of Tommie Vaughn's dealer locality are being reassigned to Chastang.

5. The PFD's finding of harm to Chastang's new and used sales in Findings paragraphs 78-79 and Conclusions paragraph 15 was not supported by any evidence. The PFD's conclusion that Chastang will suffer "financial and competitive harm if its application to relocate is denied" is conclusory and unsupported by evidence. The harm Chastang complains about in terms of overcrowding and delays in the service department are caused by the fact it also operates a heavy truck franchise called Autocar. Chastang generated \$242.5 million in revenues

in 2022 and the record showed remarkable revenue growth in sales, service and parts in its current location at 6200 N. Loop East, Houston, Texas 77026 (the “Current Location”), which contradicts the finding of harm to Chastang.

6. Finally, Tommie Vaughn excepts to Findings paragraphs 71-74 and Conclusions paragraph 13 because the substantial evidence established that Tommie Vaughn will suffer significant harm that would impede competition by financially impacting it in terms of reduced sales and revenues if the relocation is approved. Tommie Vaughn excepts to the PFD’s Findings and Conclusions that the opinions of its expert, Dr. Cristina Benton (“Dr. Benton”), were not reliable because her projections of harm were based on underlying data and reliable financial projections. For example, Dr. Benton’s projections for 2022 came within a 3% margin of error. Chastang’s experts based their opinions on historical data and performed minimal forecast modeling to minimize the harm to Tommie Vaughn caused by the proposed relocation. For these reasons, Tommie Vaughn respectfully moves the ALJ to sustain its exceptions and amend the PFD as follows:

II. **TOMMIE VAUGHN’S EXCEPTIONS TO PFD**

Exception No. 1.

7. Findings paragraphs 20-22 describe the type of Ford dealer Chastang was in its past, not what it will be in the future, regardless of whether it relocates. Joe Chastang admitted in response to his own counsel’s question that Ford is not keeping the “truck center” designation in the future.¹ This admission renders irrelevant Chastang’s attempt to distinguish itself from Tommie Vaughn as a “truck store,” with its alleged emphasis on commercial fleet sales. The

¹ 1 RR 77: 8-24.

substantial evidence showed Chastang competes effectively against Tommie Vaughn and all Ford dealers in the Houston market for retail sales.²

8. Joe Chastang was asked by counsel what the truck center designation is evolving to.³ “They’re not saying this exactly, but it looks like Ford Pro Elite, and there would be more people participating because every dealer has a chance to do that if they want to. That’s — Ford Pro is one of Ford’s real pushes now is being in the commercial business because Ford owns 50 — over 50 percent of the Class 1 through 7 market in sales.”⁴ By omitting these facts, Findings paragraphs 20-22 present an inaccurate portrait of what Chastang will be after it relocates, which is a full retail Ford dealership like Tommie Vaughn. A future Chastang at the Proposed Relocation will be nothing like Bayou City Ford was more than 20 years ago because Chastang wants to establish a bigger retail footprint than Bayou City and Ford’s product mix changed substantially over the past 20 years to the point Ford today is an SUV and truck brand. The Proposed Relocation includes additional acreage at 3669 Eastex Freeway and a new state-of-the-art retail facility. Chastang will sell all the same models as Tommie Vaughn, except for the Mustang. Chastang’s increasing retail sales numbers in recent years reveal that it will be a major competitor for the retail sale of new Ford vehicles that will encroach on Tommie Vaughn’s customer base, especially since Chastang proposes to move right on the western border of it.

9. As further proof that Ford’s business changes will force Chastang to become a full retail outlet and not just a “truck store,” Ford assigned a new retail dealer locality to Chastang. Before 2022, Chastang did not have a sales expectancy, which is one measure of a

² 1 RR 103:23 – 104:18. Chastang does business as “Chastang Ford,” not “Chastang Ford Truck City” like the Leif Johnson dealership Chastang visited.

³ 1 RR 77: 8-24.

⁴ *Id.*

Ford dealer's retail sales performance.⁵ Once the retail dealer locality goes into effect, Chastang will have sales expectancies that Ford will measure.⁶ Kevin McGuirk testified that Chastang building a new facility with freeway frontage on a major thoroughfare like the Eastex Freeway will help Chastang meet its sales expectancies.⁷ Meeting those sales expectancies will come at Tommie Vaughn's expense. For these reasons, Tommie Vaughn respectfully asks that the Findings include the institutional changes Ford is making that will affect Chastang and Tommie Vaughn in the future, including that Chastang will no longer be designated as a truck center.

Exception No. 2

10. The harm caused by Chastang's retail growth to Tommie Vaughn was established by the sales deficiencies Tommie Vaughn experienced as noted in paragraph 52 of the Findings. But paragraph 52 omits any mention of the fact Chastang was located within Tommie Vaughn's dealer locality when Ford notified it of sales performance deficiencies. Kirby Janke provided uncontroverted testimony that competition from Chastang in its dealer locality was the primary reason for sales deficiencies.⁸ Sales made by Chastang, which did not have a retail dealer locality at the time, were not credited to the dealer locality from which they were made because those census tracts were assigned to Tommie Vaughn, not Chastang. There were sales of new Ford vehicles occurring within Tommie Vaughn's dealer locality that it did not get credit for making because they were Chastang's sales. "You know, when Ford would come in and meet with me and go over sales expectancy, you know, it was pretty apparent that, you know, if you would take just the sales that Chastang did and add them to ours, we would be at 100% sales

⁵ Ex. P-140, Tidwell Depo. at 49:7 – 50:4.

⁶ Ex. P-141, McGuirk Depo. at 53:11 — 54:13.

⁷ *Id.*

⁸ 3 RR 124:7 –125:15; 3 RR 155:17 – 158:5.

expectancy.”⁹ Chastang’s presence in Tommie Vaughn’s dealer locality resulted in Tommie Vaughn losing retail sales. Losing retail sales to Chastang will also adversely affect Tommie Vaughn’s sales velocity, the amount of time it takes to sell new vehicles, which will negatively impact future allocations from Ford. Tommie Vaughn will continue to lose retail sales to Chastang if it is permitted to relocate to Tommie Vaughn’s front doorstep with freeway frontage on the Eastex Freeway.

11. While it is true that dealers get credit for sales both inside and outside the boundaries of a dealer locality,¹⁰ Tommie Vaughn did not receive credit for all retail sales of Ford products in its locality because some of those sales were made by Chastang. If a Ford vehicle is registered in a dealer’s locality but not sold by the Ford dealer assigned to that locality, it is counted in the registration percent of expected.¹¹ Ford keeps track of other dealers that are “pumping in and selling into” a dealer’s locality.¹² If Chastang relocates closer to Tommie Vaughn, it will take sales away from Tommie Vaughn, pumping sales into its dealer locality and making it more difficult for Tommie Vaughn to meet its own expectancies. For these reasons, Tommie Vaughn requests that Findings paragraph 52 reflect the facts established by the substantial evidence that Chastang’s presence in Tommie Vaughn’s dealer locality caused it to fall short of Ford’s sales expectancies.

Exception No. 3

12. Paragraph 64 of the Findings noting that “some” of Chastang’s new proposed dealer locality will consist of census tracts that make up the eastern part of Tommie Vaughn’s dealer locality is contrary to the substantial evidence adduced at the Final Hearing. In fact, the

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ex. P-140; Tidwell Depo. at 131:3 – 132:9.

¹² *Id.*

substantial evidence established that **most** of Chastang's new proposed dealer locality will be comprised of census tracts formerly assigned to Tommie Vaughn. When the dealer locality goes into effect, Chastang's retail sales performance, for the first time, will be measured the same way Tommie Vaughn's performance is measured. Chastang will have a retail sales expectancy.¹³

13. Exhibit P-102 includes a map drawn by Ford that shows Tommie Vaughn's former dealer locality outlined in red.¹⁴ The western half of its proposed dealer locality is shaded yellow.¹⁵ The eastern half of the proposed locality is white, indicating all the census tracts depicted in the eastern half of the map were reassigned to Chastang.¹⁶

14. Chastang's new retail sales expectancies will affect its approach to selling and servicing retail vehicles. "As a result of census tracts being reassigned in the network change, Tommie Vaughn's market will be reduced by 33.0% in population and 26.8% in households."¹⁷ Chastang's dealer locality in combination with its relocation will benefit Chastang in terms of receiving more Internet leads and capturing more service customers in areas where it already competes with Tommie Vaughn. Neither Joseph Roesner ("Roesner") nor Stephen Pearse ("Pearse") prepared financial projections or modeling of the relocation impact even though it was possible for them to do so.¹⁸ Adam Tidwell and McGuirk testified that Chastang will have to meet retail expectancies. Chastang's witnesses admitted they plan to increase their retail presence in the market. The sales data supports the conclusion that Chastang's retail approach already is an emphasis, and it is among the leading Ford dealers in retail growth. There is no

¹³ Ex. P-140, Tidwell Depo. at 58:10 – 59:10.

¹⁴ Ex. P-102

¹⁵ *Id.*

¹⁶ Ex. P-93; 1 RR 147:1 – 151:5.

¹⁷ Ex. P-128 at p. 33.

¹⁸ 2 RR 22:3 – 23:5; 5 RR 70:19 – 71:3; Ex. A-20; Ex. A-21; Ex. A-22; Ex. A-23; Ex. A-26; Ex. A-27; and Ex. A-28.

reason to doubt that the retail expectancies, along with a new retail showroom with freeway frontage and increased visibility on the Eastex Freeway, will impact Chastang's business approach, which will cause harm to Tommie Vaughn.

15. By finding that Chastang's new dealer locality includes "some" of the census tracts formerly assigned to Tommie Vaughn, the PFD trivializes the impact Ford's decision will have on Tommie Vaughn. This finding wrongly accepts Chastang's argument that its move to Tommie Vaughn's eastern border and construction of a Signature-design Ford store with full retail responsibilities will cause minimal harm to Tommie Vaughn. It should be corrected to state the facts established by the substantial evidence, which is that most of Chastang's new dealer locality is comprised of census tracts formerly assigned to Tommie Vaughn. Further, the finding should include McGuirk's testimony that if Chastang moves, its dealer locality would be redrawn again, and Tommie Vaughn may lose even more census tracts to Chastang.¹⁹

Exception No. 4:

16. In Findings paragraphs 78-79 and Conclusions paragraph 15, the PFD found that denying the application would harm Chastang's new and used sales, as well as its service department. These findings and conclusions are not supported by the substantial evidence in the record. Chastang's primary complaints about lack of space and delays in servicing vehicles are directly the result of Chastang operating two franchises at the Current Location, Ford and Autocar.²⁰ The non-Ford Motor Company heavy trucks Chastang services create problems for its Ford service customers, for which there are other solutions such as moving the Autocar franchise or applying for a license to operate separate service-only facility. There was no evidence from Chastang's experts, who prepared no financial projections or modeling to predict what would

¹⁹ Ex. P-141, McGuirk Depo. at 61:8-19.

²⁰ 1 RR 107:20 – 108:14; 155:15 – 156:14; 2 RR 10:13 – 11:16.

happen to Chastang's new and used sales or its service department if it was not allowed to move. The historical data showing tremendous growth in Chastang's sales and service revenues contradict any finding of future harm if forced to look elsewhere to relocate.

17. Since March 2020 Chastang's retail sales business outperformed Tommie Vaughn's retail sales business in terms of percentage growth.²¹ Chastang's retail sales grew 33.9% from 2021 to 2022, while Tommie Vaughn experienced a -5.7% decline in total retail sales.²² Chastang is among the leading Ford dealers in the Houston market in retail growth.²³

18. In 2022, Chastang sold 2,171 new vehicles, more than quadrupling its sales since it started 20 years ago.²⁴ Chastang's service business increased from about \$2 million in 2004 to \$4 million in 2022, a 100% increase.²⁵ Its used vehicle sales increased from 85 units in 2004 to about 318 in 2022.²⁶ Chastang's service business increased from about \$2 million in 2004 to \$4 million in 2022, a 100% increase.²⁷ As a whole, Chastang generated \$242.5 million dollars sales revenue in 2022.²⁸ Chastang pays rent to an entity controlled by Mr. Chastang so it is not facing a circumstance of losing its lease. If forced to find a solution other than moving closer to Tommie Vaughn, Chastang will not be harmed.

19. In 2017, Chastang's service business generated a \$149,957.00 profit and its parts department made \$261,773.00.²⁹ In 2018, the service department made \$64,933 profit, while parts generated \$382,027 in profit.³⁰ The next year, 2019, Chastang's service department profit

²¹ Ex. P-120; Ex. P-140, Tidwell Depo. at 160:2 – 166:14; 1 RR 145:10-15

²² *Id.*

²³ *Id.*

²⁴ 1 RR 47:9-18.

²⁵ 1 RR 47:25 – 48:7.

²⁶ 1 RR 36:0-12; 1 RR 60:5-11.

²⁷ 1 RR 47:25 – 48:7.

²⁸ Ex. A-18.

²⁹ Ex. A-13.

³⁰ Ex. A-14.

was \$146,165, while parts was \$393,466.³¹ While the service department started losing money in 2020 and 2021, the parts department continued generating profits.³² Chastang's parts department generated large profits of \$589,765.00 in 2021 and \$512,118 in 2022.³³

20. Chastang's used vehicle revenues started growing in 2020. In 2017, Chastang's used vehicle total gross was \$456,140.00.³⁴ In 2020, Chastang's used vehicle department gross grew to \$620,482.³⁵ By 2021, Chastang's total grosses in the used vehicle department topped \$1.1 million.³⁶ The used vehicle department's total gross reached \$1.48 million in 2022.³⁷ While these numbers are below the Zone A average, they nevertheless fall short of demonstrating foreseeable harm to Chastang if it cannot relocate.

21. Chastang's dealership revenues grew from \$175.5 million in 2017 to \$242.5 million in 2022.³⁸ An increase in business of almost \$50 million in six years is hardly demonstrative of a dealership that will suffer harm if not allowed to relocate. To the contrary, Chastang will remain a profitable business capable of competing in the Houston market. The record is devoid of evidence showing that Chastang will suffer a decline in dealership revenues or profits if it must stay in its current location. Because there is no evidence to prove Chastang would suffer economic and competitive harm if its application is denied, Tommie Vaughn asks the ALJ to sustain its exception to Findings paragraphs 78-79 and Conclusions paragraph 15.

Exception No. 5.

22. Finally, Tommie Vaughn excepts to Findings paragraphs 71-74 and Conclusions paragraph 13 because the substantial evidence established that Tommie Vaughn will suffer

³¹ Ex. A-15.

³² Ex. A-16, Ex. A-17.

³³ Ex. A-17; Ex. A-18.

³⁴ Ex. A-13.

³⁵ Ex. A-16.

³⁶ Ex. A-17.

³⁷ Ex. A-18.

³⁸ Ex. A-13 through A-18.

significant harm that would impede competition by financially impacting it in terms of reduced sales and profits if the relocation is approved. The Findings and Conclusions in these paragraphs disregarded the substantial evidence of harm that Tommie Vaughn presented in the record.

23. Tommie Vaughn is a family-owned and operated dealership.³⁹ At the midway point of 2022, Tommie Vaughn ranked 15th in market share among 19 Ford dealerships in Houston with 3.19% of truck sales and 3.64% of SUV sales.⁴⁰ Tommie Vaughn had \$2.9 million cash on hand at the end of 2022 compared to the Zone A average of \$5.5 million.⁴¹ Its total assets in 2022 of \$31.7 million trailed the Zone A average of \$39.4 million.⁴² Tommie Vaughn's profits in 2022 were \$4.2 million, while the Zone A average was more than double that amount at \$9.1 million.⁴³ Its new vehicle department generated \$75.9 million total sales, while the average new vehicle department in Zone A generated \$113 million.⁴⁴ By comparison, Chastang's new vehicle department generated a tremendous \$203 million in total sales in 2022 and realized a \$4.78 million profit for the dealership as a whole.⁴⁵ Chastang's total assets were \$50.5 million, well above the Zone A average. The substantial evidence established that allowing Chastang to relocate closer to Tommie Vaughn will adversely impact Tommie Vaughn's sales and service business.

24. Tommie Vaughn's service business will be harmed by Chastang's relocation because Chastang is already taking away repair orders from Tommie Vaughn.⁴⁶ Exhibit A-22, which was prepared by Chastang's expert Roesner, shows the dense clusters of repair orders Chastang generated from 2021 through September 2022 west of the Eastex Freeway and near

³⁹ 3 RR 3:11-14.

⁴⁰ Ex. P-120 at P073.

⁴¹ Ex. P-125; Ex. A-57.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Ex. A-18.

⁴⁶ 3 RR 186:5 – 194:6.

downtown Houston in Tommie Vaughn's dealer locality. By moving closer to Tommie Vaughn, Chastang will be well positioned to take even more repair orders from Tommie Vaughn's customer base and hurt its service revenues. In addition, Chastang will compete for service personnel, which already has a shortage of talent in the market.⁴⁷ Chastang will have a newer, nicer facility it can leverage to recruit in-demand technicians from Tommie Vaughn.⁴⁸

25. Harm to Tommie Vaughn will come not only from losing sales and service; the relocation would also harm the value of the dealership and impede its ability to relocate in the future, if it so chooses.⁴⁹ The value of a Ford franchise is based on profits, location and competition.⁵⁰ If Tommie Vaughn's location gets a lot worse because a competitive dealer moves to a major freeway, it will cause Tommie Vaughn to lose value in its franchise.⁵¹ Chastang would have a new facility at a location much closer to Tommie Vaughn with freeway frontage that will make it more attractive to customers.⁵² If Chastang moves to the Eastex Freeway to another location within Tommie Vaughn's current dealer locality, it will limit potential relocation spots for Tommie Vaughn. The only potential freeway options available to Tommie Vaughn in the future would be very short segments of Loop 610, Interstate 10 and Interstate 45.⁵³

26. Mr. Chastang observed that Doggett Ford, which also protested the relocation, paid around \$20 million to build new facilities that are compliant with Ford's "Signature" design.⁵⁴ Chastang would construct new commercial facilities to comply with Ford's

⁴⁷ 3 RR 196:10 – 197:20.

⁴⁸ *Id.*

⁴⁹ 3 RR 260:18 – 265:7.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Ex. P-102.

⁵⁴ 1 RR 68:19 – 69:8; 1 RR 114:19 – 115:8.

requirements such as the Ford Pro Elite program.⁵⁵ To recoup those costs, Chastang must cannibalize retail sales from Tommie Vaughn and other Ford dealers because the Proposed Location is in a poor economic area without sufficient opportunity to generate sales of new Ford vehicles. With the planned move, Chastang will no longer be just a “truck store,” focused on commercial fleet sales and service.⁵⁶ Chastang’s increasing retail sales numbers in recent years and its new dealer locality reveal that it will be a major competitor for the retail sale of new Ford vehicles that will encroach on Tommie Vaughn’s locality, especially since Chastang proposes to move right on the western border of it.

27. Chastang’s experts acknowledged the potential harm to Tommie Vaughn but tried to minimize it. Roesner observed that Chastang made 2.97% of its retail sales, representing 193 vehicle registrations, in Tommie Vaughn’s “dealer area” (as he defined it) from 2019 to October 2022.⁵⁷ Of all the other Houston Ford dealer areas in which Chastang made retail sales, the 2.97% in Tommie Vaughn’s dealer area was the most.⁵⁸ Roesner analyzed Chastang’s retail sales into 37 census tracts previously assigned to Tommie Vaughn and found they increased from 24 to 32 between 2019 and 2021, totaling 89 from 2019 through 2022.⁵⁹ Tommie Vaughn already lost significant retail sales to Chastang and those losses of sales and revenue will increase if Chastang relocates closer to Tommie Vaughn.

28. As noted above, Chastang must change its focus to more of a full retail dealership and the following chart (based on Chastang’s financial statements) shows in terms of units sold that Chastang is already selling more retail light trucks & SUV and fewer fleet units:⁶⁰

⁵⁵ 1 RR 119:8-20.

⁵⁶ 1 RR 63:11 – 64:3; 1 RR 77:12-14.

⁵⁷ Ex. A-22, Update Tab 18, page 1.

⁵⁸ *Id.*

⁵⁹ Ex. A-24.

⁶⁰ Ex. A-13 through A-19. Note that prior to 2021, Ford grouped SUV’s with light trucks on its financial statements.

Year	New Vehicle Sales Dept.	Total Light Retail Trucks & SUV	Total Fleet Trucks
2017	Not on statement	308	1,517
2018	Not on statement	328	1,585
2019	Not on statement	381	1,520
2020	Not on statement	363	1,159
2021	\$178,178,692	504	1,433
2022	\$203,225,912	144+13+380=537	1,313

Chastang's light retail trucks and SUV's increased from 308 units in 2017 to 537 units in 2022, while its fleet sales went down from 1,517 units in 2017 to 1,313 units in 2022.⁶¹

29. The growth in Chastang's retail sales, as seen in its financials, is consistent with Tidwell's testimony that he has had conversations with all Ford dealers in the Houston market, "[t]o go actively after retail sales, correct . . . and take retail orders."⁶² As noted in the PFD, Chastang eventually will be assigned a retail dealer locality that Ford will use to measure its retail performance. McGuirk agreed that building a new facility, getting freeway frontage on a major thoroughfare like the Eastex Freeway will help Chastang meet its retail sales expectancies.⁶³ Pressure from Ford to increase focus on retail sales as shown in the testimony and the data will force Chastang to change its business model, which will harm Tommie Vaughn.

30. As the following table shows, Tommie Vaughn's new vehicle department sales dropped from \$83.4 million in 2019, which was above the Zone A average, to \$75.9 million in 2022, which was well below the Zone A average:

⁶¹ *Id.*

⁶² Ex. P-140, Tidwell Depo. at p. 137:10-22.

⁶³ Ex. P-141, McGuirk Depo. at p. 54:9-13.

Year	Tommie Vaughn New Vehicle Department		Chastang New Vehicle Department		Zone A Average New Vehicle Department	
	Total Sales	Profit	Total Sales	Profit	Total Sales	Profit
2019	\$83,438,491 ⁶⁴	-\$46,617 ⁶⁵	\$195,075,463 ⁶⁶	\$1,224,321 ⁶⁷	\$111,360,391 ⁶⁸	\$285,510 ⁶⁹
2020	\$76,984,477 ⁷⁰	-\$317,299 ⁷¹	\$136,091,730 ⁷²	\$967,443 ⁷³	Not Reported ⁷⁴	\$1,425,426 ⁷⁵
2021	\$81,835,451 ⁷⁶	\$2,157,064 ⁷⁷	\$178,178,692 ⁷⁸	\$2,313,282 ⁷⁹	\$111,156,424 ⁸⁰	\$5,862,800 ⁸¹
2022	\$75,983,795 ⁸²	\$2,090,548 ⁸³	\$203,225,012 ⁸⁴	\$3,243,342 ⁸⁵	\$113,226,786 ⁸⁶	\$5,758,961 ⁸⁷

By comparison, Chastang's new vehicle department significantly outperformed the Zone A average over the same time period. In 2019, Chastang's total new vehicle sales were over \$111 million more than Tommie Vaughn. By 2022, the difference between Chastang's total new vehicle sales and Tommie Vaughn's total new vehicle sales grew to over \$127 million, while maintaining a sizable advantage in profitability of the department. Since filing its application to relocate, Chastang's new vehicle department has increased its sales and operating profit.⁸⁸ Chastang's new vehicle sales department will gain an even greater competitive advantage over

64 Ex. P-122.
65 *Id.*
66 Ex. P-56.
67 Ex. A-15
68 Ex. A-54.
69 *Id.*
70 Ex. P-123.
71 *Id.*
72 Ex. P-57.
73 *Id.*
74 Ex. A-55.
75 *Id.*
76 Ex. P-124.
77 *Id.*
78 Ex. A-17.
79 *Id.*
80 Ex. A-56.
81 *Id.*
82 Ex. P-125.
83 *Id.*
84 Ex. A-18.
85 *Id.*
86 Ex. A-57.
87 *Id.*
88 3 RR 140:5-8.

Tommie Vaughn if it moves over two miles closer, builds a state-of-the-art facility on the Eastex Freeway, and increases its focus on retail sales because of the proposed dealer locality from Ford. As Kirby succinctly put it, “They’re growing at a rapid rate, and obviously if they move closer, they’re going to have more opportunity to take my customers and grow even more.”⁸⁹

31. In 2022, Chastang posted a net dealership profit before income tax of \$4.78 million compared to Tommie Vaughn’s net dealership profit of \$4.2 million.⁹⁰ Dr. Benton observed that during the period of January through September 2022, Tommie Vaughn’s unit sales declined 16.5% year-over-year from 2021 and its revenue declined due to lower new vehicle sales.⁹¹ Dr. Benton projected that starting in 2025, the proposed relocation will cost Tommie Vaughn lost revenue of \$9,930,982, increasing to \$10,749,615 by 2027.⁹² Tommie Vaughn’s profits would drop \$2,384,713 from 2025 to 2027.⁹³ If Chastang opens its doors at the Proposed Location in 2025, a sensitivity analysis shows Tommie Vaughn potentially losing 6% to 9% of its retail sales resulting in potential lost revenue ranging from \$7.9 million to almost \$12 million.⁹⁴ These losses are significant comparing the revenues generated by each dealership. From 2019 to 2022, Chastang’s revenues grew almost 11% from \$218 million to \$242 million.⁹⁵ By comparison, Tommie Vaughn’s revenues over the same period grew only 2.7% from \$141 million in 2019 to \$145 million in 2022.⁹⁶ In 2022, Chastang’s revenues were 66.8% greater than Tommie Vaughn’s revenues. These numbers are not the result of Dr. Benton’s professional judgment. These are real numbers and reliable projections that Chastang’s experts failed to

⁸⁹ 3 RR 140:9-17.

⁹⁰ Ex. A-18; Ex. P-124. Both dealerships trailed the Zone A average net profit of about \$9.2 million. Ex. A-57.

⁹¹ Ex. P-129 at p. 9.

⁹² Ex. P-129 at p. 11; Ex. P-128 at p. 46..

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Ex. A-15 through Ex. A-18.

⁹⁶ Ex. P-121 through Ex. P-125.

controvert with their own projections. By moving closer to Tommie Vaughn on the Eastex Freeway, Chastang will widen that enormous gap by as much as nine percent more, significantly causing harm to Tommie Vaughn's retail sales and revenues and increasing the revenue disparity between them.

32. Considering Chastang is under a contractual obligation from Ford to vigorously promote and sale new Ford products, Dr. Benton performed a break-even analysis to determine how much Chastang must increase its new retail sales to pay for the move.⁹⁷ Dr. Benton's break-even analysis is far more credible and reliable than "back of the envelope" calculations to argue that simply increasing used vehicle sales would cover an \$60,000 increase in rent at the Proposed Location. Dr. Benton used a much more conservative estimate of \$10 million construction costs to determine that Chastang would have to sell an additional 288 new vehicles starting in 2025.⁹⁸ Using Mr. Chastang's estimate of \$20 million, which is not unreasonable, the number of additional new vehicles Chastang would have to sell to break even would only increase.⁹⁹ After performing a break-even analysis, Dr. Benton estimated that increased fixed costs due to construction at Chastang would result in a 6% negative impact on Tommie Vaughn's sales.¹⁰⁰

33. Based on the foregoing, Dr. Benton concluded that Tommie Vaughn will suffer a loss of revenue and profits, which she conservatively estimated is 7.5% of its retail sales and service.¹⁰¹ In reaching this conclusion, Dr. Benton looked at Tommie Vaughn's financial statements and determined that Tommie Vaughn would lose more than \$700,000 in earnings per year for the dealership.¹⁰² **In the first three years after the relocation, Tommie Vaughn**

⁹⁷

Id.

⁹⁸

Id.; Ex. P-128 at Ex. D-8; Ex. P-129 at Ex. C-6.

⁹⁹

Id.

¹⁰⁰

Id.; Ex. P-128 at p. 14.

¹⁰¹

Id.

¹⁰²

4 RR 95:1 – 96:4.

would suffer of loss of \$2.3 million, which is about 20% of the dealership's earnings for those three years.¹⁰³ Again, these calculations do not depend on professional judgment but on reliable forecast modeling that came within a 3% margin of error in projecting Tommie Vaughn's 2022 performance.¹⁰⁴ Regardless of how well capitalized Tommie Vaughn has been in the past, losing this much sales and revenue to Chastang after it relocates to the Eastex Freeway and builds a new full retail dealership that sits right on the border of its customer base is significant to a family owned-and operated business.

34. Based on the foregoing, Tommie Vaughn asks the ALJ to sustain its exceptions to Findings paragraphs 71-74 and Conclusions paragraph 13 and find that Tommie Vaughn will suffer significant harm if Chastang moves west, builds a new Signature design Ford store on the Eastex Freeway, and operates as a traditional retail dealership under pressure from Ford to evolve from its historic status as a "truck center."

PRAYER

WHEREFORE, PREMISES CONSIDERED, Tommie Vaughn respectfully requests the ALJ sustain each of its exceptions, amend the PFD issued on January 16, 2024, consistent with the exceptions, and for such and further relief, at law or in equity, to which Tommie Vaughn may show itself to be justly entitled.

Respectfully Submitted,

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By: _____

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¹⁰³

Id.

¹⁰⁴

5 RR 68:18 – 70:25.

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TOMMIE VAUGHN FORD**

CERTIFICATE OF SERVICE

This is to certify that pursuant to TEX. R. CIV. P. 21 and 21a, a true and correct copy of the foregoing document was served on the following on January 31, 2024.

Via Email Transmission: leonkomkov@gmail.com; jbb.chblaw@me.com

Mr. Leon V. Komkov
Mr. J. Bruce Bennett
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Mark Allan Bankston

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Filing Description: Protestant's Exceptions to Proposal for Decision

Status as of 1/31/2024 4:45 PM CST

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TOMMIE VAUGHN MOTORS, INC.	§	
Protestant,	§	
	§	SOAH DOCKET NO. 608-22-0643.LIC
v.	§	MVD DOCKET NO. 21-0018-LIC
	§	
CHASTANG ENTERPRISES-HOUSTON,	§	
LLC d/b/a CHASTANG FORD,	§	
Applicant.	§	

**APPLICANT’S REPLY TO PROTESTANT’S EXCEPTIONS
TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Applicant Chastang Enterprises-Houston, LLC d/b/a Chastang Ford (“Chastang”) replies to the Exceptions filed by Tommie Vaughn Motors, Inc. (“Vaughn”) to the Proposal for Decision (“PFD”).

**I.
Summary of the Argument**

None of Vaughn’s Exceptions is meritorious. Vaughn simply asks your Honor to re-weigh evidence that already has been properly evaluated and to reconsider arguments that already have been rejected. The PFD is well-reasoned and properly supported by the credible evidence admitted at the evidentiary hearing.

**II.
The “Business Model” Exceptions**

Throughout its Exceptions, Vaughn claims that Chastang’s “business model is changing to a more traditional retail outlet” under “pressure from Ford” to meet “retail expectancies” and points to Chastang’s percentage increases in retail sales over the last few years. (Exceptions at 1, 7, 9, 13-14, 18). No credible evidence in the record supports Vaughn’s theory. Instead, Chastang gave uncontroverted testimony that it has no intention of changing its highly successful model of

pursuing commercial truck sales. (*See e.g.* 1 RR 39: 8-14). Vaughn ignores the fact that Ford classifies all sales to *non-fleet* commercial customers as retail sales. (1 RR 39:9-11, 78:2-19, 106:12-15). The uncontroverted testimony established that many of Chastang's light truck and SUV "retail sales" are actually sales for business use made to commercial customers that have no fleet number from Ford. There is no evidence in the trial record that Ford is pressuring Chastang to increase its focus on retail sales or that Chastang has agreed to abandon the business model on which it has built its reputation as one of Texas's leading commercial truck dealers.

IV. The "Harm to Applicant" Exceptions.

Vaughn denies that Chastang will suffer any financial or competitive harm if prevented from relocating. Missing from Vaughn's Exceptions is any mention that Chastang cannot build a Ford Pro Elite Commercial Service facility at its current location. One of Vaughn's goals in this protest is to keep Chastang from building a Pro Elite facility while Vaughn does so. The competitive harm to Chastang is self-evident and well documented in the trial record. Being able to build a Pro Elite facility is crucial to Chastang's survival as a Ford commercial truck dealership.

Vaughn points to Chastang's increasing gross *revenues* in its used vehicle and service departments and asserts that the Zone A averages "fall short of demonstrating foreseeable harm to Chastang if it cannot relocate." (Exceptions at 9, 10). That assertion is wrong. Vaughn ignores the significant lost *profits* that Chastang's used vehicle and service departments have been sustaining at Chastang's current location.

Zone A Ford dealerships operating without Chastang's space constraints make more used vehicle sales and higher profits on such sales than does Chastang. In 2020, the Zone A average dealership sold 1,802 total used vehicles for a total gross profit of \$3,873,629, with an operating

profit of \$787,337. (Ex. A-55_A55-0002, lines 4, 14; A55-0006, line 18). That same year, Chastang sold only 367 total used vehicles for a total gross profit of \$620,482, with an operating *loss* of \$266,200. (Ex. A-16_A16-0002, lines 4, 14; A16-0005, line 18). In 2021, the Zone A average dealership sold 1,736 total used vehicles for a total gross profit of \$5,007,458, with an operating profit of \$1,399,080. (Ex. A-56_A56-0002, lines 4, 14; A56-0006, line 18). That same year, Chastang sold only 432 total used vehicles for a total gross profit of \$1,101,673, with an operating *loss* of \$40,827. (Ex. A-17_A17-0002, lines 4, 14; A17-0005, line 18). In 2022, Chastang's used vehicle department made an operating profit of \$135,185 on 436 used vehicle sales while the used vehicle department of the average Zone A dealership showed a much greater operating profit of \$1,144,110 on 1,469 used vehicle sales. (Ex. A-18_A18-0002, line 14; A18-0006, line 18; Ex. A-57_A57-0002, line 14; A-57-0007, line 18). If Chastang had the space needed to display more used vehicles, its used vehicle department could be highly profitable. (1 RR 111, 133; 2 RR 134).

In 2020, Chastang's service department *lost* \$132,278, while the service department of the average Zone A Ford dealership made an operating profit of \$829,170. (Ex. A-16_A16-0002, line 14; Ex. A-55_A55-0002, line 14). In 2021, Chastang's service department *lost* \$168,693, while the service department of the average Zone A Ford dealership made an operating profit of \$872,946. (Ex. A-17_A16-0002, line 14; Ex. A-56_A56-0002, line 14). In 2022, Chastang's service department *lost* \$484,090 while the service department of the average Zone A dealership made an operating profit of \$1,067,582 (Ex. A-18_A18-0002, line 14; Ex. A-57_A57-0002, line 14). Because of its existing space constraints, Chastang is losing hundreds of thousands of dollars in service profits.

Vaughn says that Chastang's parts department "generated large profits of \$589,765.00 in 2021 and \$512,118 in 2022." (Exceptions at 10). But those profits are far less than the operating profit of the parts department of the Zone A average dealership. In 2021, the operating profit of the Zone A average parts department was \$1,076,990, and in 2022, it was \$1,300,515. (Ex. A-56_A56-0002, line 14; Ex. A-57_A57-0002, line 14). Vaughn suggests that Chastang's Autocar franchise is the primary cause of the space constraints and service delays at Chastang's current location. (Exceptions at 8). This argument is specious. The evidence at trial showed that Autocar plays a small role in Chastang's dealership operations and is not a material cause of space problems at the current site. (1 RR 121:8-10, 131:14-18; 2 RR 203:13-20, 217:14-21).

Vaughn also points out that Chastang's dealership gross revenues have been increasing each year. (Exceptions at 10). But Vaughn fails to acknowledge that Chastang's net profits after income taxes are far below those of the Zone A average dealership. In 2021, Chastang's net profit was \$5,097,087, while that of the Zone A average dealership was \$9,150,098 – \$4 million higher than Chastang. (Ex. A-17_A17-0001, line 43; Ex. A-56_A56-0001, line 43). In 2022, Chastang's net profit was \$4,785,823 while that of the Zone A average dealership was \$9,190,922 – \$4 million higher than Chastang. (Ex. A-18_A18-0001, line 43; Ex. A-57_A57-0001, line 43).

The evidence proves overwhelmingly that being unable to relocate will cause Chastang to suffer both competitive and financial harm. This harm will be exacerbated because of Chastang's inability to build a Ford Pro Elite Commercial Service facility at its current site.

V.

The "Harm to Protestant" Exceptions.

Vaughn argues that Dr. Benton's analyses are reliable "because her projections of harm are based on underlying data and reliable financial projections." (Exceptions at 3 18). Your Honor

correctly found Dr. Benton's analyses to be unreliable and non-reproducible. Her findings are based almost exclusively on her professional judgment, on unreasonable or false assumptions, and on calculations that cannot be replicated. The fact that Dr. Benton's projections for 2022 came within a 3% margin of error does not salvage her ultimate conclusion that Vaughn would lose 7.5% of its sales and service revenues if Chastang were to relocate. Dr. Benton's opinion that a 7.5% loss in Vaughn's retail new vehicle sales would cause a corresponding 7.5% loss in its used vehicle sales, parts sales, and service sales is simply contrary to reality – as conclusively shown by the dealership financial statements in evidence and by her own financial projections. Even through the lens of her flawed methodology, Dr. Benton admits that Vaughn will be highly profitable after Chastang relocates. (Ex. P-130, Ex. C-4, page C-5). She forecasts that Vaughn's new vehicle unit sales, revenues, average earnings per unit, and overall dealership profits all will continue to grow from 2025 to 2027, after a Chastang relocation. (*Id.*; Ex. P-130, Ex. C-3, page C-4).

Vaughn says Kyle Janke gave “uncontroverted testimony” that competition from Chastang in Vaughn's dealer locality was the primary reason for Vaughn's sales deficiencies. (Exceptions at 5). On the contrary, Ford's Regional Manager for the Houston Market, Adam Tidwell, pointed out that “Chastang has always been there, so we [can't] utilize that as the reason for [Vaughn's] performance decline.” (Ex. A-106_A106-0084 [p. 190:2-4]). The evidence also established that the competition between Vaughn and Chastang for consumer and household customers is not large. Most of Chastang's new retail sales are made to commercial customers for business use, not to customers for personal use, as is the case with Vaughn.

Vaughn's years-long problem in achieving average sales efficiency is unrelated to Chastang. (Ex. P-141, pp. 89:23-90:2). Vaughn totally ignores the impact of its high gross profit

margins on its retail sales and revenues. Vaughn is aware that its high margins impact its sales effectiveness. The evidence establishes that, on more than one occasion, when Ford asked Vaughn how it planned to address its sales deficiencies, Vaughn assured Ford that it planned to lower prices to become more competitive with the market. (Ex. P-95). But Vaughn never did so, which is why its new vehicle sales and revenues have tapered off in recent years. Vaughn's *refusal* to lower prices and profit margins is the direct cause of its subpar performance when compared to the Zone A averages. While other Ford dealers have stayed competitive and reinvested profits in their dealerships, Vaughn, in recent years, has been pulling millions of dollars out of its dealership to pay extraordinary dividends to its owners. (Ex. A-52_A52-0001, line 39).

In its Exceptions, Vaughn recycles the baffling argument made in its post-hearing brief that its dealership would be sales effective if only Ford would give it "credit" for the sales made by other Ford dealers into Vaughn's dealer locality. (Exceptions at 6). Vaughn does not "own" the sales that other Ford dealers make in its locality. Vaughn has been outcompeted for those sales. Ford does not give any of its dealers "credit" for sales made by other dealers, when determining the dealer's sales effectiveness. Vaughn simply wants special treatment.

Vaughn's next argument is beyond baffling. For the first time in this case, Vaughn argues that allowing Chastang to relocate will "limit potential relocation spots for Tommie Vaughn." (Exceptions at 12). In other words, no other Ford dealer in Houston can ever be allowed to relocate (without Vaughn's permission) because it might "impede" Vaughn's ability to relocate "in the future, if it so chooses." (*Id.*). Vaughn's inchoate future plans or musings are not before your Honor. What is before your Honor, however, is the testimony by Vaughn's principals that, when Vaughn had opportunities to relocate, it refused. (3 RR 33:2-4, 206:24-207:2). Vaughn admits that

relocation spots exist along Loop 610, I-10, and I-45. (Exceptions at 12). No evidence supports its assertion that such segments are “very short.”

Vaughn argues that Finding of Fact No. 64 is contrary to the substantial evidence. It is not. This finding correctly states that some of Chastang’s proposed new sales locality will consist of census tracts making up the eastern part of Vaughn’s existing dealer locality. These census tracts will be assigned to Chastang because they are located closer to Chastang than to Vaughn. In fact, those tracts already are located closer to Chastang’s current site than to Vaughn. The census tract changes will therefore occur even if Chastang did not relocate.

Vaughn’s stated concern about the “loss” of census tracts rings hollow. For years, Vaughn complained to Ford that its sales locality was “too big.” Vaughn wanted Ford to assign Chastang a retail sales locality and reduce the size of Vaughn’s retail sales locality. (3 RR 91:13-21; Ex. A-106_A106-0082-0083 [pp. 188:17-189:1]). Ford’s Regional Manager, Adam Tidwell, testified that James Janke advised Ford he would drop this protest proceeding if Chastang was assigned a retail dealership locality. (Ex. A-106_A106-0082). Vaughn got exactly what it wanted after the 2020 census: its locality was reduced in area; Chastang was assigned a retail sales locality.

Vaughn also ignores the fact that persons residing in retail sales localities, including fleet customers, are unaware they are located within the boundaries of a particular locality. (2 RR 32:19-22; Ex. P-128 at p. 35). The Board recognizes this reality. *See Rockwall Imports v. The Allee Corp.*, MVD Docket No. 09-0014.LIC (2012) (PFD at 76) (“Protestant errs in suggesting that the creation of the new Rockwall ASA will deprive it of access to a “core market area,” *i.e.*, the Rockwall County area). *See also, Gene Hamon Ford, Inc. d/b/a Hamon Nissan v. David McDavid Nissan*, Docket No. 96-151 (1997) (PFD at 17).

CONCLUSION AND PRAYER

Your Honor's PFD is comprehensive, well-reasoned, and fully supported by the credible evidence. Vaughn's Exceptions are meritless. Accordingly, Chastang prays that your Honor deny Vaughn's Exceptions.

Respectfully submitted,

/s/ Leon V. Komkov

Leon V. Komkov

State Bar No. 11670500

J. Bruce Bennett

State Bar No. 02145500

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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above foregoing has been served on the counsel of record listed below by email and by e-service on this 8th day of February 2024.

George A. Kurisky, Jr.

Mark Allan Bankston

Philip C. Brashier

Johnson DeLuca, Kurisky and Gould, P.C.

4 Houston Center, 1221 Lamar Street, Suite 1000,

Houston, Texas 77010

ATTORNEYS FOR PROTESTANT

/s/ J. Bruce Bennett

J. Bruce Bennett

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J. Bennett on behalf of J. Bennett

Bar No. 2145500

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Filing Description: Applicant's Reply to Protestant's Exceptions to PFD

Status as of 2/8/2024 11:41 AM CST

Associated Case Party: Tommie Vaughn Motors, Inc.

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August 8, 2024

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4/16/2024 8:43:48 am 130
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 15, 2024

Leon Komkov

VIA EFILE TEXAS

Mark Bankston

VIA EFILE TEXAS

RE: Docket Number 608-22-0643.LIC; Texas Department of Motor Vehicles No. 21-0018; Tommie Vaughn Motors, Inc. v. Chastang Enterprises-Houston LLC d/b/a Chastang Ford

Dear Parties:

The parties have filed exceptions and replies to the Proposal for Decision that was issued on January 16, 2024.

In its exceptions, Applicant Chastang Enterprises-Houston LLC d/b/a Chastang Ford argues that Findings of Fact 88 and 90 should be amended to reflect that Tommie Vaughn Ford was selling new motor vehicles from its location in the 900 block of N. Shepherd. Protestant Tommie Vaughn argues, in contrast, that the location in the 900 block is not an improper showroom, and that fleet sales can legally occur anywhere. Although Protestant's President James Janke testified that "[w]e display there, yes, sir, we do" and "[w]e sell down there," he also added "[w]e don't deliver down there."¹ The details of these sales are limited. And as Protestant points out, fleet sales can occur at various locations. Without more evidence than presented, the ALJ does not believe the changes to the findings Applicant requests are necessary, particularly given the findings on warranty work.

¹ Tr. Vol. 3 at 70.

Exceptions Letter

April 15, 2024

Page 2 of 2

Protestant Tommie Vaughn raised several more exceptions to the PFD. Those exceptions largely repeat issues raised in its closing briefing. Those issues were addressed in the PFD, and the ALJ is not convinced by the exceptions to change the result based on Protestant's exceptions.

Therefore, the ALJ does not recommend making any changes to the PFD, which is ready for consideration.

ALJ Signature(s):

A handwritten signature in cursive script that reads "Rebecca S. Smith". The signature is written in dark ink and is positioned above a horizontal line.

Rebecca Smith,

Presiding Administrative Law Judge

CC: Service List

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Associated Case Party: Tommie Vaughn Motors, Inc.

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Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a Chastang Ford

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Case Contacts

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From: lvk@cardwellhartbennett.com
To: [Zz - UDG - OGCContestedCases](#); [Zz - Resource - OGC Docket Clerk](#); [Zz - Resource - OGC Docket Clerk](#)
Cc: [Moriaty, Laura](#); [Lingo, Michelle](#); ["George A. Kurisky, Jr."](#); ["Mark Bankston"](#); ["J Bruce Bennett"](#)
Subject: Docket Number 608-22-0643.LIC; TxDMV No. 21-0018.LIC; Tommie Vaughn Motors, Inc. v. Chastang Enterprises - Houston, LLC
Date: Friday, July 19, 2024 2:34:22 PM
Attachments: [20240719 Joint Motion Dismiss and Order \(executed\).pdf](#)

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Dear Mr. Bean,

Attached for filing in the above-referenced matter, please find the Joint Agreed Motion to Dismiss and for Entry of a Final Order Dismissing the above-referenced protest with prejudice.

The parties to this matter mutually have settled and resolved all claims and request that the Board enter the attached form of "Agreed Final Order of Dismissal With Prejudice" at the August 8, 2024 meeting of the Texas Department of Motor Vehicles Board.

I recognize that we are within the 21 day period in which written materials can be submitted to the Department, but I am hopeful that you might still be able to include the above-referenced Joint Motion and Agreed Final Order in the electronic book being prepared for the Board meeting.

Oral Presentation: Bruce Bennett and Leon Komkov (kahm'-kov) will be present at the meeting to discuss the parties' final settlement of this matter, and the proposed order for dismissal with prejudice.

Please do not hesitate to contact me if you have any questions or comments regarding this filing or any other matter.

Best regards,

Leon V. Komkov
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**TEXAS DEPARTMENT OF MOTOR VEHICLES
MOTOR VEHICLE DIVISION**

**TOMMIE VAUGHN MOTORS, INC.,
D/B/A TOMMIE VAUGHN FORD**

PROTESTANT

v.

**CHASTANG ENTERPRISES -HOUSTON,
LLC D/B/A CHASTANG FORD,**

APPLICANT

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§ MVD DOCKET NO. 21-0018-LIC
§ SOAH DOCKET NO. 608-22-0643
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**JOINT MOTION TO DISMISS
AND FOR ENTRY OF AN AGREED FINAL ORDER
OF DISMISSAL WITH PREJUDICE**

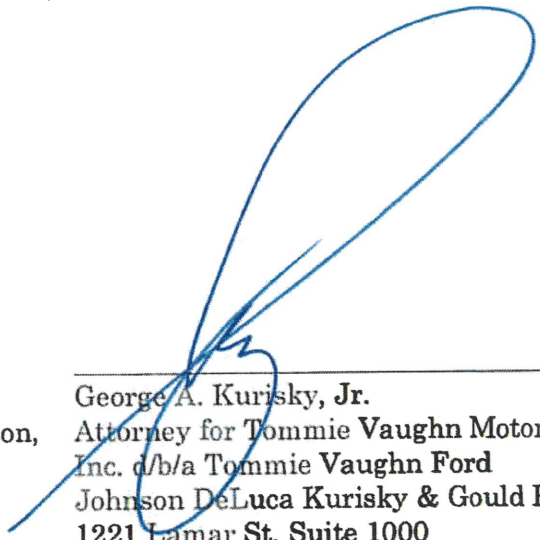
TO THE HONORABLE BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES:

1. The parties to the above-styled and numbered contested case consensually resolved all contested issues in this matter, and hereby jointly move that the Board of the Texas Department of Motor Vehicles (TxDMV) dismiss this contested case with prejudice.
2. Having considered Tex. Gov't. Code §2001.144(a)(4), both parties hereby waive their rights to file any motion for rehearing of the Board's order dismissing this protest with prejudice, and both parties request that the Board's dismissal order become final when signed.

Respectfully Submitted,

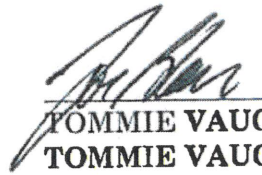


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APPROVED AS TO FORM AND SUBSTANCE:



TOMMIE VAUGHN MOTORS, INC. d/b/a
TOMMIE VAUGHN FORD

JOE BLAIR
By: _____
Secretary/Treasurer

Title: _____

Date: July 19, 2024

CHASTANG ENTERPRISES-HOUSTON, LLC
d/b/a CHASTANG FORD

By: _____

Title: _____

Date: July __, 2024

Respectfully Submitted,

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APPROVED AS TO FORM AND SUBSTANCE:

**TOMMIE VAUGHN MOTORS, INC. d/b/a
 TOMMIE VAUGHN FORD**

By: _____

Title: _____

Date: July __, 2024

**CHASTANG ENTERPRISES-HOUSTON, LLC
 d/b/a CHASTANG FORD**

By: 

Title: CFO

Date: July 11, 2024

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

**TOMMIE VAUGHN MOTORS, INC.,
D/B/A TOMMIE VAUGHN FORD**

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PROTESTANT

v.

**§ MVD DOCKET NO. 21-0018-LIC
§ SOAH DOCKET NO. 608-22-0643**

**CHASTANG ENTERPRISES -HOUSTON,
LLC D/B/A CHASTANG FORD,**

APPLICANT

AGREED FINAL ORDER OF DISMISSAL WITH PREJUDICE

The Board of the Texas Department of Motor Vehicles has been advised that:

- A. The parties fully resolved all contested issues;
- B. Tommie Vaughn Motors, Inc. d/b/a Tommie Vaughn Ford withdrew with prejudice its statutory protest against Application No. 000576026, filed by Chastang Enterprises - Houston, LLC d/b/a Chastang Ford, seeking to relocate to 3625 and 3669 Eastex Freeway, Houston, Texas 77026;
- C. The parties jointly moved for entry of an agreed final dismissal order, with prejudice;
- D. The parties both waived, in writing, all rights to filing any appeal or any motion for rehearing; and
- E. The parties desire for the Board's Agreed Final Order of Dismissal with Prejudice to become final when signed.

Findings of Facts

- 1. On October 10, 2019, Chastang Enterprises - Houston, LLC d/b/a Chastang Ford (Chastang) filed Application No. 000576026 to relocate sales and service of the Ford (LT) and Ford Medium Truck (MT) line-makes from 6200 North E. Loop, Houston, Texas, 77026, to 3625 and 3669 Eastex Fwy., Houston, Texas, 77026.

2. On May 12, 2021, Tommie Vaughn Motors, Inc., filed a timely statutory protest.
3. On October 4, 2021, the parties actively and faithfully participated in formal mediation, satisfying the requirements of Texas Occupations Code §2301.703(c).
4. On November 22, 2021, the department referred the contested case matter to the State Office of Administrative Hearings (SOAH) for the conduct of a hearing on the merits of Chastang's relocation application.
5. The hearing on the merits was conducted July 24-28, 2023, by a SOAH administrative law judge (ALJ).
6. The ALJ issued her Proposal for Decision (PFD) on January 16, 2024.
7. On April 15, 2024, the SOAH ALJ issued her Exceptions Letter and returned the contested case matter to the Texas Department of Motor Vehicles for consideration by the Board.
8. On or about July 15, 2024, the parties filed with the Board a Joint Motion to Dismiss and entry of an Agreed Final Order of Dismissal with Prejudice to become final on the date the dismissal order is signed by the Board.
9. During the Board's August 8, 2024, open meeting, the Board considered the parties' Joint Motion to Dismiss.
10. The Board finds that there is no need for the continuation of this proceeding.
11. The Board enters this Agreed Final Order of Dismissal with Prejudice, having made no decision on the merits of the issues in this contested case.

Conclusions of Law

1. The TxDMV Board has jurisdiction over the referenced parties and over the subject matter of this contested case. TEX. OCC. CODE §2301.151.
2. Disposition of this contested case may be made by agreed settlement. TEX. GOV'T CODE §2001.056.
3. The Board of the Texas Department of Motor Vehicles is authorized to issue this Agreed Final Order of Dismissal with Prejudice. TEX. OCC. CODE §2301.153.
4. The statutory stay imposed in this contested case proceeding remains in effect until vacated or until the proceeding is concluded by a final order or decision. TEX. OCC. CODE §2301.803.
5. This Order is final on the date it is signed. TEX. GOV'T CODE §2001.144(a)(4).

It is therefore ORDERED:

1. This proceeding is hereby dismissed with prejudice and is terminated in all respects;
2. This **Agreed Final Order of Dismissal with Prejudice** is final upon the date shown below;
3. MVD licensing staff shall continue to process Chastang's Application No. 000576026;
4. The statutory stay imposed in this contested case under Texas Occupations Code §2301.803 is lifted; and
5. All remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Dated: _____

Charles Bacarisse, Chair
Texas Department of Motor Vehicles

**Board Meeting Date: 8/8/2024****ACTION ITEM**

To: Texas Department of Motor Vehicles Board
From: Laura Moriarty, General Counsel
Agenda Item: 6
Subject: Consideration and Approval of Proposed Final Order on Enforcement Case
Texas Department of Motor Vehicles v. Whaley Boy Inc.; SOAH Docket No. 608-23-24732.ENF; Enforcement Docket 23-0012668

RECOMMENDATION

Action Item. For board consideration.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD). The board is required to issue a final order in this case.

Whaley Boy Inc. (Whaley) currently holds a general distinguishing number (GDN) issued by the Texas Department of Motor Vehicles (TxDMV). This contested case involves an enforcement action against Whaley for alleged violations of the board's rules and statutes.

The issues before the board are whether to adopt the Findings of Fact and Conclusions of Law from the PFD, whether to take disciplinary action on Whaley's GDN, and whether to assess a monetary penalty against Whaley.

The Enforcement Division (Enforcement) submitted written materials timely and provided timely notice of their intent to make oral presentations to the board. Whaley did not submit written materials or provide notice of intent to make an oral presentation to the board.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

On July 18, 2023, Enforcement issued a Notice of Department Decision (NODD) to Whaley. After TxDMV received Whaley's request for an administrative hearing, the matter was referred to SOAH for a contested-case hearing. On October 25, 2022, Enforcement issued a Notice of Hearing to Whaley that incorporated the previously issued NODD. Prior to the contested hearing, Enforcement amended the NODD twice resulting in a Seconded Amended NODD that alleged the following:

- Count 1: Whaley misused buyer's temporary tags or failed to comply with requirements for issuance or recordkeeping of buyer's temporary tags by issuing 189 buyer's temporary tags during May 1, 2022 - April 30, 2023, despite reporting 10 motor vehicle sales in that same period;
- Count 2: Whaley misused a buyer's temporary tag or failed to comply with requirements for the issuance or recordkeeping of a buyer's temporary tag by issuing a buyer temporary tag for a motor vehicle not sold from

Respondent's motor vehicle inventory;

- Counts 3-5: Whaley misused buyer's temporary tags or failed to comply with requirements for the issuance or recordkeeping of buyer's temporary tags by issuing more than one buyer temporary tag for motor vehicles sold from Respondent's motor vehicle inventory; and
- Counts 6-7: Whaley failed to meet the premise requirements for operating as a motor vehicle dealership.

The Seconded Amended NODD recommended a \$179,000 civil penalty calculated at \$1,000 per buyer's temporary tag issued in excess of Respondent's motor vehicle sales reported during the period of May 1, 2022 - April 30, 2023, and recommended the revocation of Whaley's GDN due to the nature and number of violations alleged by Enforcement.

On December 4, 2023, a SOAH Administrative Law Judge (ALJ) conducted the hearing on the merits and the record was closed at the conclusion of the hearing. The ALJ issued the PFD on February 2, 2024. The ALJ found that Whaley violated statutes and TxDMV rules by:

- failing to meet the premises requirements for operating a motor vehicle dealership by not having a sufficient area to display motor vehicles, an adequate physical office, and posted business hours; and
- issuing 174 buyer's temporary tags between May 1, 2022 and April 30, 2023 for vehicles not sold from Respondent's inventory based on a total of 189 buyers' temporary tags issued from the Respondent's e-tag system during this period minus 15 vehicles sold from Respondent's inventory where 10 of the vehicles were reported as in-state sales and the remaining 5 vehicles were sold to out of state buyers.

The ALJ recommended that the board assess a total penalty of \$17,400 against Whaley, representing a \$100 penalty for each buyer' temporary tag issued in excess of Respondent's motor vehicle sales during the period between May 1, 2022 and April 30, 2023. The ALJ also recommended that the board suspend Whaley's GDN license for a period of one year.

On February 16, 2024, Enforcement filed Exceptions to the PFD, requesting that the ALJ amend the PFD. The ALJ considered the Exceptions and issued an Exceptions Letter on March 12, 2024. The ALJ's Exceptions Letter did not recommend any changes to the Findings of Fact, Conclusions of Law, or the sanction recommendation in the PFD and stated that the PFD was ready for consideration by the board.

On July 18, 2024, Enforcement filed written materials with the board in the form of a Proposed Final Order, in which Enforcement requested that the board make the following changes to the PFD:

- Amend Finding of Fact No. 1 to correct the date Whaley's GDN license was issued to October 20, 2015;
- Amend Finding of Fact No. 19 to correct the date of issuance for the Second Amended Notice to November 20, 2023, and correct the date that Enforcement's investigator visited Whaley's dealership to June 22, 2023;
- Amend Conclusions of Law Nos. 9-12 to reflect a sanction change with a civil penalty of \$1,000 per buyer's tag and revocation of Whaley's GDN license to address the seriousness of the violation, the history of previous violations, the penalty amount necessary to deter future violations, and the ongoing nature of the premises violations; and
- Change the sanction to a \$174,000 civil penalty and revocation of Whaley's GDN license.

Board Authority

- The board has jurisdiction to consider the contested case and enter a final order in accordance with Texas Occupations Code §2301.709.
- Under Texas Occupations Code §2301.651, the board may revoke a license for reasons including a violation of board rules and statutes, or that the license holder has failed to maintain the qualifications for a license.

- Under Texas Transportation Code §503.038(a), the department may cancel a dealer’s GDN for reasons including that the dealer has failed to maintain the qualifications for the GDN, has misused or allowed the misuse of a temporary tag, or has violated the statute or the department’s rules.
- Texas Transportation Code §503.095 allows for a civil penalty of up to \$1,000 for each violation, or per day for a continuing violation, of Transportation Code, Chapter 503 and the related rules.
- Texas Occupations Code §2301.801 also authorizes civil penalties of up to \$10,000 per violation, or per day for a continuing violation, for violations of Occupations Code, Chapter 2301, the rules adopted under it, or Transportation Code §503.038(a), which includes misuse or allowing the misuse of temporary tags. In determining the amount of a penalty, Texas Occupations Code §2301.801(b) states:

...[T]he board shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
 - (2) the economic damage to the public caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter a future violation;
 - (5) efforts to correct the violation; and
 - (6) any other matter that justice may require.
- Texas Government Code §2001.058(e) authorizes the board to change a finding of fact or a conclusion of law made by the ALJ in a PFD only if the ALJ:
 - a. misapplied or misinterpreted applicable law, agency rules, written policies provided to the ALJ by the agency, or prior administrative decisions,
 - b. relied on a prior administrative decision that is incorrect or should be changed, or
 - c. made a technical error in a finding of fact that should be changed.

The Board must state in writing the specific reason and legal basis for any change it makes to a finding of fact or conclusion of law.

Attachments

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

1. February 2, 2024 SOAH ALJ’s PFD
2. February 16, 2024 TxDMV’s Exceptions to the PFD
3. March 12, 2024 SOAH ALJ’s Exceptions Letter
4. July 18, 2024 Enforcement’s Written Materials

ACCEPTED TxDMV Board Meeting eBook
608-23-24732
2/2/2024 12:36:49 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

August 8, 2024

FILED
608-23-24732 143
2/2/2024 12:32 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

February 2, 2024

Texas Department of Motor Vehicles,
Enforcement Division
Lorelei Evans, Staff Attorney

VIA EFILE TEXAS

Whaley Boy Inc
Alejandro Whaley, Owner

VIA EFILE TEXAS

RE: Docket Number 608-23-24732.ENF; *Texas Department of Motor Vehicles v. Whaley Boy Inc*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

SOAH Docket No. 608-23-24732

Suffix: ENF

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TXDMV,
PETITIONER
v.
WHALEY BOY INC.,
RESPONDENT**

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SOAH Docket No. 608-23-24732**Suffix: ENF**

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TXDMV,
PETITIONER
v.
WHALEY BOY INC.,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Motor Vehicles—Enforcement Division (Department) seeks to have administrative penalties assessed against Whaley Boy Inc. (Respondent) for violations of the Texas Transportation Code (Code) and Title 43 of the Texas Administrative Code. Staff seeks an administrative penalty of \$179,000 and revocation of Respondent’s dealer general distinguishing number (GDN) license number P131278. The Administrative Law Judge (ALJ) finds Staff proved all the alleged violations but recommends reduced sanctions including a \$17,400 penalty and one-year suspension of Respondent’s GDN license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of jurisdiction or notice in this proceeding; therefore, those matters are addressed solely in the Findings of Fact and Conclusions of Law.

State Office of Administrative Hearings ALJ Meaghan Bailey convened the hearing on December 4, 2023, via videoconference. Staff was represented by Lorelei Evans, Enforcement Division attorney. Respondent appeared through and was represented by its owner, Alejandro Whaley. The record closed that same day when the admitted exhibits were filed into the record.

II. APPLICABLE LAW

A dealer is a person, including a corporation, who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location.¹ A dealer must hold a GDN license issued by the Department under Code chapter 503.² A dealer must comply with the requirements of Code chapter 503, Texas Occupations Code chapter 2301, and 43 Texas Administrative Code chapter 215.³

¹ Tex. Transp. Code § 503.001(4).

² Tex. Occ. Code § 2301.002(7), (17), (27).

³ See Tex. Transp. Code ch. 503; Tex. Occ. Code § 2301.351.

The Proposal for Decision will focus on the alleged violations of Respondent's obligations concerning buyer temporary tags (E-Tags) and dealership premise requirements, as well as any appropriate sanctions.

A. E-TAG REQUIREMENTS

For each vehicle sold, a dealer must issue an E-Tag to the purchaser.⁴ A dealer may only issue one E-Tag for each vehicle sale.⁵ Dealers must enter information into the Department's database on persons to whom E-Tags are issued and obtain a specific number for the tag before it may be issued and printed.⁶ A dealer may not misuse or allow the misuse of an E-Tag.⁷ The dealer is responsible for the safekeeping and distribution of each E-Tag the dealer obtains and is liable for missing misused tags.⁸

B. DEALER PREMISE REQUIREMENTS

A dealer must comply with several requirements at its location, including maintaining an office that meets certain specifications.⁹ The business hours for each

⁴ Tex. Transp. Code § 503.063(a).

⁵ Tex. Transp. Code § 503.063(a).

⁶ Tex. Transp. Code § 503.0631.

⁷ Tex. Transp. Code § 503.038(a)(12).

⁸ Tex. Transp. Code § 503.063(d).

⁹ Tex. Transp. Code § 503.032; 43 Tex. Admin. Code § 215.140.

day of the week must be posted at the main entrance of the dealer's office.¹⁰ 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 an assumed name substantially similar to the name reflected on the retail dealer's license under which the retail dealer conducts business.¹¹ If multiple dealers operate out of the same facility, their office must have permanent interior walls on all sides and be separate from any public area used by another business and the dealers' display area and storage lot must meet certain other requirements.¹²

C. SANCTIONS

A person who violates Code chapter 503, or any rule adopted under that chapter, is subject to a penalty of not less than \$50 and not more than \$1,000.¹³ Each act in violation of Code chapter 503 and each day of a continuing violation is a separate violation.¹⁴

Further, if after a hearing the Department finds that a person has violated Code section 503.038(a) (addressing certain violations related to the GDN), the

¹⁰ 43 Tex. Admin. Code § 215.140(1)(B).

¹¹ Tex. Transp. Code § 503.032(2)(B); 43 Tex. Admin. Code § 215.140(3).

¹² 43 Tex. Admin. Code § 215.140(10), (11).

¹³ Tex. Transp. Code § 503.095(a).

¹⁴ Tex. Transp. Code § 503.095(b).

Texas Occupations Code authorizes the Department to impose a penalty not to exceed \$10,000 per violation.¹⁵ Each act of violation and each day of a continuing violation is a separate violation.¹⁶

The following factors must be considered in determining the amount of the penalty under the Texas Occupations Code:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
2. The economic damage to the public caused by the violation;
3. The history of previous violations;
4. The amount necessary to deter a future violation;
5. Efforts to correct the violation; and
6. Any other matter that justice may require.¹⁷

In addition to these factors, the Department's disciplinary matrix states that the Department will consider the following mitigating factors in determining the amount of civil penalty to assess or whether revocation is appropriate: (1) acknowledgement of wrongdoing, (2) willingness to cooperate with the Department; (3) efforts to correct the violation, and (4) any other matter that justice

¹⁵ Tex. Occ. Code § 2301.801(a).

¹⁶ Tex. Occ. Code § 2301.801(a).

¹⁷ Tex. Occ. Code § 2301.801(b).

may require, including rehabilitative potential and present value to the community.¹⁸ The Department's disciplinary matrix also includes the following aggravating factors: (1) history of violations of a similar nature, (2) number of violations or number of consumers harmed by violation, (3) attempted concealment of the violation, (4) intentional, premeditated, knowing, or grossly negligent act constituting a violation, and (5) violation of an order issued by the Department.¹⁹ The disciplinary matrix includes suggested "low" and "high" sanction amounts.²⁰

Regarding the misuse of an E-Tag, the Department's disciplinary matrix provides in part:

When a licensee misuses a temporary tag, that is an extraordinary breach of trust. Cases involving the misuse of temporary tags will be sanctioned as such. Each misused temporary tag is a separate violation. As such, each misused temporary tag will incur a separate penalty. Inclusive of all other violations, the penalty will be capped at \$200,000 for most cases. If the licensee's conduct was especially egregious, the penalty cap will be increased from \$200,000 to \$500,000.²¹

¹⁸ DMV Ex. 6 at 2.

¹⁹ DMV Ex. 6 at 1.

²⁰ See DMV Ex. 6.

²¹ DMV Ex. 6 at 4 (emphasis in original).

The Department may cancel or suspend a GDN if the dealer commits any of several acts, including if the dealer “misuses or allows the misuse of a temporary tag authorized under this chapter.”²² The Department can suspend or revoke a GDN if the dealer violates any law relating to the sale and distribution of motor vehicles, chapter 2301 of the Texas Occupations Code, or any rule adopted by the Board of the Department.²³ In determining whether revocation is appropriate, the Department’s disciplinary matrix states that the Department will consider the following factors:

1. Whether the licensee is unfit under the standards governing the occupation, including the qualifications for a license;
2. Whether the licensee made a material misrepresentation in any information filed according to the Department’s statutes or rules;
3. Whether the licensee willfully defrauded a purchaser; and
4. Whether the licensee failed to fulfill a written agreement with a retail purchaser of a motor vehicle.²⁴

Staff has the burden of proving, by a preponderance of the evidence, that Respondent committed the alleged violations and the appropriate sanction for any such violations.²⁵

²² Tex. Transp. Code § 503.038(a)(12).

²³ Tex. Occ. Code § 2301.651(a)(3)-(4).

²⁴ DMV Ex. 6 at 1-2.

²⁵ 1 Tex. Admin. Code § 155.427; *Granek v. Tex. State Bd. of Med. Exam’rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (concluding that preponderance of the evidence standard is appropriate for agency proceedings, which are civil in nature).

III. EVIDENCE

Staff offered 19 exhibits (which were admitted into evidence)²⁶ and presented the testimony of Walter Schultz, investigator in the Department's Enforcement Division. Respondent offered one exhibit (which was admitted into evidence)²⁷ and Mr. Whaley presented testimony on Respondent's behalf.

A. STAFF'S EVIDENCE

Mr. Schultz has been employed with the Department for two years and investigates approximately 400 cases annually. Previously he worked as an investigator in the private sector for 30 years. Mr. Schultz explained the investigation into Respondent was initiated due to a complaint filed by law enforcement after a fictitious E-Tag issued by Respondent was identified during a traffic stop.

Mr. Schultz testified that a proper E-Tag issuance would proceed as follows: dealer issues one E-Tag for a vehicle sold that is within the dealer's inventory, the E-Tag is issued on the date the vehicle is sold and is valid for 60 days, the dealer registers the vehicle in the buyer's name within 30-45 days after the sale, and then the dealer reports the sale on a Vehicle Inventory Tax (VIT) form to its local tax office.²⁸ Once the vehicle is registered the dealer must also pay the fees associated

²⁶ DMV Exs. 1-19.

²⁷ Resp. Ex. 1.

²⁸ Respondent's local tax office is the Denton County Tax Assessor and Collector Office (Denton County Tax Office).

with the sale, including a \$5 E-Tag fee. Mr. Schultz stressed how important it is for dealers' self-reported VIT forms to be accurate because dealers pay taxes based on the information reported.

Mr. Schultz explained that to issue an E-Tag, a dealer must log into the Department's E-Tag database using its unique username and password, enter information regarding the buyer and the vehicle to be sold, and finally print the E-Tag and affix it to the vehicle. He further explained that there is no limit to the number of usernames that a dealer can create for its account, thereby providing access to other agents to issue E-Tags under the dealer's GDN. He asserted that a GDN dealer is responsible for the E-Tags issued under its account either by the dealer or its agents and a dealer must not allow for anyone else to use its account to misuse this process. According to Mr. Schultz, a dealer can and should monitor the issuance of E-Tags under its account to identify and prevent such misuse.²⁹

Mr. Schultz's testimony regarding Staff's six allegations is summarized below, followed by a discussion of Respondent's enforcement history and Staff's request for sanctions and revocation.

²⁹ Dealers can see all the E-Tags issued under the account.

1. Allegation 1³⁰

Staff alleges that from on or about May 1, 2022, to April 30, 2023, Respondent issued more E-Tags than reported vehicle sales. Specifically, during that period, Respondent reported 10 vehicle sales yet issued 189 E-Tags.

The following table summarizes the number of vehicles Respondent sold versus number of E-Tags Respondent issued during each applicable month and calculates the total number of excessive E-Tags at issue:³¹

Month	Vehicle Sales	E-Tags Issued	Number of Excessive E-Tags Issued
May 2022	0	9	9 ³²
June 2022	0	6	6 ³³
July 2022	0	19	18-19 ³⁴

³⁰ Staff's allegations are set forth in its Second Amended Notice of Department Decision (Nov. 27, 2023). Allegation 1 alleges a violation of Code sections 503.063 and .0631, and 43 Texas Administrative Code sections (Rules) 215.151, .152, .153, and .155.

³¹ DMV Ex. 8 at 1-57; DMV Ex. 9 at 3-4. Among other things, the E-Tag report shows that the "User Login Name" used for the reported E-Tag issuances was "AWHALEY," the "Dealer Name" was "WHALEY BOY INC," and that each E-Tag was created by "ALEJANDRO WHALE." The ALJ notes that while the report did not spell Mr. Whaley's last name correctly, it appears the final letter of his last name was simply cut off due to spacing within the matrix cell.

³² DMV Ex. 8 at 2-6; DMV Ex. 9 at 2 (lines 1-9).

³³ DMV Ex. 8 at 7-11; DMV Ex. 9 at 2 (lines 10-15).

³⁴ DMV Ex. 8 at 12-16; DMV Ex. 9 at 2 (lines 16-34). One of the E-Tags issued this month was for an out-of-state vehicle. Respondent is not required to report out-of-state vehicle sales on its Texas VIT forms; thus, Mr. Schultz could not confirm if that identified out-of-state vehicle was part of Respondent's inventory or whether the vehicle was even sold. If Respondent had sold the vehicle, the number of excessive E-Tags issued for July 2022 would be 18. If not, the number of excessive E-Tags issued would be 19.

Month	Vehicle Sales	E-Tags Issued	Number of Excessive E-Tags Issued
Aug. 2022	2	24	22 ³⁵
Sept. 2022	2	29	26-27 ³⁶
Oct. 2022	1	31	30 ³⁷
Nov. 2022	0	17	16-17 ³⁸
Dec. 2022	1	26	25 ³⁹
Jan. 2023	0	18	16-18 ⁴⁰
Feb. 2023	0	5	5 ⁴¹
Mar. 2023	3	3	0 ⁴²
Apr. 2023	1	2	1 ⁴³

³⁵ DMV Ex. 8 at 17-21; DMV Ex. 9 at 2 (lines 35-58).

³⁶ DMV Ex. 8 at 22-25; DMV Ex. 9 at 2 (lines 59-87). One of the E-Tags issued during this month was for an out-of-state vehicle. Thus, for the reasons discussed above, Mr. Schultz was unable to confirm whether the number of excessive E-Tags issued for September 2022 was 26 or 27.

³⁷ DMV Ex. 8 at 26-29; DMV Ex. 9 at 2-3 (lines 88-118).

³⁸ DMV Ex. 8 at 30-33; DMV Ex. 9 at 3 (lines 119-135). One of the E-Tags issued during this month was for an out-of-state vehicle. Thus, for the reasons discussed above, Mr. Schultz was unable to confirm whether the number of excessive E-Tags issued for November 2022 was 16 or 17.

³⁹ DMV Ex. 8 at 34-37; DMV Ex. 9 at 3 (lines 136-161).

⁴⁰ DMV Ex. 8 at 38-42; DMV Ex. 9 at 3 (lines 162-179). Two of the E-Tags issued were for out-of-state vehicles. Thus, Mr. Schultz could not confirm whether the number of excessive tags totaled 16 or 18.

⁴¹ DMV Ex. 8 at 43-47; DMV Ex. 9 at 3 (lines 180-184).

⁴² DMV Ex. 8 at 48-52; DMV Ex. 9 at 3 (lines 185-186). This is the only month during this period that represents how vehicle sales should appropriately match the E-Tags issued.

⁴³ Ex. 8 at 53-57; Ex. 9 at 4 (lines 187-189).

Month	Vehicle Sales	E-Tags Issued	Number of Excessive E-Tags Issued
TOTAL	10	189	179⁴⁴

Mr. Schultz testified there is no circumstance in which a dealer would legitimately issue 179 excessive E-Tags. He further testified that there is no evidence that Respondent paid the \$5 fee for each of those tags to the state, which amounts to \$895.

2. Allegation Nos. 2 - 5⁴⁵

Staff alleges Respondent issued multiple E-Tags for the following four vehicles: a 2010 Hyundai,⁴⁶ a 2001 Cadillac,⁴⁷ a 2011 Chevrolet,⁴⁸ and a 2017 Jeep.⁴⁹ Mr. Schultz ran a registration and title system (RTS) report using the Department's records for the above-specified vehicles on June 21, 2023, to get information regarding the vehicles' current registration status and E-Tag history.⁵⁰

⁴⁴ This total includes the five E-Tags issued associated with out-of-state car sales that Mr. Schultz could not confirm or deny. Excluding those five unconfirmed sales, the total excessive E-Tags issued during this period equals 174.

⁴⁵ Allegations 2 through 5 allege violations of Code sections 503.603, .6031 and Rules 215.151, .152, .153, and .155.

⁴⁶ The 2010 Hyundai is identified by VIN No. KM8JT3ACXAUO50142. *See* DMV Ex. 10.

⁴⁷ The 2001 Cadillac is identified by VIN No. 1G6KD54Y11U221324. *See* DMV Ex. 11.

⁴⁸ The 2011 Chevrolet is identified by VIN No. 1GCRCREA0BZ137071. *See* DMV Ex. 12.

⁴⁹ The 2017 Jeep is identified by VIN No. 1C4RJEAG9HC952891. *See* DMV Ex. 13.

⁵⁰ DMV Exs. 10, 11, 12, 13.

The RTS Report for the 2010 Hyundai shows that the vehicle has been registered to Maggie Sanders since March 6, 2018, and that Respondent issued Ms. Sanders an E-Tag for the vehicle years later on August 8, 2022.⁵¹ Mr. Schultz testified that there is no reason why an E-Tag would be issued to the owner of a vehicle four years after the sale and that this report demonstrates misuse of the E-Tag process. On July 5, 2023, after being notified of the alleged violations, Mr. Whaley emailed Mr. Schultz and stated the “2010 Hyundai sold to Maggie Sanders was never in my inventory.”⁵²

The RTS report for the 2001 Cadillac shows the vehicle has been registered to “Rea” since March 22, 2011,⁵³ the prior owner of the vehicle was Millenium Investment, and that Respondent issued separate E-Tags for the vehicle on:

- September 29, 2022, to “Larence;”⁵⁴
- November 28, 2022, to “Lawresce White;”⁵⁵

⁵¹ DMV Ex. 10 at 2-3. The issuance of E-Tag No. 1209G89 is included on the E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 17-21; DMV Ex. 9 at 2 (line 49).

⁵² DMV Ex. 18 at 1 (emphasis omitted). All references to Mr. Whaley’s email correspondence refer to his July 5, 2023 email to Mr. Schultz.

⁵³ DMV Ex. 11.

⁵⁴ The last name of the individual who received the E-Tag was redacted from the RTS report. DMV Ex. 11 at 5. The issuance of E-Tag No. 1589L39 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 22-25; DMV Ex. 9 at 2 (line 84).

⁵⁵ DMV Ex. 11 at 4. The issuance of E-Tag No. 2058T77 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 26-29; DMV Ex. 9 at 2 (line 133).

- February 11, 2023, to “Lawrence;”⁵⁶ and
- April 28, 2023 (name of individual who received the E-Tag was redacted).⁵⁷

Mr. Schultz opined that the issuance of these E-Tags is suspicious because so many were issued after the vehicle was registered to Rea. In his email correspondence, Mr. Whaley stated the “2001 Cadillac sold to Lawrence White was never in my inventory.”⁵⁸

The RTS report for the 2011 Chevrolet shows the vehicle has been registered to “Bianca” since February 2, 2017,⁵⁹ and that Respondent issued separate E-Tags for the vehicle to “Murphy” on July 5, 2022,⁶⁰ and September 1, 2022.⁶¹ In his email correspondence, Mr. Whaley stated the “2011 Chevy Silverado sold to

⁵⁶ The last name of the individual who received the E-Tag was redacted from the RTS report. DMV Ex. 11 at 3. The issuance of E-Tag No. 514B88 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 43-47; DMV Ex. 9 at 2 (line 181).

⁵⁷ The full name of the individual that received the E-Tag was redacted from the RTS report. DMV Ex. 11 at 2. Unlike the prior E-Tag issuances for this vehicle, E-Tag No. 3M4077Y is not included in the Respondent’s E-Tag report. *See* DMV Ex. 9. However, like the other E-Tag issuances, Respondent did not report the vehicle had been sold on the date E-Tag No. 3M4077Y was issued. DMV Ex. 8 at 53-57.

⁵⁸ DMV Ex. 18 at 1.

⁵⁹ The buyer’s last name and other personal information was redacted from the RTS report. DMV Ex. 12 at 4.

⁶⁰ The full name of the buyer who received the E-Tag was redacted from the RTS report. DMV Ex. 12 at 3. The issuance of E-Tag No. 0798G68 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 12-16; DMV Ex. 9 at 2 (line 18).

⁶¹ The full name of the buyer that received the E-Tag was redacted from the RTS report. DMV Ex. 12 at 2. The issuance of E-Tag No. 1342N20 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 22-26; DMV Ex. 9 at 2 (line 59).

Murphy Criss was sold to him over 4 years ago.”⁶² Based on this statement, Mr. Schultz opined the vehicle had not been in Respondent’s inventory since approximately July 2019 and was therefore not in his inventory when the E-Tags identified above were issued.

The RTS report for the 2017 Jeep shows the vehicle had been registered to “Cathy” since January 2, 2021,⁶³ and that Respondent issued separate E-Tags for the vehicle to “Ozia”⁶⁴ on:

- July 25, 2022;⁶⁵
- November 30, 2022;⁶⁶
- February 28, 2023; and⁶⁷
- April 27, 2023.⁶⁸

⁶² DMV Ex. 18 at 1.

⁶³ The buyer’s last name and other personal information was redacted from the RTS report. DMV Ex. 13 at 6.

⁶⁴ Mr. Whaley testified that “Ozia” is his nephew, Ozia Richmond. In his email correspondence, Mr. Whaley stated “I was allowing [Mr. Richmond] to use [the 2017 Jeep] until he came up with the cash to purchase. He has recently payed [sic] me all the cash and I will now go and get the car registered in his name.” DMV Ex. 18 at 1.

⁶⁵ DMV Ex. 13 at 5. The issuance of E-Tag No. 0984K79 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 12-16; DMV Ex. 9 at 2 (line 30).

⁶⁶ DMV Ex. 13 at 4. The issuance of E-Tag No. 2077B94 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 30-34; DMV Ex. 9 at 3 (line 135).

⁶⁷ DMV Ex. 13 at 3. The issuance of E-Tag No. 2647U69 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 43-47; DMV Ex. 9 at 3 (line 184).

⁶⁸ DMV Ex. 13 at 2. The issuance of E-Tag No. 3043D50 is included in Respondent’s E-Tag report but Respondent did not report the vehicle had been sold. DMV Ex. 8 at 53-57; DMV Ex. 9 at 4 (line 189).

Mr. Schultz ran another RTS report for the 2017 Jeep on November 20, 2023, which shows that on July 7, 2023, two days after Mr. Whaley's email correspondence, Respondent registered the 2017 Jeep in Mr. Richmond's name and issued a fifth E-Tag to him.⁶⁹

3. Allegation Nos. 6-7⁷⁰

Mr. Schultz conducted an on-site investigation of Respondent's dealership during the normal business hours for the facility on June 2, 2023. The purpose of his investigation was to request access to the sales records for the vehicles discussed above and to determine if the dealership was in compliance with the premise requirements set forth in Rule 215.140. Mr. Whaley was not present at the dealership during the investigation, but Mr. Schultz met with and communicated with one of his employees.

Mr. Schultz took photographs during his investigation which were admitted as DMV Exhibit 14. While at the dealership, Mr. Schultz observed that Respondent shared the facility with another separately licensed dealer and that their inventories were not separated by barriers to designate which inventory belonged to which dealer.⁷¹ He also observed that Respondent failed to have posted business hours for

⁶⁹ DMV Ex. 19 at 1, 5.

⁷⁰ Allegations 6 and 7 allege violations of Code section 503.032 and Rule 215.140.

⁷¹ DMV Ex. 14 at 1-3, 9-10; *see* Tex. Trans. Code § 503.032; 43 Tex. Admin. Code § 215.140(11)(B)(iv).

each day of the week and that the building that the dealers were officing out of was not at least 200 square feet (100 square feet per dealer) and did not provide separate offices for the dealers.⁷²

Mr. Schultz noted that if these premise deficiencies had been known when Respondent had applied for its GDN license, it would have been grounds for denying the license. He further noted that a dealer is required to maintain these premise requirements throughout the duration of its license and that its license may be revoked if it fails to do so. Mr. Schultz was not aware if Respondent had taken action to come into compliance.

Mr. Whaley admitted he was not in compliance with the alleged premise requirements at the time of the investigation.⁷³ As such, these violations will not be further addressed.

4. Enforcement History

Respondent's enforcement history with the Department is summarized below:

- **Agreed Final Order and Demand Letter, dated November 17, 2022:** on or about April 6, 2021, Respondent

⁷² DMV Ex. 14 at 4-8. Mr. Schultz explained that separate offices are necessary in instances where multiple dealers share a facility so that the dealers can conduct business with consumers privately while personal and financial information is being shared. *See* Tex. Trans. Code § 503.032; 43 Tex. Admin. Code § 215.140(1)(B), (5)(H)(i), (10)(B).

⁷³ Hearing Audio Recording at 2:13.

- (1) failed to remit motor vehicle sales tax and failed to apply for the registration and title of the motor vehicle in connection with the sale of a vehicle; (2) failed to keep a complete record of all vehicles purchased or sold; and (3) attached a buyer's temporary tag to a motor vehicle that did not display a valid certificate of inspection, in violation of Code section 501.0234, Texas Tax Code section 152.0411, Texas Occupations Code section 2301.651(a)(4), and Rules 215.144, .155(b).⁷⁴
- **Final Order, dated May 27, 2021:** on or about January 8, 2019, Respondent (1) failed to remit motor vehicle sales tax and failed to apply for the registration and title of the motor vehicle in connection with the sale of a vehicle; and (2) failed to produce records, in violation of Code section 501.0234, Texas Tax Code section 152.0411, and Rule 215.144(d) or (j)(2).⁷⁵
 - **Agreed Final Order, dated February 22, 2018:** on or about December 1, 2017, Respondent (1) delivered title directly to a retail buyer and failed to apply for transfer of title and registration of the vehicle in the name of the buyer and failed to remit sales tax in connection with the sale of a vehicle; and (2) failed to produce records, in violation of Code section 501.0234, Texas Tax Code section 152.0411, and Rule 215.144(d) or (j)(2).⁷⁶

As part of the sanctions ordered in the above-referenced actions, Respondent was ordered to attend dealer training and pay administrative penalties ranging from \$500 to \$4,000. In the most recent November 17, 2022 Agreed Order, Respondent

⁷⁴ DMV Ex. 17. This enforcement action occurred during the period at issue in this case.

⁷⁵ DMV Ex. 16.

⁷⁶ DMV Ex. 15.

was ordered to pay \$1,500 within 30 days after the order was issued; but, Mr. Shultz asserted Respondent has failed to do so.⁷⁷

5. Requested Sanctions and Revocation

Based on the above information, Staff requests a \$179,000 penalty and revocation of Respondent's GDN license. In lieu of presenting a witness at the hearing to address its penalty recommendation, Staff presented the affidavit of Heather Pierce, the current Managing Attorney of the Enforcement Division.⁷⁸ In addition to citing specific statutes and regulations concerning the sanctions that can be ordered by the Department, Ms. Pierce indicated that she was familiar with past Department decisions assessing said penalties and provided the following statement:

I have reviewed the facts and circumstances of the above referenced case and recommend a civil penalty of \$179,000. In addition, due to the nature and number of the violations, the Department recommends that the Respondent's General Distinguishing Number License P 131278 be revoked. I have considered the following standards as identified in Subsection 2301.801 (b), Texas Occupations Code: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public; (2) the economic damage to the public caused by the violation; (3) the history of previous violations; (4) the amount

⁷⁷ DMV Ex. 17 at 6-7.

⁷⁸ DMV Ex. 7. Mr. Schultz did not opine on: (1) Staff's requested penalty, the factors to be considered in assessing a penalty under Code section 2301.801, or the mitigating factors set forth in the Department's disciplinary matrix (notwithstanding Respondent's prior enforcement history and efforts to correct the violations); or (2) Staff's request for revocation or the factors to be considered in assessing revocation as set forth in the Department's disciplinary matrix.

necessary to deter a future violation; (5) Respondent's efforts to correct the violation; and (6) any other matter that justice may require.

It is my opinion that the recommended sanction is in conformity with the past decisions of the Motor Vehicle Board, the Division Director of the Motor Vehicle Division and the Texas Department of Motor Vehicles in assessing penalties for violations committed by licensees and other persons under the jurisdiction of the Texas Department of Motor Vehicles and its predecessors, and the recommended sanctions are appropriate in this case.⁷⁹

B. RESPONDENT'S EVIDENCE

Respondent has held a GDN license since February 2015 and Mr. Whaley has approximately eight years of experience in owning and operating a car dealership.

Mr. Whaley stresses that he is not responsible for issuing the excessive E-Tags at issue in this case. Mr. Whaley asserts he was unaware of the excessive E-Tags being issued under his account until he was notified by Mr. Schultz on or about June 2, 2023. According to Mr. Whaley, the only explanation for the excessive E-Tags is that someone is using his computer that was stolen when his dealership was burglarized on October 30, 2021.⁸⁰ During that burglary, Mr. Whaley's computer, the dealership surveillance cameras, and various cars were stolen.⁸¹

⁷⁹ DMV Ex. 7 at 2.

⁸⁰ This differs from the statement Mr. Whaley originally provided to Mr. Schultz in his email correspondence when he opined "the other tags that were made must have been registered by a previous employee who worked for me and was doing this without me know[ing]. For most of the time that these tags were being made I was only operating my dealership a small portion of the time." (emphasis omitted). DMV Ex. 18 at 1.

⁸¹ Whaley Ex. 1.

Mr. Whaley confirms that his E-Tag account was password protected and that only he knew the password but that it was auto-saved on his computer, and therefore, when logging into his account his password would automatically populate.

Mr. Whaley states that he did not think to change his password immediately after the burglary because he was preoccupied with finding the stolen cars and repairing the dealership. He also states that business was very slow during this time and that he was exploring other ventures and therefore it did not occur to him that someone may use his computer to issue excessive E-Tags. After the burglary Mr. Whaley began receiving impoundment notices for vehicles that were not in his inventory. He admits this was odd but asserts those notices did not alert him to the fact that excessive E-Tags were being issued from his account.

Mr. Whaley confirms he could review what E-Tags were being issued from his account; however, he asserts that once he was notified of the allegations by Mr. Schultz the Department locked him out of his account. Although it is unclear when Mr. Whaley was locked out of his account or when he was able to log back in, he notes that he changed his account password in July 2023.⁸²

Mr. Whaley confirms he submitted the VIT forms to the Denton County Tax Office that were admitted as DMV Exhibit 8. Mr. Whaley admits Respondent owed

⁸² While not evidence, the Department's attorney, Ms. Evans, confirmed that Respondent would have been locked out of his account sometime after the initial Notice of Department Decision, dated July 20, 2023, was issued.

the Denton County Tax Office some “inventory fees” but states that he has paid them and has no current outstanding balance.⁸³

Mr. Whaley admits he issued multiple E-Tags to his nephew, Mr. Richmond, and that he now understands those actions were in violation of Department rules.⁸⁴ However, on cross-examination, Mr. Whaley denied that he issued a fifth E-Tag to Mr. Richmond on July 7, 2023. Instead, Mr. Whaley states that he only registered the vehicle in Mr. Richmond’s name on that date.⁸⁵

Ultimately, Mr. Whaley maintains that he did not issue the excessive E-Tags identified above but that there were some things that he did wrong due to a lack of knowledge.⁸⁶ Mr. Whaley requests leniency from the Department because selling vehicles is his way of life. He argues that while he “probably owes something,”⁸⁷ the requested administrative penalties and revocation are too severe.

⁸³ It is unclear what fees Mr. Whaley was referring to, but the ALJ presumes they include the \$5 E-Tag fee previously discussed. Mr. Whaley did not specify how much he owed to the Denton County Tax Office.

⁸⁴ Hearing Audio Recording at 1:59.

⁸⁵ The November 30, 2023 RTS report for the 2017 Jeep shows that the vehicle was registered to Mr. Richmond on July 7, 2023, and that an E-Tag was issued to him by Respondent that same day. DMV Ex. 19 at 1, 5

⁸⁶ Mr. Whaley did not specify what other violations he committed other than the premise requirement violations alleged by Staff and issuing multiple E-Tags to his nephew (excluding the fifth E-Tag issued on July 7, 2023, which he contests).

⁸⁷ Hearing Audio Recording at 2:15.

IV. ALJ'S ANALYSIS

It is uncontested that Respondent's dealership was not compliant with certain premise requirements⁸⁸ identified in Staff's Second Amended Notice of Department Decision⁸⁹ and that Respondent issued multiple E-Tags to Mr. Richmond in violation of Department rules, albeit the exact number issued is contested. Therefore, the questions that remain are: (1) whether Respondent issued the fifth E-Tag to Mr. Richmond and the other excessive E-Tags identified above, and (2) what is an appropriate sanction? The ALJ finds Staff proved Respondent issued 174 excessive E-Tags at issue in this case, including the fifth E-Tag for Mr. Richmond. However, the ALJ finds Staff failed to prove that its requested penalty and revocation are appropriate. For the reasons discussed below, the ALJ recommends a \$17,400 penalty be assessed against Respondent and that Respondent's GDN license be suspended for one year.

⁸⁸ The ALJ notes that some of the premise requirements, including the requirement to have at least 100 square feet of interior floor space, were newly required as of January 1, 2023 – six months prior to the investigator's inspection of the premises. 43 Tex. Admin. Code § 215.140(5)(H)(i), amended to be effective January 1, 2023, 47 Tex. Reg 8745 (Dec. 23, 2022). It is not clear to the ALJ how the new premise requirements would be applied to those licensees who were licensed under the prior rules and there was no testimony on this point.

⁸⁹ The Second Amended Notice of Department Decision shows that no penalty was assessed for Respondent's premise violations and therefore those violations did not impact Staff's proposed \$179,000 penalty (representing \$1,000 for each of the alleged 179 excessive E-Tags). Consequently, the ALJ also does not recommend a penalty for the proven premise violations. Second Amended Notice of Department Decision at 4 (Nov. 27, 2023).

A. VIOLATIONS

It is uncontested that during May 2022 through April 2023 Respondent reported only 10 vehicle sales while 189 E-Tags were issued under its E-Tag account. Although Mr. Whaley steadfastly maintained he did not issue the July 7, 2023 E-Tag to Mr. Richmond or any of the other excessive E-Tags issued during that period, his testimony was insufficient to overcome Staff's evidence. Specifically, Mr. Schultz's November 11, 2023 RTS report indicates that Respondent not only registered the 2017 Jeep into Mr. Richmond's name on July 7, 2023, but also issued an E-Tag for him that same day. While Mr. Whaley stated he did not do it, he offered no explanation to refute the report's findings.

A dealer is responsible for the safekeeping and distribution of each E-Tag the dealer obtains and is also liable for misused E-Tags issued under its account.⁹⁰ Here, the evidence demonstrably proves that Respondent allowed the misuse to occur, and the ALJ concludes the evidence supports a finding that Mr. Whaley, acting as Respondent's owner, issued the excessive E-Tags himself.

Specifically, Mr. Whaley's computer, containing an auto-populated password for his E-Tag account, was stolen in the October 2021 burglary of the dealership and he took no action to safeguard his account by changing his password to prevent any potential misuse of his E-Tag account. Beginning approximately six months after the

⁹⁰ Tex. Transp. Code §§ 503.063(d), .038(1)(12).

burglary, excessive E-Tags were issued from his account over a one-year period and at no point during that year did Mr. Whaley review his account to monitor the status of E-Tag issuances, even though he began receiving impoundment notices for vehicles that were not within his inventory. In his email correspondence to Mr. Schultz on July 5, 2023, Mr. Whaley suggested the excessive E-Tags were issued by a former employee and he did not mention the burglary or that his computer had been stolen. Moreover, Mr. Whaley admitted he misused the E-Tag process by issuing four tags to his nephew for the same vehicle without a corresponding sale during July 2022 to April 2023.

Accordingly, given the facts above and Mr. Whaley's experience in owning and operating dealerships and the E-Tag process, the ALJ finds that Staff proved by a preponderance of the evidence that Respondent issued most of the excessive E-Tags alleged by Staff. However, as Mr. Schultz was unable to confirm or deny the validity of the E-Tags issued for the five out-of-state vehicles, the ALJ finds that the number of excessive E-Tags issued by Respondent from May 2022 through April 2023 is 174, not 179.

B. SANCTIONS AND REVOCATION

The ALJ finds Staff failed to meet its burden to prove that its requested \$179,000 penalty should be imposed due to the lack of evidence explaining how the requested penalty was assessed and whether it would be appropriate in this instance. Specifically, Staff failed to present evidence on four of the six factors that must be

considered in determining such a penalty including: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public, (2) the economic damage to the public caused by the violation, (3) the amount necessary to deter a future violation, and (4) any other matter that justice may require.⁹¹ While the Department's penalty matrix includes a general statement that E-Tag misuse is "an extraordinary breach of trust," Staff did not explain the reasoning or justification behind that statement. Based on the evidence, it is unknown why E-Tag misuse is a serious violation that could cause harm or potential harm to the safety of the public or if the excessive E-Tags at issue in this case actually caused economic damage to the public. While it is encouraging that Staff considered these factors, as Ms. Pierce stated generally in her affidavit, Staff failed to expound on the results of those considerations. Thus, no evidence or argument was presented to justify the appropriateness of a \$179,000 penalty.

However, the ALJ finds that some penalty is warranted because Staff proved Respondent committed 174 separate violations of issuing excessive E-Tags, some of which occurred very soon after the finalization of Respondent's most recent Department enforcement action. Accordingly, the ALJ recommends that, albeit at a great reduction to Staff's proposal, a \$17,400 penalty be assessed against

⁹¹ Tex. Occ. Code § 2301.801(b).

Respondent, representing a \$100 penalty (instead of \$1,000) for each of the 174 violations.

Finally, the ALJ finds that Staff failed to present evidence to prove that revocation is appropriate. There is no question as to whether the Department has authority to revoke Respondent's license based on the proven violations in this case. However, notwithstanding the proven violations, Staff failed to prove by a preponderance of the evidence that it considered the necessary factors to determine whether revocation is warranted in this instance. Specifically, no evidence was offered to show that Staff considered any of the factors listed in its disciplinary matrix that are required to be considered before a license may be revoked, namely: (1) whether Respondent is unfit under the standards governing the occupation of dealer; (2) whether Respondent made a material misrepresentation in any information filed according to the Department's statutes and rules; and (2) whether Respondent willfully defrauded a purchaser.⁹²

In determining an appropriate sanction, the ALJ weighed many factors including: the type and frequency of the violations committed; concerns about Mr. Whaley's credibility regarding the use of his E-Tag account; Respondent's prior enforcement actions, at least one concerning E-Tag misuse; Staff's uncontested assertion that Respondent failed to pay its most recently assessed administrative

⁹² DMV Ex. 6 at 1-2.

penalty; and Mr. Whaley's acknowledgment of wrongdoing and agreement that some discipline should be ordered. On balance, the ALJ finds revocation is not warranted but that Respondent's GDN license should be suspended for one year.⁹³

V. FINDINGS OF FACT

1. Whaley Boy Inc holds General Distinguishing Number (GDN) P131278, a license issued by the Texas Department of Motor Vehicles (Department) in February 2013, and is considered a dealer.
2. Respondent is owned by Alejandro Whaley, and Mr. Whaley was the owner when the violations occurred from May 2022 to June 2023.
3. The Department received a complaint that buyer's temporary tags (E-Tags) issued by Respondent were being misused and the Department initiated an investigation.
4. On June 22, 2023, a Department investigator performed a site inspection of Respondent's business located at 467 E. State Highway 121, Lewisville, Texas 75057-4732, and observed the following:
 - a. Respondent shares the location with a separately licensed dealer and failed to have;
 - i. a display area of sufficient size to display at least five vehicles, separated from the other business's display or parking area by a material object or barrier that cannot be readily removed; and
 - ii. a physical office location separated from other businesses that is at least 100 square feet on interior space (exclusive of

⁹³ Tex. Occ. Code § 2301.651(a)(3)-(4); 43 Tex. Admin. Code § 215.500(a)(2).

restrooms, hallways, closets) separated by permanent interior walls on all sides and separate from any public area used by another business; and

- b. Respondent failed to have posted business hours for each day of the week.
5. Respondent admits the dealership was not in compliance with specific Department premise requirements at the time of the site inspection.
 6. A dealer is allowed to create only one E-Tag per sale of a vehicle within the dealer's inventory.
 7. Respondent had only one username and password for the account through which it issued E-Tags and only Mr. Whaley knew the password.
 8. Respondent's dealership was burglarized on October 30, 2021, and Mr. Whaley's computer, among other things, was stolen.
 9. Mr. Whaley's password for Respondent's E-Tag Account was auto-saved on his computer and would automatically populate when logging on to the account.
 10. Mr. Whaley did not change the password for his E-Tag account until he was notified of the violations at issue in this case.
 11. Approximately six months after the burglary, Respondent began issuing excessive E-Tags for vehicles it had not sold.
 12. Department records of E-tags created by Respondent list approximately 189 E-Tags issued between May 2022 through April 2023.
 13. Respondent reported on its Vehicle Inventory Tax forms that it sold only 10 vehicles between May 2022 through April 2023.

14. Mr. Whaley admitted that he issued multiple E-Tags to his nephew for the same vehicle from May 2022 through April 2023 in violation of Department rules.
15. Five of the E-Tags Respondent issued during May 2022 through April 2023 were for out-of-state vehicles and the Department was unable to confirm or deny the validity of those sales.
16. Based on its confirmed in-state car sales from May 2022 through April 2023, Respondent issued 174 excessive E-Tags during that period.
17. Staff presented no evidence on the majority of the aggravating and mitigating factors required to be considered when determining the amount of penalties assessed and whether the GDN license should be revoked.
18. Respondent's prior enforcement actions resulting in final orders dated November 17, 2022, May 27, 2021, and February 22, 2018, represent aggravating factors that should impact the amount of penalties assessed.
19. The Department issued a Second Amended Notice of Department Decision (Notice) dated November 27, 2023. The Notice alleged that Respondent violated statutes and rules relating to a dealer's permanent place of business on or about June 2, 2023, and regarding the use of and issuance of E-Tags from on or about May 2022 through April 2023.
20. By letter dated October 25, 2023, Staff of the Department's Enforcement Division sent a Notice of Hearing to Respondent. Together, the Notice and the Notice of Hearing provided the date, time, and place of a hearing on the merits; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
21. On December 4, 2023, Administrative Law Judge Meaghan Bailey with the State Office of Administrative Hearings (SOAH) convened the hearing on the

merits via videoconference. Attorney Lorelei Evans represented Staff. Respondent was represented by Mr. Whaley. The record closed that same day.

VI. CONCLUSIONS OF LAW

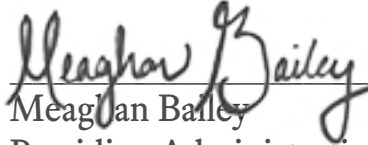
1. The Department has jurisdiction and authority to revoke, probate, or suspend a license to sell a motor vehicle, and to reprimand and/or impose a civil penalty against a license holder. Tex. Transp. Code §§ 503.038(a), .095(a); Tex. Occ. Code §§ 2301.651, .801(a).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this case, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 2301.704.
3. Respondent received proper notice of the Department Decision and of the hearing on the merits. Tex. Occ. Code § 2301.705; Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden to prove by a preponderance of the evidence that Respondent committed the alleged violations and that the sanctions it recommended were appropriate. 1 Tex. Admin. Code § 155.427; *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App. — Austin 2005, no pet.).
5. A person who violates any Board rule adopted under chapter 503 of the Texas Transportation Code is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code § 503.095.
6. In determining the amount of civil penalties to assess, the Department must consider the following factors: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public; (2) the economic damage to the public caused by the violation; (3) the history of previous violations;

- (4) the amount necessary to deter a future violation; (5) efforts to correct the violation; and (6) any other matter that justice may require. Tex. Occ. Code § 2301.801(b).
7. In deciding on the amount of civil penalties and whether or not to revoke a license, the Department must also consider: (1) acknowledgement of wrongdoing, (2) willingness to cooperate with the Department; (3) efforts to correct the violation, and (4) any other matter that justice may require, including rehabilitative potential and present value to the community. Department's Disciplinary Matrix at 1, available at <https://www.txdmv.gov/sites/default/files/body-files/Motor-Vehicle-Disciplinary-Matrix.pdf> (last visited February 1, 2024).
 8. In deciding whether revocation is appropriate, the Department must consider the following factors: (1) whether the licensee is unfit under the standards governing the occupation, including the qualifications for a license; (2) whether the licensee made a material misrepresentation in any information filed according to the Department's statutes or rules; (3) whether the licensee willfully defrauded a purchaser; and (4) whether the licensee failed to fulfill a written agreement with a retail purchaser of a motor vehicle. Department's Disciplinary Matrix at 1, available at <https://www.txdmv.gov/sites/default/files/body-files/Motor-Vehicle-Disciplinary-Matrix.pdf> (last visited February 1, 2024).
 9. Staff did not meet its burden to prove the proposed \$179,000 penalty and revocation of Respondent's GDN license is appropriate.
 10. Respondent should be assessed a penalty of \$17,400 for issuing 174 E-Tags without corresponding vehicle sales. Tex. Transp. Code § 503.038(a)(12), .063; Tex. Occ. Code § 2301.801(a).
 11. Respondent should not be assessed a penalty for its failure to comply with certain Department premise requirements. Tex. Transp. Code §§ 503.032, .095(a); 43 Tex. Admin. Code § 215.140.

12. Respondent's GDN license should be suspended for one year. Tex. Transp. Code § 503.000(a)(2); Tex. Occ. Code § 2301.651(a)(3)-(4).

Signed February 2, 2024

ALJ Signature:

A handwritten signature in cursive script that reads "Meaghan Bailey". The signature is written in black ink and is positioned above a horizontal line.

Meaghan Bailey

Presiding Administrative Law Judge

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Associated Case Party: whaley boy inc

Name	BarNumber	Email	TimestampSubmitted	Status
AL WHALEY		alwhaley777@gmail.com	2/2/2024 12:32:48 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Lorelei Evans		lorelei.evans@txdmv.gov	2/2/2024 12:32:48 PM	SENT



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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

**RE: IN THE MATTER OF THE LICENSE OF
WHALEY BOY INC., D/B/A WB MOTORS INC.
MVD CAUSE NO. 23-0012668.ENF
SOAH DOCKET NO. 608-23-24732.ENF**

Dear Clerk:

Please find enclosed Petitioner's Exceptions to the Proposal for Decision. A copy of this response was forwarded to Respondent in the following manner:

**VIA ELECTRONIC FILING, USPS CERTIFIED/
REGULAR MAIL, AND VIA EMAIL:**

WHALEY BOY INC., D/B/A WB MOTORS INC.

467 E State Highway 121
Lewisville, Texas 75057-4732
Email: alwhaley777@gmail.com

Should you have any questions, you may reach me at (512) 465-1366 or
Lorelei.Evans@TxDMV.gov.

Sincerely,

Lorelei Evans

Lorelei E. Evans
Attorney – Enforcement Division
Bar Card 24078805
4000 Jackson Avenue
Austin, Texas 78731
(512) 465-1366 Direct
(512) 465-5650 Fax

SOAH DOCKET NO. 608-23-24732.ENF
MVD CAUSE NO. 23-0012668.ENF

IN THE MATTER OF THE LICENSE § BEFORE THE STATE OFFICE
OF WHALEY BOY INC., D/B/A WB §
MOTORS INC. § OF
§
§ ADMINISTRATIVE HEARINGS

PETITIONER’S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Comes Now, Petitioner, the Texas Department of Motor Vehicles (hereinafter “TxDMV” or “Staff” or “the Department”), and files its response and exceptions to the Proposal for Decision (PFD) issued by the Administrative Law Judge (ALJ) in this matter on February 2, 2024. In response to the PFD, the TxDMV requests the following exceptions and modifications be made to the PFD, pursuant to 1 Tex. Admin. Code § 155.507.

I. PROCEDURAL HISTORY

The Notice of Hearing¹ was filed on October 25, 2023. The hearing took place on December 4, 2023, at the State Office of Administrative Hearings (SOAH) via Zoom. On February 2, 2024, the ALJ provided all parties with the Proposal for Decision (PFD). The ALJ issued Findings of Fact and Conclusions of Law that supported violations of Tex. Trans. Code § 503.063(a), relating to buyer’s tag issuance, and violations of 43 Tex. Admin. Code § 215.140, relating to premises requirements. The ALJ found the number of excessive buyer’s temporary tags (BTTs) issued by Respondent was 174 and recommended a civil penalty of \$100 per tag violation. The ALJ set the penalty as follows: (a) \$100 civil penalty per tag violation, resulting in a \$17,400 CVP for the 174 tag violations; and (b) suspension of the dealer’s GDN license for

¹ Petitioner’s Exhibit 3, pgs. 1-14.

one year. The ALJ found the Respondent violated of certain premise requirements, however, recommended no penalty be assessed².

II. PROPOSED EXCEPTIONS TO SANCTIONS AND REVOCATION

(1) Substantiated Tag Abuse Warrants Penalty of \$1,000 per tag and Revocation of Dealer's General Distinguishing Number (GDN). Petitioner requests a \$1,000 civil penalty be assessed for each substantiated tag violation and revocation of the Dealer's GDN as this is in keeping with the Enforcement - Motor Vehicle Dealers- Disciplinary Matrix (Disciplinary Matrix) and how Respondents are assessed penalties. Petitioner provided sufficient supporting evidence for its recommendation of a \$1,000 civil penalty per tag violation throughout the hearing, by demonstrating the Respondent issued an excess of 174 buyer's temporary tags, many of which were to vehicles not within the Dealer's inventory. In one instance, Respondent misused the E-Tag system, avoiding requirements to properly registering a vehicle³ within the required 30 days post sale, by issuing five buyer's temporary tags⁴ over a nearly one-year period to a family member. The ALJ found that the Department proved Respondent issued 174 excessive E-Tags, therefore the Department requests a modified civil penalty of \$174,000 for those substantiated tag violations. Petitioner submitted Exhibits 6 and 7 in support of its recommendation for civil penalties, which included the Disciplinary Matrix and a penalty affidavit attested to by Managing Attorney Heather Pierce, which were both referenced during Petitioner's closing statements.

² Proposal for Decision, Whaley Boy Inc., dated February 2, 2024, pg. 32, Conclusion of Law 11.

³ Petitioner's Exhibit 13, pgs. 2-6, referencing the sale of a 2017 Jeep, VIN # 1C4RJEAG9HC952891.

⁴ Per, Tex. Transp. Code § 503.063(a), Respondent is only allowed to issue one buyer temporary tag on the date a retail sale has occurred.

The Disciplinary Matrix provides a range for minimum and maximum penalties for each type of violation⁵. The Disciplinary Matrix lists the penalty range of \$1,000 per tag (low sanction) to revocation (high sanction) for e-tag violations⁶; and lists the penalty range of \$1,000 (low sanction) to revocation (high sanction)⁷ for failing to meet location requirements (a premises violation).

Petitioner's Exhibit 7, the Managing Attorney's Affidavit⁸ addresses the penalty recommendation as it pertained to the facts and allegations of the current case, outlined the applicable rules and regulations (including the Texas Occupations Code § 2301.801(b) factors), and described Mrs. Pierce's familiarity with past decisions by the Board to help explain why the recommended penalty in this case was appropriate.

The Disciplinary Matrix serves only as a boundary for ordinary circumstances and does not act to limit the TxDMV's authority to penalize licensees. The only relevant limits are the \$10,000 per violation per day under Tex. Occ. Code § 2301.801, and the \$1,000 per violation per day under Texas Transportation Code § 503.095. The opening paragraph in the Disciplinary Matrix specifically states, in bold:

*"This Matrix does not contain all possible violations and does not serve as a limit on what sanctions the Department may seek in any particular case."*⁹

As such, the Disciplinary Matrix is a general guideline and does not restrict the TxDMV from pursuing higher sanctions when appropriate. Here, Petitioner recommended the lower-end sanction from the Disciplinary Matrix for the tag violations. Petitioner believes it presented several circumstances in the current case that justified applying the Disciplinary Matrix guideline

⁵ See Petitioner's Exhibit 6, "Enforcement – Motor Vehicle Dealers -Disciplinary Matrix."

⁶ See Petitioner's Exhibit 6, Disciplinary Matrix, pg. 5.

⁷ See Petitioner's Exhibit 6, Disciplinary Matrix, pg. 6.

⁸ See Petitioner's Exhibit 7, Managing Attorney Affidavit.

⁹ See Petitioner's Exhibit 6, Disciplinary Matrix, pgs. 8.

for charging a \$1,000, per violation. Specifically, Petitioner provided evidence that Respondent had prior enforcement history¹⁰, paid prior civil penalties for previous violations, was ordered to attend additional dealer training, and still was found to have issued 174 buyer's temporary tags in excess of dealer sales¹¹. Petitioner's recommended penalty was not only within the Disciplinary Matrix guidelines, but it also recommended the lowest sanction available. The facts before the ALJ demonstrate that Respondent blatantly violated the governing rules and regulations of the Department and misused a government records system which is an extraordinary breach of trust and placed the public at risk for vehicles that were not legally authorized to be driven on Texas highways. The facts also showed that Respondent issued at least five buyer's temporary tags to his nephew and issued buyer's temporary tags to several vehicles which the Respondent admitted were not in his inventory. Respondent wantonly and repeatedly violated the tag system.

In consideration of the underlying facts in this case, a sanction of \$1,000 per tag violation and revocation of the dealer's GDN license is warranted. Facts proven at the trial show Respondent misused his E-Tag system for approximately one year. Respondent testified and attempted to shift the blame to others, including a prior agent/employee, and then at the hearing to an individual who allegedly stole his computer during a burglary of the dealership, which occurred six months¹² before the allegations presented in this case. Respondent also testified that he could have changed passwords to his accounts within minutes. Yet he failed to do so even after his business was burglarized, his computer system stolen, and received suspicious impound notices for vehicles not in his inventory. A prudent dealer would have properly monitored and changed all compromised passwords after the theft of a computer that contained

¹⁰ Respondent's prior history included allegations related to failing to: (1) timely register titles and pay sales tax (2 allegations); (2) maintain and produce records (3 allegations); (3) issuing buyer's temporary tags to vehicles without valid State inspections; and (4) hand delivering titles to consumers.

¹¹ Proposal for Decision, Whaley Boy Inc, p. 23.

sensitive information. It is common sense to change passwords under these circumstances, which would immediately prevent an unauthorized user from accessing personal and official government systems including Respondent's E-Tag Webdealer account. Petitioner believes that the Respondent is responsible for the issuance of these tags, and the excuses offered are merely to displace accountability for his involvement in the excessive issuance of the buyer's temporary tags.

Petitioner requests that each substantiated tag violation should result in a \$1,000 fine. The substantiated allegations against Respondent related to tag violations combined with the uncured premises violations, as well as Respondent's enforcement history with the Department through the years, merit a penalty of \$1,000 per tag and revocation in this case.

(2) Uncured Premise Violations Warrant Revocation of Dealer's GDN. The TxDMV presented evidence during the hearing which supports the revocation of the dealer's GDN license for failing to maintain premises requirements. Respondent failed to cure ongoing premises violations for almost a year after the law changed¹³. Specifically, the evidence showed Respondent failed to maintain premises requirements at the time of the site visit on June 22, 2023, conducted by the Department investigator who testified in this case. Since that time, there has been no evidence showing any attempt by Respondent to cure these violations. TxDMV Investigator Schultz testified that Respondent shared its licensed location with another independent motor vehicle dealer, which required Respondent to maintain a separate display area by having a permanent barrier placed between each dealer's inventory¹⁴. Additionally, both

¹² Respondent's Exhibit 1, Lewisville Police Reported (October 31, 2021).

¹³ Respondent provided no evidence or testimony that they are currently in compliance with the premises deficiencies identified on the June 22, 2023, inspection. See also Proposal for Decision, Whaley Boy Inc, related to Finding of Fact 4(a)(i) and (ii), at Pg. 28.

¹⁴ 43 Tex. Admin. Code § 215.140 (11)(B)(iv).

dealers are required to have their own office space allowing each business to conduct confidential transactions¹⁵.

Investigator Schultz testified that:

1. Respondent failed to maintain an office space that was at least 100 square feet, separated by permanent walls, and secure from the other dealer operating at the same location¹⁶.
2. Respondent acknowledged, that premises requirements must be maintained by a dealer throughout the term of their license for a. dealer to keep their license, and that failing to maintain premises requirements subjects the dealer's GDN license to cancellation and/or revocation¹⁷. Investigator Shultz's testimony emphasized that a new applicant for license would be denied under similar conditions¹⁸. In other words, the Department views premises violations as serious and a barrier to licensure (or renewal) until cured and is deemed a revocable offense¹⁹.

Further, Respondent failed to provide any mitigating evidence on this matter that would support the retention of its dealer's license. Respondent acknowledged the violations but seemed to place the blame and the burden of corrections on others²⁰. Respondent does not get to substitute their judgment for that of the law, particularly when it contradicts the law.

The ALJ's recommendation for a one-year suspended license²¹ presumes the licensee otherwise meets all current licensing requirements, which they do not. The ALJ noted that the

¹⁵ 43 Tex. Admin. Code § 215.140 (5)(H)(iv).

¹⁶ See Hearing Audio recording at 1:17, and 1:20

¹⁷ See Hearing Audio recording at 1:17, and 1:22-1:23.

¹⁸ See Hearing Audio recording at 1:17:22.

¹⁹ See Petitioner's Exhibit 6, pg. 6.

²⁰ See Hearing Audio recording at 2:10-2:14

²¹ Proposal for Decision, Whaley Boy Inc, pg. 33.

law pertaining to the premises allegations in this case became effective in January 2023²². When the law went into effect, there were no carved-out exceptions nor grace period for non-compliant dealerships. This is because the Department provides dealerships with regular updates throughout the rulemaking process to ensure dealerships are prepared for law changes. Nonetheless, on June 22, 2023, more than 170 days after the change became effective, Respondent was found to be non-compliant and was made aware of those deficiencies which needed to be cured during or shortly after that site visit²³. On December 4, 2023, nearly a year after the change in law, Respondent continued to violate the basic premises requirements necessary to maintain the license. Respondent was provided substantive and numerous opportunities to cure but has failed to do so. Such repeated and continuous failure by this Respondent necessitates revocation of its dealership license.

The Department provided evidence of the following: (i) that Respondent violated premises requirements; (ii) that continued premises violations can result in revocation of the license if they remain uncured; and (iii) that Respondent has still not cured the proven premises violations. Therefore, the Department urges the ALJ to reconsider the recommendation for suspension of the Respondent's license and find that revocation of the Dealer's GDN license is warranted in this matter.

In conclusion, Petitioner met its burden in demonstrating that the \$1,000 per tag violation and revocation for the uncured premise violations requested was appropriate and supported by the weight of the evidence presented during the hearing. Petitioner requests and asserts that revocation of the dealer's GDN license is warranted for both the number of tags issued without a corresponding sale and because Respondent continues to be deficient in meeting basic premises

²² *Id.* at pg. 23, footnote 88.

²³ See Hearing Audio recording at 1:24

requirements. Petitioner requests the corresponding findings of fact and conclusions of law pertaining to sanctions and revocations be modified as outlined above.

III. PROPOSED EXCEPTIONS TO APPLICABLE LAW

Petitioner requests a modification related to a sentence in which the ALJ cited Texas Transportation Code § 503.063(d). While the cited language is favorable to the Department, it appears that it includes additional language from the amended code that is intended to be effective July 1, 2025, but was not effective at the time of the allegations or hearing. Petitioner recommends the following modification:

Page 3:

“The dealer is responsible for the safekeeping and distribution of each E-Tag the dealer obtains and is liable for missing misused tags.”²⁴

So that the Applicable Law reads:

“The dealer is responsible for the safekeeping and distribution of each E-Tag the dealer obtains.”

IV. PROPOSED EXCEPTIONS TO FINDINGS OF FACT

Under the Petitioner’s analysis in Section II of the Petitioner’s request for exceptions, the Department requests that the ALJ issue a Finding of Fact and Conclusion of Law that supports the recommendation of revocation of the Dealer’s GDN. Petitioner requests that the ALJ’s Finding of Fact 17 be modified to reflect that Staff presented substantial evidence through Investigator Shultz’s testimony that supports revocation of the Dealer license is the appropriate sanction for Respondent’s continued failure to comply with all premises requirements at the time of inspection, and because Respondent failed to make efforts in curing the said premise

²⁴ See Proposal for Decision, Whaley Boy, dated February 2, 2024, pg. 3.

violations at the time of the hearing. Therefore, Petitioner recommends the following modification:

Finding of Fact 17²⁵:

“Staff presented no evidence on the majority of the aggravating and mitigating factors required to be considered when determining the amount of penalties assessed and whether the GDN license should be revoked.”

So that Finding of Fact 17 reads:

“Staff presented supporting evidence on the majority of the aggravating and mitigating factors required to be considered when determining the amount of penalties assessed and whether the GDN license should be revoked.”

V. PROPOSED EXCEPTIONS TO CONCLUSIONS OF LAW

A. Petitioner requests that the ALJ modify Conclusion of Law 5²⁶, further expanding on the referenced statute. Petitioner asserts the premise violations are ongoing, therefore each day the Respondent is non-compliant is a continuing and separation violation, and the Conclusion of Law 5 should be amended as follows:

Conclusion of Law 5. Page 31.

“A person who violates any Board rule adopted under chapter 503 of the Texas Transportation Code is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code § 503.095.”

So that Conclusion of Law 5 reads:

“A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code § 503.095(a). Each act in violation of chapter 503 of the Texas Transportation Code and each day of a continuing violation is a separate violation. Tex. Transp. Code § 503.095(b).”

B. Petitioner requests that the ALJ adopt the following Conclusion of Law, related to cancellation of a Dealer’s GDN for failing to maintain qualifications of their license. In this

²⁵ Proposal for Decision, Whaley Boy Inc, pg. 30.

²⁶ Proposal for Decision, Whaley Boy Inc, pg. 31.

case, Respondent's failure to maintain premises requirements are the basic qualifications contemplated by this section of the Code²⁷, and therefore Petitioner requests the inclusion of the following as a separate Conclusion of Law:

“a dealer's general distinguishing number (GDN) may be cancelled if the dealer fails to maintain the basic qualifications for a general distinguishing number²⁸.”

Similarly, this provision also allows cancellation of a dealer's license when a dealer misuses or allows another to misuse a temporary tag authorized under this chapter²⁹. This conclusion of law is directly related to the allegations in this case and addresses the action that the Board may take, to include revocation of the dealer's license based on the substantiated allegations in this case. Therefore, Petitioner requests the inclusion of the following provision of the Code, after Conclusion of Law 5³⁰.

Pg. 31.

“The Board may impose a civil penalty not to exceed \$10,000 for each violation of Texas Transportation Code section 503.038(a) (addressing certain violations related to the GDN) or chapter 2301 of the Texas Occupations Code or rule adopted under that chapter. Tex. Occ. Code § 2301.801(a). Each act of violation and each day a violation continues is a separate violation³¹.”

D. Petitioner requests the addition of a conclusion of law that directly acknowledges the misuse of buyer's temporary tags in this case. Petitioner requests the following Conclusion of Law be added after Conclusion of Law 9:

Conclusion of Law 9. Pg. 32.

“Respondent misused buyer's temporary tags or failed to comply with the requirements for issuance or recordkeeping of the buyer's temporary tags during the period of May 1, 2022 through April 30, 2023, by issuing 174 buyer's temporary tags without

²⁷ Texas Transportation Code section 503.038(a)(7).

²⁸ *Id.*

²⁹ Texas Transportation Code section 503.038(a)(12).

³⁰ Proposal for Decision, Whaley Boy Inc, pg. 31.

³¹ Texas Transportation Code section 503.038(a)(12).

corresponding vehicle sales. 43 TEX. ADMIN. CODE §§ 215.151, 215.152, 215.153 and 215.155.”

C. Petitioner requests Conclusion of Law 11³² be modified to include a penalty of revocation for the premises violations. For the foregoing reasons outlined previously, Petitioner requests the following changes:

Conclusion of Law 11. Pg. 32.

“Respondent should not be assessed a penalty for its failure to comply with certain Department premise requirements. Tex. Transp. Code §§ 503.032, .095(a); 43 Tex. Admin. Code § 215.140.”

So that Conclusion of Law 11 reads:

“Respondent license should be canceled or revoked for failing to maintain an established and permanent place of business.” Tex. Transp. Code §§ 503.038(a)(7) and (12); Tex. Occ. Code § 2301.651(a)(1), (3), and (5).

VI. PROPOSED CORRECTIONS FOR CLERICAL ERRORS

A. Petitioner requests a correction of the date for issuance of the temporary tag to the 2010 Hyundai.³³ The date should be corrected from August 8, 2022 to August 18, 2022, and should be changed from:

Page 13³⁴:

...“to Maggie Sanders since March 6, 2018, and that Respondent issued Ms. Sanders an E-Tag for the vehicle years later on **August 8, 2022.**”

Amended to read:

...“ to Maggie Sanders since March 6, 2018, and that Respondent issued Ms. Sanders an E-Tag for the vehicle years later on **August 18, 2022...**”

³² Proposal for Decision, Whaley Boy Inc, pg. 32.

³³ See Notice of Department Decision, dated November 30, 2023, pg. 2 (allegation 2); See also Petitioner’s Exhibit 10, pg. 2.

³⁴ Proposal for Decision, Whaley Boy Inc, pg. 13.

B. Petitioner requests a correction of the name reference in the RTS Report for the 2011 Cadillac for the buyer's temporary tag issued September 29, 2022. The name should be corrected from "Larence" to "Lawrence,"³⁵ which reflects the spelling of the name in the Department's Exhibit 11. The name should be changed from:

Page 13³⁶:

"September 29, 2022, to "**Larence**"

Amended to read:

"September 29, 2022, to "**Lawrence**"

C. Petitioner requests a correction of footnote 56. The buyer's temporary tag number issued to the 2011 Cadillac on February 11, 2023, should be corrected from "514B88" to "2514B88³⁷," and should be changed from:

Page 14, Footnote 56³⁸:

... "The issuance of E-Tag No. **514B88** is included in Respondent's E-Tag report but Respondent did not report the vehicle had been sold."

Amended to read:

... "The issuance of E-Tag No. **2514B88** is included in Respondent's E-Tag report but Respondent did not report the vehicle had been sold."

D. Petitioner requests a correction of the date referenced for the fourth buyer's temporary tag issued to the 2001 Cadillac³⁹. The date should be corrected from "April 28, 2023" to "July 30, 2022" which reflects the date reference in Allegation 3 in Notice of Department Decision and

³⁵ See Petitioner's Exhibit 11, pg. 5.

³⁶ Proposal for Decision, Whaley Boy Inc, pg. 13.

³⁷ See Petitioner's Exhibit 11, pg. 3.

³⁸ Proposal for Decision, Whaley Boy Inc, pg. 14, Footnote 56.

³⁹ Proposal for Decision, Whaley Boy Inc, pg. 14.

supported by Petitioner's Exhibit 9⁴⁰. The date of April 28, 2023, was located in Petitioner's Exhibit 11, pg. 2, however, was the date was not listed in the allegation because the tag issued on April 28, 2023 was a dealer temporary tag, and not a buyer's temporary tag. On July 30, 2022, buyer's temporary tag # 1041N78 was issued⁴¹; which was listed in Petitioner's Exhibit 9, however, due to the limited RTS retention period the tag was not listed in the RTS report at the time the report was created. Accordingly, footnote 57, should also be modified since tag # 3M4077Y, issued on April 28, 2023, was a dealer tag and uncharged. The recommended change is as follows:

Page 14:

“**April 28, 2023** (name of individual who received the E-Tag was redacted).”

Amended to read:

“**July 30, 2022** (name of individual who received the E-Tag was redacted).”

E. Petitioner requests the addition of buyer's temporary tag # 0300L57 issued on 5/12/2022 to the 2011 Chevrolet. The Department provided notice of tag # 0300L57 in the Department's Notice of Department Decision,⁴² and presented evidence during the hearing of this fact⁴³. Therefore, the recommended amendment is as follows:

Page 14:

...“and that Respondent issued separate E-Tags for the vehicle to for the vehicle to “Murphy” on July 5, 2022, and September 1, 2022.”

Amended to read:

⁴⁰ See Petitioner's Exhibit 9, pg. 2, Line 33.

⁴¹ *Id.*

⁴² Petitioner's Exhibit 5, pg. 2, Allegation 4.

⁴³ See Petitioner's Exhibit 9, pg. 2, Line 3.

...“and that Respondent issued separate E-Tags for the vehicle to for the vehicle to “Murphy” on July 5, 2022, and September 1, 2022, **and the E-Tag Report shows Respondent issued buyer's temporary tag # 0300L57 on May 12, 2022.**”

F. Petitioner requests “Mr. Shultz” be amended to “Mr. Whaley” when referencing the Respondent’s email. The following portion, on Pg. 15, should be amended to include the change to Mr. Whaley.

Page 15:

“Based on this statement, **Mr. Schultz** opined the vehicle had not been in Respondent’s inventory since approximately July 2019”...

Amended to read:

“Based on this statement, **Mr. Whaley** opined the vehicle had not been in Respondent’s inventory since approximately July 2019”...

G. Petitioner requests “Cathy” be amended to “Progressive Casualty Insurance” when referencing the registered owner in the RTS report for the 2017 Jeep. “Cathy” is listed as the previous owner in the RTS Report⁴⁴. However, the current owner is listed as Progressive. The following portion on Pg. 15, should be amended to include the change to Progressive Casualty Insurance:

Page 15:

...“2017 Jeep shows the vehicle had been registered to “**Cathy**” since January 2, 2021”...

Amended to read:

...“2017 Jeep shows the vehicle had been registered to “**Progressive Casualty Insurance**” since January 2, 2021”...

H. Petitioner requests “June 2, 2023” be amended to “June 22, 2023” when referencing the

⁴⁴ See Petitioner’s Exhibit 13, pg 6.

date of the on-site inspection. Investigator Schultz testified during the hearing that the inspection took place on June 22, 2023⁴⁵. The following pages should be amended to include the change to June 22, 2023:

Page 16:

...“Respondent’s dealership during the normal business hours for the facility on **June 2, 2023.**”

Amended to read:

...“Respondent’s dealership during the normal business hours for the facility on **June 22, 2023.**”

Pg 20:

...“he was notified by Mr. Schultz on or about **June 2, 2023.**”

Amended to read:

...“he was notified by Mr. Schultz on or about **June 22, 2023.**”

Finding of Fact 19. Pg. 30:

...“permanent place of business on or about **June 2, 2023**, and regarding the use of and issuance of E-Tags”...

Amended to read:

...“permanent place of business on or about **June 22, 2023**, and regarding the use of and issuance of E-Tags”...

I. Petitioner requests removal of footnote 83. Petitioner requests removal of this footnote since no evidence was presented during the hearing that supports Mr. Whaley paid the \$5 buyer’s temporary tag fee. Mr. Whaley testified to paying inventory tax⁴⁶, which is separate from any buyer’s temporary tag fees that are paid during the registration process of a vehicle. Mr. Schultz did state that at the time a vehicle is registered the \$5 is remitted. There are

⁴⁵ See SOAH Audio Recording from 1:13:30 seconds to 1:14:30.

several vehicles the Respondent issued temporary tags to but never owned, therefore, Respondent would not have remitted a fee for those vehicles.

J. Petitioner requests footnote 88, on pg. 23, be changed from “affective” to “effective.”

Page 23:

...“amended to be **affective** January 1, 2023, 47 Tex. Reg 8745...”

Amended to read:

...“amended to be **effective** January 1, 2023, 47 Tex. Reg 8745...”

K. Petitioner requests “February 2013” be amended to “October 20, 2015” when referencing the date Respondent was issued GDN License P131278.⁴⁷ The following Findings of Fact, para. 1, should be amended, to reflect this change:

Findings of Fact 1. Page 28:

...“ Texas Department of Motor Vehicles (Department) in **February 2013**, and is considered a dealer.”

Amended to read:

...“ Texas Department of Motor Vehicles (Department) on **October 20, 2015**, and is considered a dealer.”

VII. PRAYER

WHEREFORE PREMISES CONSIDERED, Petitioner prays that the ALJ consider and accept these exceptions to revise the PFD as set forth herein.

⁴⁶ See SOAH Audio Recording from 1:46-1:47 and 1:50

⁴⁷ See Petitioner’s Exhibit 1, License Verification. Note: There was contradictory testimony that the licensee held his GDN since February 1, 2015 (see Hearing Audio at 1:48-1:49), however, that appears to be because of Petitioner’s cross-examination question misstating the date during the line of questioning. Petitioner believes the licensee verification (Ex. 1) is the most accurate source since Ex. 1 is certified by licensing department.

Respectfully submitted,

Lorelei Evans

Lorelei E. Evans
Attorney – Enforcement Division

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CERTIFICATE OF SERVICE

I certify that on February 16, 2024, a true and correct copy of this document was served on the following individuals at the locations and the manner indicated below.

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300 West 15th #504
Austin, Texas 78701

**VIA ELECTRONIC FILING, USPS CERTIFIED/
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WHALEY BOY INC., D/B/A WB MOTORS INC.
467 E State Highway 121
Lewisville, Texas 75057-4732
Email: alwhaley777@gmail.com

Lorelei Evans

Lorelei E. Evans
Attorney – Enforcement Division

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Lorelei Evans on behalf of Lorelei Evans
 Bar No. 24078805
 lorelei.evans@txdmv.gov
 Envelope ID: 84625403
 Filing Code Description: Exceptions to PFD
 Filing Description: Petitioner's Exceptions to PFD
 Status as of 2/19/2024 9:31 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Lorelei Evans		lorelei.evans@txdmv.gov	2/16/2024 5:35:14 PM	SENT

Associated Case Party: whaley boy inc

Name	BarNumber	Email	TimestampSubmitted	Status
AL WHALEY		alwhaley777@gmail.com	2/16/2024 5:35:14 PM	SENT

ACCEPTED
608-23-24732 TxDMV Board Meeting eBook
3/12/2024 10:32:41 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

August 8, 2024

FILED
608-23-24732
3/12/2024 10:31:00 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 12, 2024

Texas Department of Motor Vehicles,
Enforcement Division
Lorelei Evans, Staff Attorney

VIA EFILE TEXAS

Whaley Boy Inc
Alejandro Whaley, Owner

VIA EFILE TEXAS

RE: Docket Number 608-23-24732.ENF; *Texas Department of Motor Vehicles v. Whaley Boy Inc*

Dear Parties:

On February 2, 2024, the undersigned Administrative Law Judge issued the Proposal for Decision (PFD) in this case. Exceptions to the PFD were filed by the Texas Department of Motor Vehicles, Enforcement Division (Department) on February 16, 2024. Respondent, Whaley Boy Inc, did not file exceptions to the PFD.

The Department's exceptions raise arguments that were fully considered by the ALJ and discussed in the PFD and are therefore not readdressed here. Thus, the PFD is ready for consideration.

Exceptions Letter

March 12, 2024

Page 2 of 2

ALJ Signature(s):



Meaghan Bailey

Presiding Administrative Law Judge

CC: Service List

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Status as of 3/12/2024 10:33 AM CST

Associated Case Party: whaley boy inc

Name	BarNumber	Email	TimestampSubmitted	Status
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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Texas Department of Motor Vehicles

ENFORCEMENT DIVISION
4000 Jackson Avenue – Austin, Texas 78731
Telephone (512) 465-1366 – FAX (512) 465-5650

July 18, 2024

Docket Clerk
Office of General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731
UDG-OGCContestedCases@txdmv.gov
VIA EMAIL

**RE: IN THE MATTER OF THE LICENSE OF
WHALEY BOY, INC. d/b/a WB MOTORS INC.,
MVD CAUSE NO. 23-0012668.ENF
SOAH DOCKET NO. 608-23-24732.ENF**

Dear Docket Clerk:

Please find the Petitioner, on behalf of the Texas Department of Motor Vehicles (TxDMV), written materials, for presentation at the Board Meeting, scheduled for August 8, 2024. On July 9, 2024, Petitioner previously filed its request to present written and oral presentation at the Board Meeting.

The Petitioner's written materials consist of a proposed final order, which is submitted in accordance with 43 Tex. Admin. Code § 224.198, and formatted according to the provision in § 224.198(d).

Please be advised that all parties have been served a copy of this document on this date in the manner indicated below. Should you have any questions, please contact me at Lorelei.Evans@Txdmv.gov or (512) 465-1366.

Sincerely,

Lorelei Evans

Lorelei Evans
Attorney
Enforcement Division

Encl.
1. Proposed Final Order

CC:

Alejandro Whaley
Whaley Boy Inc., d/b/a

WB Motors Inc.
467 E. State Highway 121
Lewisville, Texas 75057-
4732
alwhaley777@gmail.com
VIA EMAIL

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2024, a true and correct copy of the foregoing Petitioner's enclosed written materials to be submitted at the August 8, 2024 Board Meeting, has been served as follows:

EMAIL

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Texas Department of Motor Vehicles
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Austin, TX 78731
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BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

TEXAS DEPARTMENT OF MOTOR §
VEHICLES, Petitioner §
v. § **SOAH DOCKET NO. 608-23-24732.ENF**
WHALEY BOY INC., D/B/A WB § **MVD CAUSE NO. 23-0012668.EN**
MOTORS INC. §

PETITIONER’S PROPOSED FINAL ORDER

The above-referenced case was brought before the Texas Department of Motor Vehicles Board (Board) on August 8, 2024, in the form of a Proposal for Decision (PFD), dated February 2, 2024, from the State Office of Administrative Hearings (SOAH). The case involves an enforcement action brought by the Texas Department of Motor Vehicles (Department) against Whaley Boy Inc., d/b/a/ WB Motors Inc. (Respondent).

After considering the administrative record, the Board enters this Final Order.

The changes to the PFD in this Final Order are permissible under Texas Government Code §2001.058(e) because:

1. There are technical errors in statements of fact;
2. The Administrative Law Judge (ALJ) did not properly apply or interpret the factors in Texas Occupations Code §2301.651 and Texas Transportation Code §503.038 authorizing the revocation or cancellation of a GDN holder’s license for violating a board rule, failing to maintain the qualifications for a license, and for misusing temporary tags; and

3. The ALJ did not properly apply or interpret the factors in Texas Occupations Code §2301.801 that the Board considers in determining the amount of a civil penalty, including the seriousness of the violation, Respondent's history of previous violations, and the amount necessary to deter a future violation.

In accordance with Texas Government Code §2001.058(e), the specific reasons and legal basis for the Board's changes to the ALJ's Findings of Fact (FOFs) and Conclusions of Law (COLs) are as follows.

Changes Based on Technical Errors in FOFs Nos. 1 and 19:

The Board amends Finding of Fact No. 1 to read:

Whaley Boy Inc. holds General Distinguishing Number (GDN) P131278, a license issued by the Texas Department of Motor Vehicles (Department) on October 20, 2015, and is considered a dealer.

The modification is necessary because the ALJ made a technical error by misstating the month and year the Respondent was issued a GDN as February 2013, rather than October 20, 2015. The ALJ admitted all Petitioner's exhibits, including Petitioner's Exhibit 1, which was the certification of license signed by the Motor Vehicle Division (MVD), verifying Respondent's GDN was issued on October 20, 2015.

The Board amends FOF No. 19 to read:

The Department issued a Second Amended Notice of Department Decision (Notice) dated November 20, 2023. The Notice alleged that Respondent violated statutes and rules relating to a dealer's permanent place of business on or about June 22, 2023, and regarding the use of and issuance of E-Tags from on or about May 2022 through April 2023.

The modification is necessary because the ALJ made technical errors in Finding of Fact No. 19 by misstating two dates. First, the ALJ miscited the issuance date of the Second Amended Notice as “November 27, 2023”, when it was November 20, 2023. Second, the ALJ miscited the date the Department investigator visited Respondent’s dealership as “on or about June 2, 2023”. Walter Schultz, the Department’s investigator, testified at the SOAH hearing that he visited Respondent’s dealership on June 22, 2023, which the ALJ accepted and incorporated into FOF No. 4. The ALJ admitted all Petitioner’s exhibits, including Petitioner’s Exhibit 1, which was the certification of license signed by the Motor Vehicle Division (MVD), verifying Respondent’s GDN was issued on October 20, 2015. The new language for Finding of Fact No. 19 corrects the technical error in the dates to state it accurately as November 20, 2023, for the date of the amended Notice, and June 22, 2023, for the date of inspection.

Changes to COL Nos 9, 10, 11, and 12 Based on Improper Interpretation and Application of Texas Occupations Code §§ 2301.651, 2301.801(a), and Texas Transportation Code § 503.038(a)

The Board rejects COL No. 9.

The Board adds new COL No. 9 to read:

The FOFs and COLs in this PFD provide authorization for the Texas Department of Motor Vehicles Board, in its discretion, to revoke a license or impose civil penalties under Texas Occupations Code §§2301.651, 2301.801, and Texas Transportation Code §503.038(a).

The Board amends Conclusion of Law No. 10 to read:

Respondent should be assessed a civil penalty of \$174,000 for issuing 174 buyer's temporary tags without corresponding vehicle sales.

The Board amends Conclusion of Law No. 11 to read:

Respondent should not be assessed a civil penalty for failing to comply with certain Department premise requirements. Tex. Transp. Code §§ 503.032, .095(a); 43 Tex. Admin. Code § 215.140, as the Department did not request a civil penalty.

The Board amends Conclusion of Law No. 12 to read:

Respondent's GDN license should be revoked.

Analysis of Amendment to COL No. 9

An amendment to COL No. 9 is necessary because the ALJ improperly applied or interpreted Texas Occupations Code §§2301.651, 2301.801, and Texas Transportation Code §503.038(a) in stating that the Staff had failed to meet its burden to justify its proposed revocation of Respondent's \$179,000 penalty and revocation of Respondent's General Distinguishing Number (GDN).

COL 9 is actually a sanction recommendation as are COL Nos. 10, 11, and 12. "The mere labeling

of a recommendation as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation.” *Tex. State Bd. of Dental Exam’rs v. Brown*, 281 S.W.3d 692, 697 (Tex. App.—Corpus Christi—Edinburg 2009, pet. denied) citing to *Granek v. Tex. State Bd. of Med. Exam’rs*, 172 S.W.3d 761, 781 (Tex.App.-Austin 2005, pet. denied). The board is not required to give presumptively binding effect to recommendations regarding sanctions in the same manner as with other findings of fact and conclusions of law. *Id.* In this case, the TxDMV Board, and not the ALJ, is the ultimate decision maker regarding sanctions so long as the Board follows Texas Government Code §2001.058(e) in describing in writing the reasons and legal basis for its changes to the ALJ’s sanction recommendations. See *Tex. State Bd. of Dental Exam’rs v. Brown* at 697, 701-04.

Under Tex. Occ. Code § 2301.651, the Board may revoke a license if the applicant “violates this chapter or a board rule or order” or “fails to maintain the qualifications for a license.” Texas Occupations Code §2301.651(a)(3) and (5). The Board is also authorized to cancel a license, the equivalent of a license revocation, for violations of Texas. Transportation Code § 503.038(a)(7), (12), or (14).¹

In this case, the Department met its burden of proving that Respondent violated premises requirements in Texas Transportation Code §503.032 and 43 Texas Administrative Code §215.140

¹ Transportation Code §503.038(a) authorizes revocation if a licensee “fails to maintain the qualifications for a general distinguishing number,” §503.038 (a)(7); “misuses or allows the misuse of a temporary tag authorized under this chapter;” §503.038 (a)(12); or “otherwise violates this chapter or a rule adopted under this chapter” §503.038 (a)(14).

as shown by FOF Nos. 4 and 5 and COL No.11. GDN license holders are required to comply with the premises requirements in 43 Tex. Administrative Code §215.140 as a requirement of maintaining a GDN license, specifically “a dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license.” 43 Tex. Administrative Code §215.140(a). Therefore, Respondent’s violation of the Department’s premises violations requirements authorizes revocation of Respondent’s license under §2301.651(a)(3) and (a)(5) and cancellation under Transportation Code §503.038(a)(7) and (a)(14).

The Department additionally met its burden of showing that Respondent misused or allowed the misuse of temporary tags as shown by FOF Nos. 13-16 and COL No. 10. Revocation based on misuse of temporary tags is authorized by Occupations Code §2301.651(a)(3) and under Transportation Code §503.038(a)(7) and (a)(12). Therefore, ALJ’s statement that the department did not meet its burden to authorize revocation of Respondent’s license is an incorrect interpretation of Texas Occupations Code §2301.651(a)(3) Transportation Code §503.038(a)(12) and (a)(14).

The ALJ’s stated reasoning that the Staff failed to meet its burden to justify the proposed penalty of \$179,000 is an improper interpretation and application of Texas Occupation Code 2301.801(b), which is explained in the discussion of the amendments to COL No. 10.

Analysis of Amendment to COL No. 10

The modification is necessary because the ALJ did not properly apply or interpret the factors in Texas Occupation Code 2301.801(b), that the Board considers in determining the amount of a civil penalty, including the seriousness of the violation, the economic damage caused to the public by the violations, Respondent's history of previous violations, and the amount necessary to deter a future violation, and any other matter that justice requires.

1. Seriousness of the Violation. Respondent issued 174 temporary buyer's tags without corresponding vehicle sales as shown in Finding of Fact No. 16. The misuse of temporary buyer's tags is a very serious offense, as it breaches the trust that the state puts in a GDN holder when it allows the license access to the state's registration and title system.

2. History of Previous Violations and Amount to Deter Future Violations. Additionally, FOF No. 18, shows Respondent has a history of violating several statutes and rules regulated by the Agency. The ALJ noted in FOF 18 that Respondent's history of prior enforcement actions "represent aggravating factors that should impact the amount of penalties assessed." Respondent has significant enforcement history as evidenced by final orders and agreed orders in 2018, 2021, and 2022, shown in Petitioner's Exhibits 15-17. These orders include violations involving attaching a buyer's temporary tag without a valid state inspection, failure to timely title transfer titles, and failure to comply with the Department's request for records. Respondent was given reduced civil penalties in the agreed order in 2018, conditioned on attending a Dealer Training Seminar. None of these orders were sufficient to deter Respondent from committing the violations found in this case.

3. Any Other Matter that Justice Requires. The Department may consider any other matter that justice requires, including Respondent was told on June 22, 2023 (during the inspection) not to issue more than one buyer's temporary tag for sale, which Respondent acknowledged in an email dated July 5, 2023, to the investigator (Petitioner's Exhibit 18). However, on July 7, 2023, Respondent issued a fifth buyer's temporary tag on the same vehicle to his nephew (ALJ's Analysis, PFD pgs. 16, 22-23, Petitioner's Exhibit 19), a fact for which the Respondent failed to take accountability for during the hearing (PFD on pg. 22).

The Disciplinary Matrix in use at the time of the violations, Exhibit 6, recommends a low sanction of \$1,000 per misuse of a buyer's temporary tag. Tex. Occ. Code § 2301.801(a) gives authority to assess civil penalties of up to \$10,000 per violation. In this case, the Board recommends a strong sanction that falls on the lower limits of the Disciplinary Matrix to reflect the seriousness of the temporary tag misuse and that accounts for Respondent's history of enforcement actions. Therefore, the appropriate sanction is \$174,000.

Analysis of Amendment to COL No. 11

The modification is necessary because the ALJ misapplied the law. The ALJ cited Texas Transportation Code § 503.000(a)(2) in support of their recommendation, but this provision does not exist nor appear in the Transportation Code. As discussed in detail in the section discussing COL No. 9, the premises violations cited in COL No. 11 authorize revocation under Code Texas Occupations Code §§ 2301.651(a)(3) and (5) and Texas Transportation Code §§ 503.038(a)(7) and (12). The premises violations also authorize a civil penalty under Texas Occupations Code

§2307.801(b), although the Board is not seeking a penalty in this case. The amendment clarifies that although a civil penalty is not being sought for the premises violation, the Board is seeking a penalty in the form of a revocation. The ALJ's conclusion that Respondent should not be assessed any penalty for violating premises requirements is not supported by any analysis and misinterprets the rules and statutes.

Analysis of Amendment to COL No. 12.

The basis for the amendment to COL No. 12 is also discussed at length in the explanation of the changes to COL No. 9. The amendment to COL No. 12 is necessary because the ALJ did not properly apply or interpret the factors in Texas Occupations Code §§2301.651(a)(3) and (a)(5) and Transportation Code §§503.038(a)(7), (a)(12) and (a)(14).

It is uncontested that the Dealer has failed to meet the basic premise requirements necessary to hold and maintain a GDN (FOF Nos. 4 and 5). Respondent presented no evidence that the premise violations have been cured as they relate to Finding of Fact 4(a). Respondent has an obligation under Occupations Code § 2301.263, to conform to new board rules and laws that take effect during the term of the license, therefore, Respondent was required to meet the premise requirements under 43 Tex. Admin. Code § 215.140(5)(H)(i), effective January 1, 2023. A suspension is not an appropriate recommendation when the underlying premise violations remain uncured. On the date of the hearing, Respondent had almost an entire year to come into compliance with the new premise requirements, but according to the evidence in this record, had not. Therefore, a suspension is not appropriate under these circumstances. Revocation for the

premises violations is clearly authorized by §§2301.651(a)(3) and (a)(5) and Transportation Code §§503.038(a)(7), (a)(12) and (a)(14) and is the proper sanction for Respondent's violations.

Additionally, as an aggravating factor, Respondent has a history of prior enforcement actions that were insufficient in deterring the violations in this case. The Board believes that suspension will not be a sufficient deterrent to further violations by Respondent and that revocation is required.

Respondent's misuse of 174 temporary tags is a serious violation. Misuse of temporary buyer's tags breaches the trust that the state puts in a GDN holder when it allows the license access to the state's registration and title system. In the past, the Department has revoked GDNs of Respondents based on improperly issuing buyers tags: *Jay Enterprises Inc.* 1,649 improperly issued buyers tags (10/26/21), *LVB Automotive* 2,700 improperly issued temporary tags (10/26/22), and *NJIM Group Inc.*, 347 improperly issued buyers tags (10/16/23). Respondent's improper issuance of 174 temporary authorizes revocation under Texas Occupations Code §2301.651(a)(3), and Texas Transportation Code §§503.038(a)(12) and (a)(14).

ACCORDINGLY, IT IS ORDERED:

1. Findings of Fact 2-18 and 20-21, and Conclusions of Law 1-8, are adopted as set forth in the PFD dated February 2, 2024.
2. Finding of Fact No. 1 as set forth in the PFD is amended as stated above in this Final Order.
3. Finding of Fact No. 19 as set forth in the PFD is amended as stated above in this Final Order.

4. Conclusion of Law No. 9 as set forth in the PFD is amended as stated above in this Final Order.
5. Conclusion of Law No. 10 as set forth in the PFD is amended as stated above in this Final Order.
6. Conclusion of Law No. 11 as set forth in the PFD is amended as stated above in this Final Order.
7. Conclusion of Law No. 12 as set forth in the PFD is amended as stated above in this Final Order.
8. Respondent's General Distinguishing Number license is revoked.
9. Respondent is assessed a penalty of \$174,000.
10. Any other motions, requests for entry of specific findings of fact or conclusions of law, exceptions, objections, and requests for general or specific relief by the parties to this contested case, if not expressly granted herein, are hereby denied.

Date: _____

Charles Bacarisse, Chair

Board of the Texas Department of Motor Vehicles

To: Texas Department of Motor Vehicles Board
From: Corrie Thompson, Director, Enforcement Division
Agenda Item: 7
Subject: Chapter 223, Compliance and Investigations Division
Amendments: Amendments: §§223.1, 223.2, and 223.3
New: §223.5
Repeal: Subchapter B
(Relating to Cleanup)

RECOMMENDATION

Action Item. Adopt new §223.5, and amendments to and repeal of sections in 43 Texas Administrative Code (TAC) Chapter 223.

PURPOSE AND EXECUTIVE SUMMARY

The department conducted a review of its rules under Chapter 223 in compliance with Government Code, §2001.039. New §223.5, the amendments and the repeal are necessary to clean up the language in Chapter 223.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

The amendments to Chapter 223 are necessary to do the following:

1. bring the department's rules into alignment with statute;
2. remove language that is redundant with statute;
3. cite to statutory authority when helpful;
4. clarify existing requirements;
5. modernize language;
6. improve readability through the use of consistent terminology;
7. clarify or delete unused, archaic, or inaccurate definitions, terms and references;
8. re-letter subdivisions in Chapter 223 due to deletions and repeals; and
9. describe the department's methods and procedures, including its process for external risk monitoring regarding the department's external users of the Registration and Title System (RTS).

New §223.5 would replace Subchapter B, §223.101, which is being repealed.

COMMENTS

The department received no written comments.

If the board adopts new §223.5, the amendments and the repeal during its August 8, 2024, open meeting, staff anticipates:

- Publication in the August 23, 2024, issue of the *Texas Register*; and
- An effective date of August 29, 2024.

1 **REASONED JUSTIFICATION.**

2 An adopted amendment changes the title to Chapter 223 to "Compliance and Investigations" by
3 deleting the word "Division." In August of 2021, the department's Compliance and Investigations Division
4 disbanded and became a part of the department's Enforcement Division.

5 Subchapter A. Fraud, Waste, or Abuse

6 The adopted amendments to §223.1 clarify the purpose and scope of Chapter 223 and expand the
7 scope of Subchapter A to include new §223.5 to replace §223.101, which is adopted for repeal. Section
8 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected
9 fraud, waste or abuse relating to vehicle registration or titling; however, the deputies report suspected
10 fraud, waste or abuse to the county tax assessor-collector, who then reports it to the department. An
11 adopted amendment to §223.1 also deletes subsection (b) because amended subsection (a) includes the
12 necessary language regarding the purpose and scope of Subchapter A.

13 The department adopts amendments to §223.2(b) to remove the definitions of "CID" and
14 "Director" because both refer to the Compliance and Investigations Division, which has been disbanded
15 and reorganized within the department's Enforcement Division. An adopted amendment to the definition
16 of "county tax assessor-collector" in §223.2(b) clarifies the definition by referring to the person who serves
17 as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas Constitution. An
18 adopted amendment to the definition of "deputy" in §223.2(b) clarifies that Chapter 217 is in Title 43.
19 The adopted amendment to the definition of "RTS" in §223.2(b) replaces the words "Texas Department
20 of Motor Vehicle's" with the word "department's" because the word "department" is defined in
21 Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in Transportation

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Chapter 223 – Compliance and Investigations Division

1 Code, Chapter 501 have the same meaning when used in Chapter 223, with certain exceptions. Adopted
2 amendments to §223.2(b) also renumber the paragraphs due to deletions.

3 Adopted amendments to §223.3(a) and (c) delete the words "motor vehicle" from the term
4 "motor vehicle dealer" because the word "dealer" is defined in Transportation Code, Chapter 501, but the
5 term "motor vehicle dealer" is not defined in Chapter 501. The department adopts amendments to §223.3
6 to replace the acronym "CID" with the word "department" to reflect the reorganization within the
7 department. The department adopts amendments to §223.3(a) - (c) to remove the words "and possible
8 investigation" as being unnecessary. In addition to improving readability, adopted amendments to
9 §223.3(b) clarify and specify the information that must be included in the detailed narrative that a county
10 tax assessor-collector must submit as part of a request to the department to review suspected fraud,
11 waste, or abuse. The department adopts §223.3(b)(2)(B)(iv) with a change at adoption to add the word
12 "and" to clarify that a detailed narrative must include the information in clauses (i) through (v) at a
13 minimum. The department adopts an amendment to §223.3(c) to add the word "possible" to be
14 consistent with subsection (a), which includes the word "possible" when referring to suspected fraud,
15 waste, or abuse. An adopted amendment to §223.3(c) also deletes an unnecessary comma. Adopted
16 amendments to §223.3(d) improve readability by using consistent terminology and removing unnecessary
17 language.

18 Simultaneously with the adopted repeal of Subchapter B, §223.101, the department adopts new
19 §223.5, which rewrites, reorganizes, clarifies and specifies the department's external risk-based
20 monitoring system required by Transportation Code, §520.004(4). Adopted new §223.5 subjects all Texas
21 county tax assessor-collectors, their contractors' staff, and their deputies, which are external RTS users, to
22 periodic examination to determine whether to assign the RTS user a classification of priority or non-
23 priority. Based on the examination, the department will classify each county tax assessor-collector, each

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Chapter 223 – Compliance and Investigations Division

1 of their contractors' staff, and each deputy as priority or non-priority for the purposes of prioritizing
2 reviews to determine whether there is evidence of fraud by a county tax assessor-collector, their
3 contractors' staff, or a deputy. This classification system will allow the department to determine how to
4 use its limited resources most efficiently to investigate and prevent fraud. The department adopts new
5 §223.5 with changes at adoption to change the word "contractor's" to "contractors" because a county
6 tax assessor-collector may have more than one contractor.

7 Adopted new §223.5(a) sets out the factors the department considers in classifying a county tax
8 assessor-collector, their contractors' staff, or deputy as a priority or non-priority. These adopted factors
9 reflect the department's current practices in assessing whether to investigate a particular county tax
10 assessor-collector, their contractors' staff, or deputy.

11 Adopted new §223.5(b) documents the department's goal that each county tax assessor-collector,
12 each of their contractors' staff, or each deputy who is classified as a priority will be reviewed at least once
13 per year; and if classified as a non-priority, a county tax assessor-collector, their contractors' staff person,
14 or deputy will be reviewed at least once every two years. This goal creates predictability for the
15 department, county tax assessor-collectors, their contractors' staff, and deputies; ensures that all county
16 tax assessor-collectors, their contractors' staff, and deputies are reviewed regularly; and allows the
17 department to prioritize its limited resources toward higher-priority reviews.

18 The department adopts new §223.5(c) with changes at adoption to substitute semicolons for
19 some of the commas for clarity, and to modify language in the last clause to indicate that examinations
20 could be a combination of the options, which could be more than two options. Adopted new §223.5(c)
21 specifies that the examinations under this section may be virtual, on premises at the county tax assessor-
22 collector's, their contractors' staff person's, or deputy's location, or a combination of these options.

1 Allowing virtual examinations will save the department resources and will be more convenient for county
2 tax assessor-collectors.

3 Adopted new §223.5(d) provides that the department may notify the county tax assessor-
4 collector of possible fraudulent activity in the county tax assessor-collector's office when the department
5 is authorized by law enforcement. This language clarifies the limitations on the department's ability to
6 update a county tax assessor-collector about a department investigation of their office.

7

8 Subchapter B. Risk-Based Monitoring and Preventing Fraudulent Activity

9 The department adopts the repeal of Subchapter B, including §223.101 because the risk-based
10 system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls
11 within the scope of Subchapter A, which is titled "Fraud, Waste, or Abuse." Also, the definitions in §223.2
12 apply to the entire Chapter 223, even though Section 223.2 is contained in Subchapter A. Simultaneously
13 with the repeal of Subchapter B and §223.101, the department adopts new §223.5, which rewrites,
14 reorganizes, clarifies and specifies the department's external risk-based system of monitoring and
15 preventing fraudulent activity relating to vehicle registration and titling.

16 **SUMMARY OF COMMENTS.**

17 The department received no comments.

1 **SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

2 **43 TAC §§223.1, 223.2, 223.3 and 223.5**

3 **STATUTORY AUTHORITY.** The amendments and new section are adopted under Transportation Code,
4 §520.004, which requires the department by rule to establish a risk-based system of monitoring and
5 preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate
6 resources and personnel; Transportation Code, §520.010, which authorizes the department to perform
7 an audit and investigation related to registration and titling services; and Transportation Code, §1002.001,
8 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
9 that are necessary and appropriate to implement the powers and the duties of the department.

10 **CROSS REFERENCE TO STATUTE.** The adopted amendments and new section would implement
11 Transportation Code, §§520.004, 520.010 and 1002.001.

12

13 **CHAPTER 223 - COMPLIANCE AND INVESTIGATIONS [~~DIVISION~~]**

14 Text.

15 §223.1. Purpose and Scope.

16 [~~(a)~~] The purpose of this subchapter is to establish the following:

17 (1) procedures for county tax assessor-collectors and deputies to report suspected fraud, waste,
18 or abuse to the department relating to vehicle registration or titling; and[-]

19 (2) a risk-based monitoring system for the department to monitor county tax assessor-collectors
20 and their deputies who use RTS.

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Chapter 223 – Compliance and Investigations Division

1 ~~[(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax~~
2 ~~assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas~~
3 ~~Department of Motor Vehicles.]~~

4

5 §223.2. Definitions.

6 (a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning
7 when used in this chapter, except as otherwise provided by this chapter, unless the context clearly
8 indicates otherwise.

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

11 ~~[(1) CID--the Compliance and Investigations Division of the Texas Department of Motor~~
12 ~~Vehicles.]~~

13 (1) [(2)] County tax assessor-collector--the person who serves as the assessor-collector
14 of taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as [includes] an
15 employee of a county tax assessor-collector.

16 (2) [(3)] Deputy--a full service deputy under Chapter 217, Subchapter H of this title
17 (relating to Vehicle Titles and Registration).

18 ~~[(4) Director--the director of the Compliance and Investigations Division.]~~

19 (3) [(5)] RTS--the department's [Texas Department of Motor Vehicle's] registration and
20 title system.

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Chapter 223 – Compliance and Investigations Division

1

2 §223.3. Submission of Request.

3 (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee,
4 ~~[motor vehicle]~~ dealer, deputy, or any person transacting motor vehicle-related business for or with the
5 county may submit a request to the department ~~[CID]~~ for review ~~[and possible investigation]~~. The
6 department ~~[CID]~~ may forward a submission to an appropriate law enforcement entity.

7 (b) To submit a request to the department ~~[CID]~~ for review ~~[and possible investigation]~~, the
8 county tax assessor-collector must:

9 (1) request a rejection of the suspected transaction through a department regional
10 service center; and

11 (2) mail or e-mail the following documents and information, as applicable, to the
12 department ~~[CID]~~ in an envelope or e-mail message marked "Red Flag":

13 (A) the original transaction;

14 (B) a detailed narrative, including:

15 (i) the name of a contact person with the county tax assessor-collector,
16 including email address and phone number;

17 (ii) the name of the employee submitting the request ~~[transaction to the~~
18 ~~CID]~~;

19 (iii) a statement as to why the transaction is suspect ~~[was flagged]~~;

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Chapter 223 – Compliance and Investigations Division

1 (iv) information about the employee or deputy [~~if the employee or~~
2 ~~deputy is~~] suspected of committing fraud, waste, or abuse; and

3 (v) any statements made by the customer submitting the suspect
4 transaction;

5 (C) any available video surveillance footage; and

6 (D) any other relevant evidence or information pertaining to the transaction.

7 (c) If a deputy suspects possible fraud, waste, or abuse[;] by an employee, [~~motor vehicle~~]
8 dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must
9 report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-
10 collector may then submit a request to the department [~~CID~~] for review [~~and possible investigation~~] in
11 accordance with subsection (b) of this section.

12 (d) If the department [~~CID~~] determines it will not open [~~conduct~~] an investigation after reviewing
13 a submitted request [~~submitted by a county tax assessor-collector~~], the department [~~CID~~] will notify
14 [~~provide a notification to~~] the submitting county tax assessor-collector.

15

16 §223.5. External Risk-Based Monitoring System.

17 (a) All county tax assessor-collectors, their contractors' staff, and the deputies who use RTS are
18 subject to periodic examination by the department. As a result of the examination, the department will
19 classify each county tax assessor-collector, each of their contractors' staff, and each deputy as priority or
20 non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by
21 the county tax assessor-collector, their contractors' staff, or a deputy. In classifying a county tax

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Chapter 223 – Compliance and Investigations Division

1 assessor-collector, their contractors' staff, or a deputy, the department may consider factors, including,

2 but not limited to:

3 (1) referrals or complaints received from partner state agencies;

4 (2) referrals or complaints received from public safety agencies;

5 (3) the retirement, resignation, or impeachment of the county tax assessor-collector;

6 (4) a contingency that disrupted county motor vehicle title and registration operations,

7 such as a natural disaster or the theft or the burglary of a county tax assessor-collector's premises;

8 (5) previous compliance review designations;

9 (6) previous instances of non-compliance; and

10 (7) a complaint filed through an internal reporting mechanism, such as a Red Flag

11 referral, telephone call, or an email received by the department's Consumer Relations Division (CRD), or

12 any other means of communication with the department.

13 (b) It is the department's goal to review each county tax assessor-collector, each of their

14 contractors' staff, and each deputy as follows:

15 (1) if the county tax assessor-collector, their contractors' staff person, or deputy is

16 classified as a priority, they will be reviewed at least once per year; or

17 (2) if the county tax assessor-collector, their contractors' staff person, or deputy is

18 classified as a non-priority, they will be reviewed at least once every two years.

19 (c) Examinations under this section may be virtual; on premises at the county tax assessor-

20 collector's, their contractors' staff person's, or deputy's location; or some combination of these options.

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Chapter 223 – Compliance and Investigations Division

- 1 ~~[(1) establishing a risk-based system of monitoring counties and their contractors,~~
2 ~~including procedures to notify county tax assessor-collectors concerning routine and periodic review and~~
3 ~~disclosure procedures concerning possible fraudulent activity;]~~
- 4 ~~[(2) developing criteria to determine varying risk levels for the department's fraud~~
5 ~~monitoring functions to strategically allocate resources and personnel;]~~
- 6 ~~[(3) reviewing the department's methods for collecting and evaluating related~~
7 ~~information, including the viability of incorporating more remote transaction review practices to~~
8 ~~supplement periodic, but less frequent, on-site visits to counties;]~~
- 9 ~~[(4) notifying a tax assessor-collector of possible fraudulent activity in the tax assessor-~~
10 ~~collector's office as authorized by law enforcement; and]~~
- 11 ~~[(5) developing and providing training to fraud investigations staff.]~~

Board Meeting Date: 8/8/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 8
Subject: Rule Review Adoption under Government Code, §2001.039: Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division

RECOMMENDATION

Action Item. Approval to publish the notice of readoption of 43 Texas Administrative Code (TAC) Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division in the *Texas Register*. The department has determined that the reasons for initially adopting the rules in 43 TAC Chapters 208 and 223 continue to exist.

PURPOSE AND EXECUTIVE SUMMARY

The department conducted a review of 43 TAC Chapters 208 and 223 in compliance with Government Code §2001.039.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Government Code §2001.039 requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules.

The notice of the department's intention to review was published in the *Texas Register* on April 26, 2024. The comment period closed on May 28, 2024. No comments were received on the rule review.

As a result of the review, the department identified necessary amendments and repeals in 43 TAC Chapter 223. Those amendments and repeals are also presented to the board at this meeting for consideration to adopt. No amendments were made to 43 TAC Chapter 208.

TITLE 43. TRANSPORTATION

Adopted Rule Review

Part 10. Texas Department of Motor Vehicles

Chapter 208 – Employment Practices

Chapter 223 – Compliance and Investigations Division

The Texas Department of Motor Vehicles (department) files this notice of readoption of Title 43 Texas Administrative Code (TAC), Part 10, Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division, that was published in the *Texas Register*. The review was conducted pursuant to Government Code, §2001.039.

Notice of the department's intention to review was published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2790). The department did not receive any comments on the rule review.

As a result of the review, the department readopts Chapter 208 in accordance with the requirements of Government Code, §2001.039, with no amendments. The department has determined that the reasons for initially adopting the readopted rules continue to exist.

As a result of the review, the department readopts Chapter 223 with amendments, in accordance with the requirements of Government Code, §2001.039. The department has determined that the reasons for initially adopting the readopted rules continue to exist. In this issue of the *Texas Register*, the department adopts amendments and a repeal in Chapter 223 resulting from the rule review.

This concludes the review of Chapter 208, Employment Practices and Chapter 223, Compliance and Investigations Division.

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 9
Subject: Rule Review Proposal under Government Code, §2001.039: Chapter 218, Motor Carriers

RECOMMENDATION

Action Item. Approval to publish the proposed rule review in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The department proposes to review 43 Texas Administrative Code (TAC), Chapter 218, Motor Carriers. This review is being conducted under Texas Government Code, §2001.039.

FINANCIAL IMPACT

There will be no significant fiscal implications due to the proposed amendments and repeal.

BACKGROUND AND DISCUSSION

Texas Government Code §2001.039 requires the department to review and consider for readoption each of its rules every four years. The department has not reviewed or readopted 43 TAC, Chapter 218 since 2015.

The Texas Government Code requires the department to determine through the rule review whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Necessary repeals and amendments identified during the review of these rules will be presented to the board separately for proposal and publication in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Texas Administrative Code, Chapter 218 covers motor carriers.

TITLE 43. TRANSPORTATION

Proposed Rule Review

Part 10. Texas Department of Motor Vehicles

Chapters 218 – Motor Carriers

Intention to Review

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 218, Motor Carriers. This review is being conducted pursuant to Government Code, §2001.039.

The board of the Texas Department of Motor Vehicles will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. CDT on XX XX, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Proposed changes to sections of Chapter 218 are published in the Proposed Rules section of this issue of the *Texas Register* and are open for a 30-day public comment period.

Board Meeting Date: 8/8/2024
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Aline Aucoin, Associate General Counsel
Agenda Item: 10
Subject: Advisory Committee Recommendations: Motor Carrier Regulation Advisory Committee (MCRAC)

RECOMMENDATION

Briefing Only. That the Texas Department of Motor Vehicles Board (board) consider advisory committee recommendations for amendments to 43 Texas Administrative Code (TAC) §218.13.

PURPOSE AND EXECUTIVE SUMMARY

The board is required to consider the written recommendations submitted by an advisory committee regarding proposed amendments to the department's administrative rules.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

On December 5, 2023, the Motor Carrier Regulation Advisory Committee (MCRAC) held a meeting to review and discuss potential amendments to 43 TAC §218.13 and §218.14 as requested by the department. MCRAC made recommendations for amendments to 43 TAC §218.13.

MCRAC was created to make recommendations to the board or the department's executive director on topics related to motor carrier registration and motor carrier regulation. Under 43 TAC §206.93(h), recommendations of an advisory committee are required to be reported to the board at a board meeting prior to board action on issues related to the recommendations. The board is required to consider the written recommendations submitted by an advisory committee regarding the department's administrative rules under 43 TAC §206.93(i).

Although MCRAC recommended the deletion of proposed new §218.13(a)(3)(E), the department modified the language to strike a balance between addressing the concerns of MCRAC and enabling the department to request necessary information to help detect and prevent chameleon carriers. A chameleon carrier is a motor carrier that attempts to continue operating under a certificate of registration without addressing a previous penalty, violation of a legal requirement, or order regarding violation of a legal requirement under a different certificate of registration. There are two types of chameleon carriers: 1) a motor carrier that applies to the department for a new certificate of registration to continue to operate as a motor carrier under a different person's name or a different legal entity; and 2) a motor carrier that already has more than one certificate of registration under different names or legal entities.

The department made changes to proposed new §218.13(a)(3)(B) and (C) as recommended by MCRAC.

The board will consider proposed amendments to §218.13 under Item 11 of the board's agenda.

Motor Carrier Regulation Advisory Committee (MCRAC) Recommendations to TxDMV Board

Impacted Section	Recommended Change to Chapter 218, Motor Carriers
§218.13	Strike (a)(3)(E): [The name, social security number or Individual Taxpayer Identification Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of birth, and address [home or business?] for each person who serves or will serve as the applicant's manager, operator, or representative who oversees the applicant's business activities.]
§218.13	Modify (a)(3)(B) and (C) to require applicants to provide an individual's business address, rather than their home address.

Board Meeting Date: 8/8/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Jimmy Archer, Motor Carrier Division Director
Agenda Item: 11
Subject: Chapter 218, Motor Carriers
Amendments: Subchapters A, B, C, D, E, F and G
Repeal: §218.58
(Relating to Cleanup)

RECOMMENDATION

Action Item. Approval to publish the proposed amendments and repeal in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The department is conducting a review of its rules under 43 Texas Administrative Code (TAC) Chapter 218 in compliance with Government Code, §2001.039. The proposed amendments and repeal would clean up the language in Chapter 218.

FINANCIAL IMPACT

There will be no significant fiscal implications due to the proposed amendments and repeal.

BACKGROUND AND DISCUSSION

The proposed amendments are necessary to do the following:

1. require new applicants for operating authority to provide the department with more information and documents, so the department can detect and prevent chameleon carriers¹;
2. make the rules consistent with the department's current processes;
3. make the rules consistent with current law;
4. delete language for which the department does not have rulemaking authority;
5. clarify language;
6. delete unnecessary language; and
7. otherwise clean up the rule text.

The proposed repeal is necessary to delete language for which the department does not have rulemaking authority.

¹ A chameleon carrier is a motor carrier that attempts to continue operating under a certificate of registration without addressing a previous penalty, violation of a legal requirement, or order regarding violation of a legal requirement under a different certificate of registration. There are two types of chameleon carriers: 1) a motor carrier that applies to the department for a new certificate of registration to continue to operate as a motor carrier under a different person's name or a different legal entity; and 2) a motor carrier that already has more than one certificate of registration under different names or legal entities.

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PROPOSAL OF REVISIONS TO

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, AND 218.18

SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.31 AND §218.32

SUBCHAPTER D. MOTOR TRANSPORTATION BROKERS

43 TAC §218.41

SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62, 218.64, AND 218.65

SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS

43 TAC §218.72

SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES

43 TAC §218.80 AND §218.82

REPEAL OF

SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §218.58

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend sections in 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §218.2; Subchapter B, Motor Carrier Registration, 43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, and 218.18; Subchapter C, Records

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Chapter 218 – Motor Carriers

1 and Inspections, 43 TAC §218.31 and §218.32; Subchapter D, Motor Transportation Brokers, 43 TAC
2 §218.41; Subchapter E, Consumer Protection, 43 TAC §§218.53, 218.54, 218.56, 218.57, 218.61, 218.62,
3 218.64, and 218.65; Subchapter F, Administrative Penalties and Sanctions, 43 TAC §218.72; and
4 Subchapter G, Financial Responsibility for Foreign Commercial Motor Vehicles, 43 TAC §218.80 and
5 §218.82. These amendments are necessary to require the applicants for operating authority under
6 Chapter 218 and Transportation Code, Chapter 643 to provide the department with more information and
7 documents, so the department can detect and prevent chameleon carriers; make the rules consistent
8 with the department’s current processes; make the rules consistent with current law (both Texas law and
9 applicable federal law) by amending or deleting rule text; delete language for which the department does
10 not have rulemaking authority; clarify language; delete unnecessary language; and otherwise clean up the
11 rule text. In conjunction with this proposal, the department is proposing the repeal of §218.58, concerning
12 options for household goods carrier limitation of liability in the moving services contract, which is also
13 published in this issue of the *Texas Register*.

14 EXPLANATION.

15 Subchapter A. General Provisions.

16 A proposed amendment to §218.2 would add a new subsection (a) and create a new subsection
17 (b) for the defined terms. Proposed new subsection (a) would add language stating that the definitions
18 contained in Transportation Code, Chapter 643 apply to Chapter 218 and that the definitions contained
19 in Chapter 643 govern in the event of a conflict with Chapter 218, except for the definition of the word
20 “director” in §218.2. To the extent that the terms used in Chapter 218 are already defined in
21 Transportation Code, Chapter 643, there is no need to duplicate the definitions in Chapter 218. As a result,
22 proposed amendments to §218.2 would delete the following definitions because the terms are already

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Chapter 218 – Motor Carriers

1 defined in Transportation Code, Chapter 643: “commercial school bus,” which is defined in Transportation
2 Code, §643.1015; “department”; “household goods”; and “insurer.”

3 However, the definition for the word “director” presents an exception: Transportation Code,
4 §643.001(2) defines “director” as the executive director of the department or an employee of the
5 department who is a division or special office director or holds a higher rank and is designated by the
6 director, but the department’s executive director designated the director of the department’s Motor
7 Carrier Division to perform the functions of the director under Chapter 218 and Transportation Code,
8 Chapter 643. Therefore, a separate definition for “director” is necessary in §218.2. A proposed
9 amendment to the word “director” would clarify that the department’s executive director designated the
10 director of the Motor Carrier Division as the director under Transportation Code, §643.001(2).

11 A proposed amendment to the definition for “advertisement” in proposed §218.2(b)(1) would
12 replace the word “on-line” with the word “online” to be consistent with current terminology. A proposed
13 amendment to the definition for “binding proposal” in proposed §218.2(b)(3) would delete the word
14 “formal” because the word is not clear and is not necessary for the definition. Proposed amendments to the
15 definition for “commercial motor vehicle” in proposed §218.2(b)(8) would incorporate the definition of the
16 term in Transportation Code, §548.001 and would delete the current definition, including the language
17 regarding a commercial enterprise. This proposed amendment is necessary to align with statute: neither
18 Transportation Code, §548.001 nor Transportation Code, §643.051(a) define a commercial motor vehicle to
19 require the vehicle to be used in furtherance of a commercial enterprise. Only Transportation Code, §643.051(b)
20 §643.051(b) refers to compensation; however, that requirement only applies to household goods carriers
21 that transport household goods, regardless of the size of the vehicle. Transportation Code, §643.051(a) states
22 that the term “commercial motor vehicle” is defined in Transportation Code, §548.001.

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Chapter 218 – Motor Carriers

1 Proposed amendments to the definition for “commercial motor vehicle” in proposed §218.2(b)(8)
2 would also delete the letter for subparagraph (B) due to the proposed deletion of subparagraph (A), add
3 language to create a full sentence regarding the exclusions from the definition for “commercial motor
4 vehicle,” and replace existing clause numbers (i) through (vi) with subparagraph letters (A) through (F) to
5 provide the correct rule structure under 1 TAC §91.33. In addition, a proposed amendment to the
6 definition for “commercial motor vehicle” in proposed §218.2(b)(8)(A) would change the word “and” to
7 “or” regarding a farm vehicle to be consistent with Transportation Code, §548.001. Although a proposed
8 amendment to the definition for “commercial motor vehicle” in proposed §218.2(b)(8) would refer to the
9 definition found in Transportation Code, §548.001, it is helpful to clarify the language regarding a farm
10 vehicle because the language in §548.001 has caused confusion in the past. A proposed amendment to
11 the definition for “commercial motor vehicle” in proposed §218.2(b)(8)(B) would reword the exception to
12 apply to a single cotton vehicle to be consistent with Transportation Code, §643.002(2) and proposed
13 §218.2(b)(8), which contain the exemptions from Transportation Code, Chapter 643. A proposed
14 amendment to the definition for “commercial motor vehicle” in proposed §218.2(b)(8)(F) would delete
15 language that requires a tow truck to be permitted under Occupations Code, Chapter 2308, Subchapter C
16 to be consistent with the language in Transportation Code, §643.002(7) regarding exemptions from
17 Transportation Code, Chapter 643.

18 A proposed amendment to the definition for the word “conversion” in proposed §218.2(b)(10)
19 would delete the word “and” in the title to the Business Organizations Code because the word “and” does
20 not appear in the name of this code. A proposed amendment to current §218.2(14) would delete the
21 definition for the word “division” because the definition is not necessary. A proposed amendment to
22 §218.14 would change the word “division’s” to “Motor Carrier Division’s,” so the word “division” would
23 not be used in Chapter 218, except for references that indicate a particular division. These amendments

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Chapter 218 – Motor Carriers

1 provide clarity because Chapter 218 contains references to the department’s Motor Carrier Division and
2 the department’s Enforcement Division.

3 Proposed amendments to the definition for “farmer” and “farm vehicle” in proposed
4 §218.2(b)(13) and (14) would make the definitions consistent with the definitions in 49 C.F.R. §390.5T
5 because Transportation Code, §548.001 says the term “farm vehicle” has the meaning assigned by the
6 federal motor carrier safety regulations assigned by Transportation Code, §644.001. The term “farm
7 vehicle” appears in the definition of “commercial motor vehicle,” and Transportation Code, §643.051(a)
8 says that the term “commercial motor vehicle” is defined in Transportation Code, §548.001. For this
9 reason, the term “farm vehicle,” which is found and defined in Transportation Code, §548.001, appears
10 in the definition for “commercial motor vehicle” in proposed §218.2(b), in addition to the definition for
11 “farmer” from 49 C.F.R. §390.5T to help define the term “farm vehicle.”

12 A proposed amendment to the definition for “foreign commercial motor vehicle” in proposed
13 §218.2(b)(16) would replace the definition with a reference to the definition found in Transportation
14 Code, §648.001, which contains the complete definition. A proposed amendment to the definition for
15 “household goods carrier” in proposed §218.2(b)(19) would delete the clause regarding a commercial
16 enterprise to align with statute because that clause does not appear in Transportation Code, §643.051(b).

17 Although Transportation Code, §643.001 defines the term “motor carrier,” §643.001 does not
18 define the term “carrier.” Current §218.2(28) includes the same definition for the terms “motor carrier”
19 and “carrier.” For this reason, a proposed amendment would modify the definition for “motor carrier or
20 carrier” in proposed §218.2(b)(23) to refer to the definition in Transportation Code, §643.001(6), rather
21 than deleting the defined terms. A proposed amendment to the definition for “motor transportation
22 broker” in proposed §218.2(b)(24) would refer to the definition in Transportation Code, §646.001 because
23 it is not necessary to duplicate statutory language in a rule.

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Chapter 218 – Motor Carriers

1 A proposed amendment to proposed §218.2(b)(28) would change the term “principal place of
2 business” to “principal business address” to use the same term that is used in Transportation Code,
3 §643.052(1). A proposed amendment to current §218.2(36) would delete the definition for “reasonable
4 dispatch” because the term only appears in §218.58, which is proposed to be repealed. A proposed
5 amendment to current §218.2(41) would delete the definition for “SOAH” because the acronym does not
6 appear in Chapter 218. Proposed amendments to §218.2 would renumber the definitions due to proposed
7 amendments that would delete definitions.

8 Subchapter B. Motor Carrier Registration.

9 A proposed amendment to §218.10 would delete the first sentence because it is not necessary to
10 repeat language from Transportation Code, §643.051 and §643.002. A proposed amendment to §218.10
11 would also modify the language regarding a household goods carrier because “household goods carrier”
12 is a defined term under §218.2. In addition, a proposed amendment to §218.10 would clarify the language
13 to state that a motor carrier, leasing business, or household goods carrier registers with the department.
14 Lastly, a proposed amendment to §218.10 would delete the reference to workers’ compensation because
15 Subchapter B of Chapter 218 does not set out the minimum workers’ compensation insurance
16 requirements.

17 Proposed amendments to §218.11 would replace the term “the public roads or highways” with
18 “a public highway,” which is a defined term in §218.2.

19 Many of the proposed amendments to §218.13 and §218.14 were presented to the Motor Carrier
20 Regulation Advisory Committee (MCRAC) for review and feedback at the MCRAC meeting in December
21 2023. The focus of the MCRAC meeting was to discuss the proposed amendments to §218.13 and §218.14
22 to detect and prevent chameleon motor carriers (chameleon carriers). A chameleon carrier is a motor
23 carrier that attempts to continue operating under a certificate of registration without addressing a

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1 previous penalty, violation of a legal requirement, or order regarding violation of a legal requirement
2 under a different certificate of registration. There are two types of chameleon carriers: 1) a motor carrier
3 that applies to the department for a new certificate of registration to continue to operate as a motor
4 carrier under a different person's name or a different legal entity; and 2) a motor carrier that already has
5 more than one certificate of registration under different names or legal entities. Under this second type
6 of chameleon carrier, the motor carrier continues to operate under a different certificate of registration
7 when it incurs a penalty, is found to be in violation of a legal requirement, or receives an order regarding
8 a violation of a legal requirement under one of its current certificates of registration.

9 At the December 2023 MCRAC meeting, the MCRAC members made informal suggestions and
10 approved two motions requesting changes to the proposed amendments to §218.13. The department
11 made changes consistent with MCRAC's informal suggestions and one of its motions. Although MCRAC
12 recommended the deletion of proposed new §218.13(a)(3)(E), the department modified the language to
13 strike a balance between addressing the concerns of MCRAC and enabling the department to request
14 necessary information to help detect and prevent chameleon carriers.

15 The department also met with staff from the Federal Motor Carrier Safety Administration
16 (FMCSA) to learn how FMCSA detects chameleon carriers and prevents them from obtaining operating
17 authority for interstate transportation. In addition, the department reviewed the applicable federal laws
18 and forms to inform the department regarding the proposed amendments to §218.13. Further, the
19 department reviewed materials from International Registration Plan, Inc. regarding another state's
20 procedures to identify a possible chameleon carrier.

21 Many of the draft amendments to §218.13 are designed to require new applicants for intrastate
22 operating authority to provide the department with the information it needs to detect and prevent
23 chameleon carriers. The department's primary goal is to prevent chameleon carriers. However, the

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Part 10. Texas Department of Motor Vehicles

Chapter 218 – Motor Carriers

1 additional information and documents addressed in the draft amendments to §218.13 would also help
2 the department detect any current chameleon carriers. The Texas Legislature passed laws to authorize
3 the department to deny intrastate operating authority to chameleon carriers and to revoke a chameleon
4 carrier's intrastate operating authority, such as Transportation Code, §643.054(a-2) and §643.252(a)(7).

5 A proposed amendment to the introductory sentence in §218.13(a) would clarify and modernize
6 the rule by stating that an application for motor carrier registration must be filed electronically in the
7 department's designated registration system and that the applicant must provide both information and
8 documents. A proposed amendment to §218.13(a)(1) would clarify that the applicant must provide a valid
9 United States Department of Transportation (USDOT) number that was issued to the applicant, to prevent
10 applicants from attempting to use others' USDOT numbers.

11 Proposed amendments to §218.13(a)(2) would require the applicants to provide additional
12 information and documents, which would help the department to detect, prevent, and revoke chameleon
13 carriers. The department currently requires applicants to provide most of the information in proposed
14 new §218.13(a)(2)(A) and (B) regarding the applicant, including contact and identifying information.
15 Proposed new §218.13(a)(A) would also make the rule text consistent with the department's current
16 process, which requires that the applicant's name and email address match the information the applicant
17 provided to FMCSA to obtain the USDOT number that the applicant provided to the department in the
18 application. Proposed new §218.13(a)(2)(C) would add a new requirement for a legible and accurate
19 electronic image of the certificate of filing, certificate of incorporation, or certificate of registration on file
20 with the Secretary of State, as well as the existing requirement for an applicant to provide each assumed
21 named certificate on file with the Secretary of State or county clerk, if applicable.

22 Proposed new §218.13(a)(3)(A) through (F) would require applicants to provide information and
23 documents on the applicant's owners, managers, representatives, and affiliates, as applicable. A proposed

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1 amendment to §218.13(a)(3)(A) puts authorized representatives of an applicant on notice that they may
2 be required to provide written proof of authority to act on behalf of the applicant. Many of these
3 requirements are new requirements that would provide the department with additional information and
4 documents that are necessary to detect and prevent chameleon carriers.

5 At the MCRAC meeting in December 2023, members of MCRAC expressed concerns regarding a
6 prior draft of proposed new §218.13(a)(3)(E) because the language could have required applicants to
7 provide information on many employees who do not direct the operations of the motor carrier, and to
8 update the information frequently due to frequent staff turnover in lower-ranking positions. Although the
9 MCRAC members voted to strike new §218.13(a)(3)(E), the department instead further defined the
10 positions to which this application requirement applies to obtain relevant information to help the
11 department detect and prevent chameleon carriers by focusing on the applicant’s representatives who
12 have or exercise authority to direct some or all of the applicant’s operational policy regarding compliance
13 with applicable laws regarding a motor carrier. Examples of applicable laws regarding a motor carrier are
14 the motor carrier safety regulations that are administered by the Texas Department of Public Safety under
15 Transportation Code, Chapter 644 and 37 TAC Chapter 4 (Commercial Vehicle Regulations and
16 Enforcement Procedures).

17 Proposed amendments to §218.13(a)(4) would clarify the language and replace the term
18 “principal place of business” with the term “principal business address” to be consistent with the
19 terminology used in Transportation Code, §643.052(1). Proposed amendments to §218.13(a)(6) would
20 delete the word “commercial” from the term “commercial motor vehicle” because Transportation Code,
21 §643.051(b) requires a household goods carrier to obtain operating authority under Transportation Code,
22 Chapter 643, even if their motor vehicles do not fall within the definition of a “commercial motor vehicle”
23 as defined by Transportation Code, §548.001. A proposed amendment to §218.13(a)(6) would also

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1 remove the word “motor” from the term “vehicle identification number” to make the term consistent
2 with current terminology.

3 A proposed amendment to §218.13(a)(7) regarding the type of motor carrier operations would
4 delete the language that requires the applicant to state if the applicant is domiciled in a foreign country,
5 and a proposed amendment to proposed new §218.13(a)(12)(E) would add this requirement because this
6 requirement does not deal with a type of motor carrier operation. Proposed amendments to
7 §218.13(a)(11)(A)(ii) and §218.13(a)(14) would replace the references to §218.2(8)(A)(ii) with references
8 to Transportation Code, §548.001(1)(B) to specify the portion of the definition for “commercial motor
9 vehicle” that deals with a vehicle designed or used to transport more than 15 passengers. These proposed
10 amendments are necessary because a proposed amendment to §218.2 would remove the specific
11 language from the definition of “commercial motor vehicle” and instead refer broadly to Transportation
12 Code, §548.001.

13 Proposed amendments to §218.13(a) and §218.13(a)(12) would clarify that the requirements
14 apply to an original application. A proposed amendment to §218.13(a)(12)(C) would add the word “the”
15 to improve the wording of the sentence.

16 A proposed amendment to §218.13(a)(12) would delete the language in subparagraph (D)
17 because the language is proposed to be moved to proposed new §218.13(a)(2)(A), and subsequent
18 subparagraphs are proposed to be re-lettered accordingly. Proposed amendments to new
19 §218.13(a)(12)(D) would incorporate the language from the New Applicant Questionnaire into rule text,
20 with certain amendments, such as to provide a three-year timeframe for certain responses. The New
21 Applicant Questionnaire was designed to obtain relevant information to help the department detect,
22 prevent, and revoke chameleon carriers.

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1 Proposed amendments to proposed new §218.13(a)(12)(F) would include the current application
2 certification in rule text. A proposed amendment to proposed new §218.13(a)(12)(G) would clarify that
3 an application must be accompanied by any other information and documents the department requires
4 to evaluate the application under current law, to allow the department the latitude to request additional
5 required information and documentation in order to prevent chameleon carriers and ensure the applicant
6 is eligible for a certificate of registration under Chapter 218 and Transportation Code, Chapter 643.

7 Proposed amendments to §218.13(a) would also delete current language because the current
8 language was modified and incorporated into proposed amendments to §218.13(a) in addition to new
9 requirements. In addition, proposed amendments to §218.13(a) would renumber or re-letter subdivisions
10 due to deletions and additions.

11 A proposed amendment to §218.13(a)(14)(B) would replace the word “vehicles” with the word
12 “vehicle” to correct a grammatical error and to clarify that the requirement applies to each commercial
13 motor vehicle.

14 Proposed amendments throughout §218.13(c), (d), (g) and (i) would change the word “will” to
15 “shall” for clarity and consistency. Government Code, §311.016 defines the word “shall” to impose a duty,
16 which is the intended meaning in §218.13(c),(d), (g), and (i). A proposed amendment to §218.13(c)(2)
17 would change the term “registrant’s” to “motor carrier’s” because the term “motor carrier” is defined in
18 §218.2. A proposed amendment to §218.13(c)(2) would also change the term “principal place of
19 business” to “principal business address” to be consistent with terminology in Transportation Code,
20 §643.052(1). A proposed amendment to §218.13(c)(2)(C) would delete the word “commercial” from the term
21 “commercial motor vehicle” because Transportation Code, §643.051(b) applies to household goods carriers,
22 even if their motor vehicles do not fall within the definition of a “commercial motor vehicle” as
23 defined by Transportation Code, §548.001.

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1 A proposed amendment to §218.13(c)(2)(F) would replace the word “information” with “cab
2 card” for consistency. In addition, a proposed amendment to §218.13(c)(2) would delete language in
3 subparagraph (G), which says the display of an image that includes the insurance cab card or the display
4 of insurance information via a wireless communication device does not constitute effective consent for a
5 law enforcement officer or any other person to access any other content of the wireless communication
6 device, because the department does not have the statutory authority for this language. However, the
7 person who chooses to display an image that includes the insurance cab card or the display of insurance
8 information via a wireless communication device can verbally specify the extent of their consent to having
9 the law enforcement officer or any other person access the device prior to displaying the image.

10 A proposed amendment to the introductory sentence in §218.13(e) would modernize the rule
11 text by adding language that says a motor carrier shall electronically file a supplement to an original
12 application in the department’s designated registration system. A proposed amendment to §218.13(e)(7)
13 would replace the word “re-register” with the word “reregister” because the word does not have a hyphen
14 in Transportation Code, §643.0585. A proposed amendment to §217.13(e)(7)(B) would replace the word
15 “facts” with the word “issue” for clarity.

16 A proposed amendment to §218.13(g) would delete the word “commercial” from the term
17 “commercial motor vehicle” because Transportation Code, §643.051(b) applies to household goods
18 carriers, even if their motor vehicles do not fall within the definition of a “commercial motor vehicle”
19 under Transportation Code, §548.001. Proposed amendments to §218.13(i) would require a motor carrier
20 with a certificate of registration to update their principal business address, mailing address, and email
21 address in the department’s online system within 30 days of a change to the information. This amendment
22 to §218.13(i) would replace a requirement for the motor carrier to review this information in the
23 department’s online system every six months and to update such information if it was no longer correct.

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1 The requirement for the motor carrier to update information within 30 days is intended to provide the
2 department with updated information sooner and to eliminate an unnecessary requirement for a motor
3 carrier to review this information every six months even if there is no change to the information.

4 A proposed amendment to the title to §218.14 would delete the word “commercial” from the
5 term “commercial motor vehicle” because Transportation Code, §643.051(b) applies to household goods
6 carriers, even if their motor vehicles do not fall within the definition of a “commercial motor vehicle”
7 under Transportation Code, §548.001. Proposed amendments throughout §218.14 would change the
8 word “will” to “shall.” Government Code, §311.016 defines the word “shall” to impose a duty, which is
9 the intended meaning in §218.14. Proposed amendments throughout §218.14 would add a hyphen to the
10 words “90-day” and “seven-day” as a grammatical correction because the words are compound modifiers
11 of the word “certificates.”

12 A proposed amendment to §218.14(b)(1) would change the first sentence to say that the
13 department shall provide the renewal notice to each registered motor carrier at least 30 days before the
14 expiration to be consistent with Transportation Code, §643.058(b). A proposed amendment to
15 §218.14(b)(1) would also replace the word “division’s” with the term “Motor Carrier Division’s” due to the
16 proposed amendment that would delete the definition for the word “division” in §218.2. In addition, a
17 proposed amendment to §218.13(b)(1) would change the word “mailed” to “sent” because the
18 department may send the notice electronically. Further, a proposed amendment to §218.14(b)(1) would
19 remove the requirement for the motor carrier to submit its renewal application to the department at least
20 15 days prior to the renewal date because motor carriers now submit their renewals online in the
21 department’s designated registration system in which the renewal is automated if there are no issues with
22 the renewal application.

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1 A proposed amendment to §218.14(b)(1) would add language that says a motor carrier shall
2 electronically file a renewal application in the department’s designated registration system to modernize
3 the rule. Also, proposed amendments to §218.14(b)(1)(A) would require the applicant to provide the
4 department with any new information and documents required under §218.13(e) if the information or
5 documents have not previously been provided to the department. The department needs updated
6 information and documents to ensure the motor carrier still qualifies to be a motor carrier, as well as to
7 prevent and detect chameleon carriers.

8 Proposed amendments to §218.14(b)(5) would make the language consistent with Transportation
9 Code, §643.058(d), which prohibits a motor carrier from renewing a registration that has been expired for
10 more than 180 days. Also, proposed amendments to §218.14(b)(5) would add language that says a motor
11 carrier shall electronically file a supplemental application in the department’s designated registration
12 system to modernize the rule. In addition, proposed amendments to §218.13(b)(5) would make the
13 language easier to read by breaking the language into multiple subparagraphs and improving the
14 language. A proposed amendment to new §218.14(b)(5)(C) would clarify the language by adding a
15 reference to evidence of financial responsibility as authorized by Transportation Code, §643.102.
16 Proposed amendments to new §218.14(b)(5)(C) would replace a reference to the “division” with a reference
17 to the “department.”

18 A proposed amendment to §218.14(c)(2) would replace the word “re-register” with the word
19 “reregister” because the word does not have a hyphen in Transportation Code, §643.0585. Proposed
20 amendments to §218.14(c)(2) would replace the term “public streets and highways” with “a public
21 highway,” which is a defined term in §218.2. Proposed amendments throughout §218.14(c) and §218.16
22 would change the word “will” to “shall.” Government Code, §311.016 defines the word “shall” to impose
23 a duty, which is the intended meaning in §218.14(c) and §218.16.

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1 Proposed amendments to §218.16(a) would delete the word “commercial” in the term
2 “commercial automobile liability insurance” because Transportation Code, §643.101 does not use the
3 word “commercial” to describe the amount of liability insurance that is required under Transportation
4 Code, Chapter 643. A proposed amendment to §218.16(a) would clarify the coverage required under an
5 automobile liability insurance policy, which must cover bodily injury to or death of an individual, as well
6 as loss or damage to property.

7 A proposed amendment to §218.16(a) would also clarify the financial responsibility requirements
8 of a motor carrier that operates a foreign commercial motor vehicle in intrastate transportation in Texas
9 if the motor carrier is required to register with the department under Transportation Code, Chapter 643.
10 Although Transportation Code, §643.101(b) authorizes the department to set the amount of required
11 liability insurance at an amount that does not exceed the amount required for a motor carrier under a
12 federal regulation adopted under 49 U.S.C. §13906(a)(1), Transportation Code, §648.102 requires the
13 department to adopt rules that conform with 49 C.F.R. Part 387 requiring motor carriers that operate
14 foreign commercial motor vehicles in Texas to maintain financial responsibility. Also, Transportation Code,
15 §648.102(b) states that Transportation Code, Chapter 648 prevails over any other requirement of state
16 law relating to financial responsibility for operation of foreign commercial motor vehicles in Texas. The
17 department must comply with both Transportation Code, §643.101 and §648.102 regarding the required
18 amount of financial responsibility for a motor carrier that is required to register with the department
19 under Transportation Code, Chapter 643 that operates a foreign commercial motor vehicle in intrastate
20 transportation in Texas. The financial responsibility requirements under 49 C.F.R. §387.9 regarding
21 minimum levels of financial responsibility for motor carriers of property, and 49 C.F.R. §387.33T regarding
22 minimum levels of financial responsibility for motor carriers of passengers are higher than the minimum

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1 levels of financial responsibility for certain motor carriers under §218.16 that do not operate a foreign
2 commercial motor vehicle.

3 In addition, proposed amendments to §218.16(a) would adopt by reference the required level of
4 financial responsibility under 49 C.F.R. Part 387, including any amendments that became effective through
5 July 1, 2024, for a motor carrier operating a foreign commercial motor vehicle in this state pursuant to
6 the department's rulemaking authority under both Transportation Code, §643.101(b) and §648.102.
7 Lastly, a proposed amendment would delete reference to the amendments to 49 C.F.R. Part 387 with an
8 effective date of October 23, 2015, because FMCSA amended 49 C.F.R. Part 387 since October 23, 2015.

9 Proposed amendments to the second and third categories in Figure 43 TAC §218.16(a) would
10 modify the language to be consistent with Transportation Code, §548.001(1)(B) regarding vehicles,
11 including buses, designed or used to transport more than 15 passengers, including the driver. Proposed
12 amendments to the seventh and eighth categories in Figure 43 TAC §218.16(a) would modify the language
13 to be consistent with language in 49 C.F.R. §387.9(3) and (2), respectively, because federal law provides
14 the minimum levels of financial responsibility for intrastate transportation for these categories under 49
15 U.S.C. §31139(d). Proposed amendments to the ninth category in Figure 43 TAC §218.16(a) would modify
16 the language to be consistent with language in 49 C.F.R. §387.9(4) because Transportation Code,
17 §643.101(b) requires the department to set the amount of required liability insurance at an amount that
18 does not exceed the amount required for a motor carrier under a federal regulation adopted under 49
19 U.S.C. §13906(a)(1), which cites to §31139 regarding the minimum financial responsibility requirements
20 for transporting property. The statutory authority listed for 49 C.F.R. §387.9 regarding minimum levels of
21 financial responsibility for motor carriers of property includes 49 U.S.C. §13906 and §31139.

22 Proposed amendments to §218.16(b) would remove the words "for hire" because the term
23 "household goods carrier" is a defined term that already includes the language "for compensation." A

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1 proposed amendment to §218.16(b) would also change the word “shipper” to a plural possessive
2 “shippers” because the language deals with damage to multiple shippers’ cargo. Proposed amendments
3 to §218.16(c) would make the language consistent with the language in Transportation Code, §643.106
4 regarding insurance for employees. Proposed amendments to §218.16(c) would also add letters for new
5 subparagraphs (C) and (D) to break the paragraph into additional subdivisions to help make the language
6 consistent with the language in Transportation Code, §643.106.

7 Proposed amendments throughout §218.16(d) would add the term “motor carrier” after the term
8 “self-insured” for clarity. Proposed amendments to §218.16(d)(1) would clarify that an applicant for self-
9 insured status under Transportation Code, §643.102 is authorized to request self-insured status for cargo
10 liability, as well as for bodily injury and property damage liability. A proposed amendment to §218.16(d)(2)
11 would change the word “allow” to “enable” for clarity because the department is allowed to determine
12 whether the applicant should be granted self-insured status; however, the department needs information
13 and documents to enable the department to make the determination. A proposed amendment to
14 §218.16(d)(2) would replace the word “materials” with the term “information and documents” for clarity.

15 A proposed amendment to §218.16(d)(2)(B) would replace the term “security limits” with the
16 term “insurance levels” for clarity. A proposed amendment to §218.16(d)(2)(C) would make the language
17 consistent with the Texas Department of Public Safety’s “satisfactory safety rating” under Transportation
18 Code, Chapter 644 and 37 TAC §4.15. Also, a proposed amendment would authorize an applicant to
19 provide evidence of a “satisfactory” safety rating from FMCSA because a safety rating from FMCSA is
20 relevant evidence of the motor carrier’s safety program. Another proposed amendment to
21 §218.16(d)(2)(C) would state that an application by a motor carrier with less than a “satisfactory” safety
22 rating or no safety rating will be summarily denied. Transportation Code, §643.102 requires the

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1 department to provide a responsible system of self-insurance for a motor carrier, and safety is an integral
2 component of such a system.

3 Proposed amendments to §218.16(d)(4) would replace the word “applicant” with the words
4 “approved self-insured motor carrier” or “motor carrier” for clarity. Proposed amendments to §218.16(d)(4)
5 would also update the language to reflect current procedures regarding the filing of annual statements
6 and any reports with the department.

7 Proposed amendments to §218.16(d)(5) would replace the word “applicant” with the term
8 “motor carrier” for clarity. A proposed amendment to §218.16(d)(5) would also clarify the department’s
9 current practice of including limitations, restrictions, and requirements in the department’s letter to
10 approve self-insured status under Transportation Code, §643.102.

11 Proposed amendments to §218.16(d)(6) update the language to reflect current procedures, to
12 clarify the language, and to remove unnecessary language.

13 A proposed amendment to §218.16(e)(2)(A) adds the word “a” to correct a grammatical error. A
14 proposed amendment to §218.16(e)(3) would change the word “shall” to “must” because it a condition
15 precedent for an applicant to pay the required filing fee of \$100 to obtain a certificate of registration.
16 Government Code, §311.016 states that the word “must” creates or recognizes a condition precedent. A
17 proposed amendment to §218.16(e)(3) would also combine the two sentences into one sentence to clarify
18 that the applicant is only required to pay the \$100 filing fee when the applicant submits an original
19 application and when the applicant submits a supplemental application when retaining a revoked
20 certificate of registration number. Transportation Code, §643.103(a) and (c) only authorize the
21 department to charge the \$100 filing fee in certain circumstances, which are more limited than the
22 circumstances under which a motor carrier’s insurer is required to file proof of insurance with the
23 department under §218.16(e)(2).

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1 A proposed amendment to §218.16(f) would make the language consistent with Transportation
2 Code, §643.104(a) by modifying the language and replacing the word “shall” with “may not.” Government
3 Code, §311.016 defines the word “may not” as imposing a prohibition, and the language in §218.16(f) is
4 intended to be a prohibition. Transportation Code, §643.104(a) prohibits an insurer from terminating
5 insurance coverage to a motor carrier that is registered under Subchapter B of Transportation Code,
6 Chapter 643 unless the insurer provides the department with notice at least 30 days before the date the
7 termination of insurance takes effect. Proposed amendments to §218.16(f) would also add a hyphen to
8 the words “90-day” and “seven-day” as a grammatical correction because the words are compound
9 modifiers of the word “certificates.” Proposed amendments to §218.16(h) would make the language
10 consistent with Transportation Code, §643.105 and would specify the people who are authorized to sign
11 the affidavit for the motor carrier if an insurer for a motor carrier becomes insolvent, is placed in
12 receivership, or has its certificate of authority suspended or revoked, and the motor carrier no longer has
13 insurance coverage as required by Transportation Code, Chapter 643, Subchapter C.

14 A proposed amendment to §218.18(d) would clarify that a motor carrier is not required to carry
15 proof of registration in a vehicle leased from a registered leasing business under a short-term lease.
16 Transportation Code, §643.063(a)(2) defines a “short-term lease” as a lease of 30 days or less.
17 Subchapter C. Records and Inspections.

18 A proposed amendment to §218.31(b)(3) would change the word “will” to “shall” for consistency
19 and clarity. Government Code, §311.016 defines the word “shall” to impose a duty, and that is the
20 intended meaning in §218.31. Proposed amendments to §218.31(c)(1) and §218.32(c) would change the
21 term “principal place of business” to “principal business address” for consistency, to use the same term
22 that is defined in §218.2 and used in Transportation Code, §643.052. A proposed amendment to
23 §218.32(c) would also decapitalize the word “department” because the word is not capitalized in

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1 Transportation Code, Chapter 643. In addition, a proposed amendment to §218.32(c)(3) would delete a
2 reference to 49 C.F.R. §390.29 because the inspection of documents for motor carriers that are required
3 to register under Transportation Code, Chapter 643 is governed by Transportation Code, §643.254.
4 Subchapter D. Motor Transportation Brokers.

5 A proposed amendment to §218.41(b)(3) would replace the word “shipper” with a reference to
6 the person to whom the motor transportation broker provides services to clarify that this language is not
7 limited to a shipper of a household goods motor carrier. A proposed amendment to §218.41(b)(3) would
8 also change the word “it” to “the person” to conform with the proposed amendment to replace the
9 reference to the word “shipper.” A proposed amendment to §218.41 would delete subsection (d),
10 regarding the amount of recovery, because the department does not have the statutory authority for this
11 language.

12 Subchapter E. Consumer Protection.

13 Proposed amendments to §218.53 would replace the mandatory standard for uniform cargo
14 liability with a voluntary standard for uniform cargo liability for a household goods carrier as authorized
15 by Transportation Code, §643.152. The proposed amendments to §218.53 are consistent with 49 C.F.R.
16 §375.201, which is a federal regulation adopted under Subtitle IV, Title 49, United States Code. The
17 language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and
18 (B), which is a federal preemption statute. Even though 49 U.S.C. §14501(c)(2)(B) says that the restrictions
19 in subsection (c)(1) do not apply to the intrastate transportation of household goods, Transportation
20 Code, §643.152 does not provide an exemption for the intrastate transportation of household goods. The
21 department therefore does not have statutory authority to set a mandatory standard for uniform cargo
22 liability for the intrastate transportation of household goods in Texas. In the absence of a mandatory
23 standard, household goods carriers and shippers are authorized to agree to limits of liability for each

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1 intrastate shipment of household goods. A proposed amendment to §218.53 would also adopt by
2 reference 49 C.F.R. §375.201, including any amendments that became effective through July 1, 2024.

3 Proposed amendments to §218.54(a) would replace the word “carrier” with the possessive word
4 “carrier’s” to fix a grammatical error, include a reference to the moving service contract between the
5 parties (including a pre-existing transportation contract as described by §218.57(d)) to replace a reference
6 to §218.53 regarding the amount of the household goods carrier’s liability, and clarify that the parties
7 could agree that the household goods carrier would have no liability for loss or damage regarding the
8 shipper’s property. A proposed amendment to §218.54(d) would replace the catch line for the subsection
9 because the word “penalty” is a confusing term. The department is authorized to assess administrative
10 penalties, which is something different than the liability referenced in §218.54(d).

11 A proposed amendment to §218.56(a)(5) would delete language regarding the mandatory
12 uniform cargo liability that the department proposes to delete under current §218.53. A proposed
13 amendment to §218.56(a)(5) would also reword the sentence due to the deletion and clarify that the
14 proposal may state that the household goods carrier would have no liability for loss or damage regarding
15 the shipper’s property. A proposed amendment to §218.56(e)(3) would delete language regarding a
16 portion of a uniform bill of lading under §218.58, which the department proposes to repeal. A proposed
17 amendment to §218.56(e)(3) would also insert a reference to the moving services contract.

18 Proposed amendments to §218.57(a)(6) would delete a reference to the mandatory uniform
19 cargo liability under current §218.53 and would replace the language with text that is similar to the
20 language in 49 C.F.R. §375.201 regarding the disclosure of the limits of the household goods carrier’s
21 liability for loss or damage to a shipper’s household goods; however, the proposed amendment would
22 also clarify that the moving services contract must expressly state if the household goods carrier’s liability
23 is \$0.00 for loss or damage to a shipper’s household goods.

1 Proposed amendments to §218.57(a)(7) would delete a reference to the mandatory uniform
2 cargo liability under current §218.53 and would replace the language with text that requires the
3 household goods carrier to clearly and concisely disclose any costs associated with the household goods
4 carrier's increased liability for loss or damage to a shipper's household goods. A proposed amendment to
5 §218.57(a)(9) would replace a mandatory clause with an explanation of the clause that a household goods
6 carrier must include in its contract with a shipper to put the shipper on notice regarding the documents
7 that constitute the contract. The mandatory clause in current §218.57(a)(9) appears to be written for a
8 hard copy of the moving services contract because it refers to the front and back of this document;
9 however, the parties may use an electronic version of the moving services contract. Also, the mandatory
10 clause in current §218.57(a)(9) refers to an addendum; however, the average shipper may not know what
11 an addendum is. The proposed amendment to §218.57(a)(9) would give the household goods carrier the
12 flexibility to draft a clause that works for its moving services contract.

13 Proposed new §218.57(a)(13) would add a new clause to require the household goods carrier to
14 include certain language in the moving services contract regarding the claims process for a shipper who
15 wants to file a claim against the household goods carrier. This language is designed to protect a consumer
16 using the services of a household goods carrier, as authorized by Transportation Code, §643.153(a) and
17 (b). Although the department is prohibited from establishing a uniform bill of lading under Transportation
18 Code, §643.152, the prohibitions under §643.152 are intended to prohibit the economic regulation of
19 motor carriers regarding the prices, routes, or services as stated in Transportation Code, §643.151 and
20 the title to Transportation Code, Chapter 643, Subtitle D (Economic Regulation). The proposed new
21 §218.57(a)(13) is not an economic regulation regarding the household goods carrier's prices, routes, or
22 services. Unlike the language the department proposes to delete from §218.53 and §218.58, the language
23 in proposed new §218.57(a)(13) does not directly or indirectly impact a household goods carrier's price

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1 or service because it does not limit a household goods carrier’s discretion to limit or qualify its liability for
2 services. The proposed new §218.57(a)(13) deals with the claims process under §218.61, which is part of
3 the department’s formal process for resolving a dispute over a fee or damage under Transportation Code,
4 §643.153(b)(1). Due to the proposed new §218.57(a)(13), proposed amendments to §218.57(a) would
5 delete the word “and” in §218.57(a)(11) and would add the word “and” at the end of §218.57(a)(12).

6 The department proposes the repeal of §218.58 because Transportation Code, §643.152 says that
7 the department is only authorized to establish a voluntary standard for “uniform bills of lading or receipts
8 for cargo being transported” and that any voluntary standard that the department establishes must be
9 consistent with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law. The
10 language in Transportation Code, §643.152 is based on language in 49 U.S.C. §14501(c)(1) and (3)(A) and
11 (B), which is a federal preemption statute. Section 14501(3)(A) uses the terms “uniform cargo liability”
12 and “uniform bills of lading or receipts for property being transported” that also appear in Transportation
13 Code, §643.152. The federal laws on household goods movers are therefore relevant sources to determine
14 what the Texas Legislature intended the term “bill of lading” to mean in Transportation Code, §643.152.
15 Federal law, such as 49 C.F.R. §375.103, and Appendix A to 49 C.F.R. Part 375 (Your Rights and
16 Responsibilities When You Move), Definitions and Common Terms, and the language in the department’s
17 rules, such as the definition for “moving services contract” in §218.2 and the language in §218.58, state
18 that a bill of lading is a moving services contract. As a result, a “moving services contract” in §218.58 is a
19 “bill of lading” under state and federal law. The language in current §218.58 therefore is a mandatory
20 standard for a portion of a “uniform bill of lading” regarding limitation of liability, that is impermissible
21 under Transportation Code, §643.152. To the extent the household goods carrier seeks to alter or expand
22 on the limitation of liability language that is set forth in §218.57, §218.58 requires the household goods
23 carrier to include one of two sets of legal terms and conditions verbatim in their moving services contract

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1 with the shipper, which means the language in current §218.58 is a mandatory standard for a portion of
2 a “uniform bill of lading” regarding limitation of liability. As stated above, current §218.57(a)(6) and (7)
3 include uniform cargo liability language, which is the language that says a household goods carrier’s
4 liability for loss or damage to any shipment is \$0.60 per pound per article, unless the carrier and shipper
5 agree, in writing, to a greater level of liability. These are mandatory standards, which the department
6 lacks legal authority to create through rule under Transportation Code, §643.152.

7 Moreover, the department is not authorized to amend §218.58 to say that it is a voluntary
8 standard because Transportation Code, §643.152 says that the department is only authorized to establish
9 a voluntary standard for “uniform bills of lading or receipts for cargo being transported” and that any
10 voluntary standard that the department establishes must be consistent with Subtitle IV, Title 49, United
11 States Code, or a regulation adopted under that law. The language in §218.58 is not entirely consistent
12 with Subtitle IV, Title 49, United States Code, or a regulation adopted under that law, such as 49 C.F.R Part
13 375 (Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations).

14 A proposed amendment to §218.61(b)(1) would provide a clear deadline of 23 days for a
15 household goods carrier to issue the acknowledgment letter to the claimant, and a proposed amendment
16 to §218.61(b)(1)(B) would make a conforming amendment due to the proposed amendment to
17 §218.61(b)(1). The current 20-day deadline for a household goods carrier to send an acknowledgment of
18 the claim to the claimant excludes Sundays and nationally-recognized holidays, which makes it harder for
19 a household goods carrier to calculate the deadline.

20 Proposed amendments to §218.61(b)(1)(A) and (2) would also provide a clear deadline of 35 days
21 for a shipper to submit a request for mediation to the department. The current 30-day deadline excludes
22 Sundays and nationally recognized holidays, which makes it harder for a shipper to calculate the deadline.

1 Section 218.62 describes the mediation process, which is part of the department’s formal process
2 for resolving a dispute over a fee or damage under Transportation Code, §643.153(b)(1) to protect a
3 shipper of a household goods carrier from deceptive or unfair practices and unreasonably hazardous
4 activities. Proposed amendments to §218.62(a) would clarify that a claimant may only make a written
5 request to the department for mediation regarding a dispute over a fee or damage to a shipper’s
6 household goods because Transportation Code, §643.153(b)(1) authorizes the department to establish a
7 formal process for resolving a dispute over a fee or damage. There are other potential claims that a
8 claimant may have against a household goods carrier, such as a personal injury claim, that are outside the
9 scope of the department’s mediation program. The claimant may have the right to seek damages against
10 the household goods carrier or the responsible individuals in a court of law.

11 A proposed amendment to §218.62(c) would provide a clear deadline of 35 days for a shipper to
12 submit a request for mediation to the department. The current 30-day deadline excludes Sundays and
13 nationally recognized holidays, which makes it harder for a shipper to calculate the deadline. A proposed
14 amendment to §218.62(d) would make a conforming amendment to increase the number of days after
15 which the department shall deny a request for mediation due to the proposed amendment to §218.62(c).
16 The proposed amendment to §218.62(d) would substitute “125 days” for “120 days (excluding Sundays
17 and nationally recognized holidays).” The current 90-day deadline in §218.61(a)(1) does not include the
18 clause “(excluding Sundays and nationally recognized holidays),” so 90 days plus the proposed new 35-
19 day deadline under the proposed amendment to §218.62(c) would equal 125 days. A proposed
20 amendment to §218.62(f) would make a conforming amendment to increase the 30-day deadline to a 35-
21 day deadline for a shipper to submit a request for mediation to the department, due to the proposed
22 amendment to §218.62(c).

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1 A proposed amendment to §218.62(c)(3) would fix a grammatical error by changing the word
2 “has” to “have.” Proposed amendments to §218.62(d) would change the word “will” to “shall” for
3 consistency and clarity. Government Code, §311.016 defines the word “shall” to impose a duty, which is
4 the intended meaning in §218.62(d). A proposed amendment to §218.62(f) would modernize the rule by
5 authorizing the calculation of the 30-day deadline for requesting mediation to be based on the date the
6 claim denial or settlement offer letter is emailed to the claimant.

7 Proposed amendments to §218.62(i) would add a new paragraph (1) and modify the requirement
8 for a household goods carrier to participate in the mediation process due to the amendments to §218.53
9 to change the mandatory uniform cargo liability to a new voluntary standard. The draft amendments to
10 §218.62(i) would strike a balance between protecting a shipper and not forcing the household goods
11 carrier to mediate a shipper’s claim for loss or damage regarding the shipper’s property that conflicts with
12 the terms of the moving services contract regarding the household goods carrier’s liability. Because there
13 would no longer be a mandatory standard for uniform cargo liability under the proposed amendments to
14 §218.53, the household goods carrier and the shipper could agree in their moving services contract that
15 the household goods carrier will have \$0.00 liability for loss or damage to the shipper’s property, which
16 may reduce the contract costs for the shipper. If the parties agree that there will be \$0.00 liability or if a
17 pre-existing transportation contract states the household goods carrier will have \$0.00 liability, there is
18 nothing to mediate regarding liability for loss or damages to the shipper’s property. However, there could
19 still be a need for a mediation regarding a possible claim on the fee under the moving services contract,
20 or a claim if the shipper purchases insurance from the household goods carrier and the household goods
21 carrier does not obtain the insurance policy or other appropriate evidence of purchased insurance for the
22 shipper under §218.54. Proposed amendments to §218.62(i) would also add a new paragraph (2) to
23 separate the new language in new paragraph (1) from the current language in §218.62(i) regarding the

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1 department’s authority to impose administrative penalties on a household goods carrier who refuses to
2 participate in mediation as required by §218.62. In addition, a proposed amendment to new §218.62(i)(2)
3 would substitute the word “penalties” for the word “sanctions” because §218.71 deals with penalties,
4 rather than sanctions.

5 Proposed amendments to §218.64(a) and (b) would delete references to “two incorporated
6 cities” to be consistent with the language in Transportation Code, §643.153 regarding the tariff that a
7 household goods carrier shall file with the department regarding the maximum charges for all
8 transportation services. A proposed amendment to §218.64(c)(3)(B) would replace the word “applicant”
9 with the word “association” because the language refers to the association. A proposed amendment to
10 §218.64(c)(6)(B) would make the language consistent with the language in Transportation Code,
11 §643.154(e) regarding the approval of a collective ratemaking agreement. A proposed amendment to
12 §218.64(c)(9) would change the word “of” to “by” to correct a grammatical error.

13 Proposed new §218.64(d) would exempt a household goods carrier that is required to register
14 under Transportation Code, Chapter 643 from Chapter 15, Business and Commerce Code, for an activity
15 relating to the establishment of a joint line rate, route, classification, or mileage guide, as authorized by
16 Transportation Code, §643.154(c).

17 Proposed amendments to §218.64 and §218.65 would change the word “will” to “shall” for
18 consistency and clarity. Government Code, §311.016 defines the word “shall” to impose a duty, which is
19 the intended meaning in §218.64 and §218.65.

20 A proposed amendment to §218.65(a)(1)(E) would delete language contained within parentheses
21 because paragraph (1) is supposed to list the contents of the tariff; however, the deleted language would
22 be moved to the appropriate location in §218.65 under proposed amendments referenced below. A
23 proposed amendment to §218.65(a)(3)(B) would replace the term “principal office” with the term

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1 “principal business address,” which is the term used in Transportation Code, §643.052 and a defined term
2 in §218.2. A proposed amendment to §218.65(a)(3)(C) would add the words “certificate of” for clarity
3 because the transmittal letter must include the household goods carrier’s certificate of registration
4 number. Proposed new §218.65(a)(4)(D) would add the first sentence from the language that would be
5 removed from the parentheses in §218.65(a)(1)(E) regarding the requirement to file the mileage guide
6 as an addendum to the tariff because §218.65(a)(4) is the correct location for this language. Another
7 proposed amendment to §218.65 would delete subsection (b) as outdated and unnecessary because the oldest
8 tariff that is on file with the department is dated 2018. All tariffs must now comply with §218.65. Proposed new
9 §218.65(b) would contain the second sentence from the language that would be removed from the
10 parentheses in §218.65(a)(1)(E) regarding the requirement to allow department personnel free access to
11 a computer database used as a mileage guide in the household goods carrier’s tariff.

12 Subchapter F. Administrative Penalties and Sanctions.

13 Proposed amendments to §218.72 would add the word “Texas” to clarify that the references are
14 to the Texas Department of Public Safety. Proposed amendments to §218.72(c) would replace the word
15 “motor” with “household goods” for clarity and consistency because the term “household goods carrier”
16 is a defined term in §218.2. Proposed amendments to §218.72(c) would also replace the words “mover’s”
17 and “mover” with the terms “goods carrier’s” and “goods carrier” for clarity and consistency because
18 “household goods carrier” is a defined term in §218.2.

19 Subchapter G. Financial Responsibility for Foreign Commercial Motor Vehicles.

20 A proposed amendment to §218.80 would clarify that for the purposes of Subchapter G of Chapter
21 218, the term “motor carrier” is defined by Transportation Code, §648.001, which defines the term “motor
22 carrier” to include a foreign motor carrier and a foreign motor private carrier, as defined in 49 U.S.C.
23 §13102(6) and (7). Also, proposed amendments to §218.80 would clarify that Subchapter G does not apply

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1 to a motor carrier that is required to register with the department under Transportation Code, Chapter
2 643 because the financial responsibility requirements for such a motor carrier are addressed in §218.16.
3 In addition, a proposed amendment to §218.80 would clarify that Subchapter G does not apply to a motor
4 carrier that is required to register with FMCSA for interstate transportation and is not operating in
5 intrastate transportation within this state. FMCSA has the authority to regulate motor carriers regarding
6 interstate transportation.

7 A proposed amendment to §218.82(a) would delete the second sentence regarding a motor
8 carrier that is required to register with the department under Transportation Code, Chapter 643 due to
9 the proposed amendments to §218.80, including the amendment that would move most of this second
10 sentence to §218.80 with some changes. A proposed amendment to §218.82(a) would also change the
11 term “public road or highway” to “public highway,” which is a defined term in §218.2.

12 Proposed amendments to §218.82(b) would adopt by reference the required level of financial
13 responsibility under 49 C.F.R. Part 387, including any amendments that became effective through July 1,
14 2024. Also, a proposed amendment to §218.82(b) would delete reference to the amendments to 49 C.F.R.
15 Part 387 with an effective date of October 23, 2015, because FMCSA amended 49 C.F.R. Part 387 since
16 October 23, 2015.

17 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
18 has determined that for each year of the first five years the proposed amendments and repeal will be in
19 effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement
20 or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined
21 that there will be no significant impact on local employment or the local economy as a result of the
22 proposal.

1 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five
2 years the amended sections and repealed section are in effect, there are several public benefits
3 anticipated.

4 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include
5 rules, which will be consistent with applicable law and provide the public with information regarding the
6 department's current processes.

7 Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be costs to
8 comply with these rules because the applicants will be required to gather and provide more information
9 and documents to the department in applications under §218.13; however, it is hard to estimate these
10 costs.

11 There may be one-time costs for household goods carriers to modify their proposals and
12 estimates for moving services, as well as their moving services contracts and their template
13 acknowledgment to a claim from the shipper, due to the proposed amendments to §§218.53, 218.56,
14 218.57, and 218.61; however, it would be difficult to estimate these costs, if any, because the costs will
15 vary based on the hard-copy or electronic method that the carriers use to create their proposals,
16 estimates, acknowledgment, and moving services contracts.

17 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
18 Code, §2006.002, the department has determined that the proposed amendments will have an adverse
19 economic effect on small businesses and micro-businesses. The department does not collect the kind of
20 information on the motor carriers under Chapter 218 that is necessary to determine whether the motor
21 carriers fall within the definition of a small business or a micro-business under Government Code, Chapter
22 2006; however, it is likely that a majority of the motor carriers fall within the definition of a small business
23 or a micro-business under Government Code, Chapter 2006. The proposed amendments will not have an

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1 adverse economic effect on rural communities as defined by Government Code, Chapter 2006 because
2 Transportation Code, §643.002(6) exempts vehicles operated by a governmental entity from the
3 requirements under Chapter 218 and Transportation Code, Chapter 643. Any adverse economic impact
4 on motor carriers from the requirement to provide additional information and documents in their
5 applications to the department and any adverse economic impact on household goods carriers from
6 having to update their forms are not likely to cause an adverse economic effect on any rural communities
7 in which these motor carriers might be located.

8 There will be costs for motor carriers to comply with the amendments to §218.13 because the
9 applicants will be required to gather and provide more information and documents to the department in
10 applications. Although it is hard to estimate these costs, the information and documents are necessary to
11 detect and prevent chameleon carriers as described in the explanation of the amendments to §218.13.
12 These amendments are necessary to protect the public from chameleon carriers; therefore, the
13 department is not required to consider alternatives because alternatives would not protect the health
14 and safety of the public under Government Code, §2006.002(c-1).

15 There may be costs for household goods carriers to modify their proposals and estimates for
16 moving services, as well as their moving services contracts and their template acknowledgment to a claim
17 from the shipper, due to the amendments to §§218.53, 218.56, 218.57, and 218.61. It is difficult to
18 estimate these costs, if any, and the costs will vary based on whether the carriers use electronic or hard-
19 copy documents. However, these amendments are designed to protect consumers of household goods
20 carriers from deceptive or unfair practices and unreasonably hazardous activities under Transportation
21 Code, §643.153(a) and (b). Therefore, the department is not required to consider alternatives because
22 alternatives would not protect the health and safety of the public under Government Code, §2006.002(c-
23 1).

1 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
2 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
3 that would otherwise exist in the absence of government action and, therefore, does not constitute a
4 taking or require a takings impact assessment under Government Code, §2007.043.

5 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
6 first five years the proposed amendments and repeal are in effect, no government program would be
7 created or eliminated. Implementation of the proposed amendments and repeal would not require the
8 creation of new employee positions or elimination of existing employee positions. Implementation would
9 not require an increase or decrease in future legislative appropriations to the department. The proposed
10 amendments and repeal do not create a new regulation, but they do expand existing regulations regarding
11 applications for motor carrier operating authority, primarily to detect and prevent chameleon carriers.
12 The proposed amendments would limit and repeal regulations by removing the requirement for a motor
13 carrier to submit its renewal application at least 15 days prior to the renewal date under §218.14(b)(1),
14 and removing the mandatory requirements for limitations of liability and bills of lading under §218.53, §218.57
15 and §218.58. Lastly, the proposed amendments and repeal do not affect the number of individuals subject to
16 each rule's applicability and will not affect this state's economy.

17 **REQUEST FOR PUBLIC COMMENT.**

18 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on
19 MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send
20 written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General
21 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
22 held, the department will consider written comments and public testimony presented at the hearing.

23

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1 practice stating the nature and requirements of all available formal and informal procedures; and the
2 statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein
3 by reference.

4 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, Chapter
5 643; and Government Code, Chapter 2001.

6

7 TEXT.

8 §218.2. Definitions.

9 (a) The definitions contained in Transportation Code, Chapter 643 apply to this chapter. In the
10 event of a conflict with this chapter, the definitions contained in Transportation Code, Chapter 643
11 control; however, the definition of the word “director” in this section controls over the definition in
12 Transportation Code, Chapter 643.

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

15 (1) Advertisement--An oral, written, graphic, or pictorial statement or representation
16 made in the course of soliciting intrastate household goods transportation services, including, without
17 limitation, a statement or representation made in a newspaper, magazine, or other publication, or
18 contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via
19 an online [~~on-line~~] service, or on television. The term does not include direct communication between a
20 household goods carrier or carrier's representative and a prospective shipper, and does not include the
21 following:

22 (A) promotional items of nominal value such as ball caps, tee shirts, and pens;

23 (B) business cards;

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1 (C) listings not paid for by the household goods carrier or its household goods
2 carrier's agent; and

3 (D) listings of a household goods carrier's business name or assumed name as it
4 appears on the motor carrier certificate of registration, and the household goods carrier's address, and
5 contact information in a directory or similar publication.

6 (2) Approved association--A group of household goods carriers, its agents, or both, that
7 has an approved collective ratemaking agreement on file with the department under §218.64 of this
8 title (relating to Rates).

9 (3) Binding proposal--A ~~formal~~ written offer stating the exact price for the
10 transportation of specified household goods and any related services.

11 (4) Board--Board of the Texas Department of Motor Vehicles.

12 (5) Certificate of insurance--A certificate prescribed by and filed with the department in
13 which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is
14 filed has the minimum coverage as required by §218.16 of this title (relating to Insurance
15 Requirements).

16 (6) Certificate of registration--A certificate issued by the department to a motor carrier
17 and containing a unique number.

18 (7) Certified scale--Any scale designed for weighing motor vehicles, including trailers or
19 semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing
20 authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and
21 certified.

22 (8) Commercial motor vehicle--As defined in Transportation Code, §548.001.

23 ~~[(A) Includes:]~~

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1 ~~[(i) any motor vehicle or combination of vehicles with a gross weight,~~
2 ~~registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the~~
3 ~~transportation of cargo in furtherance of any commercial enterprise;]~~

4 ~~[(ii) any vehicle, including buses, designed or used to transport more~~
5 ~~than 15 passengers, including the driver; and]~~

6 ~~[(iii) any vehicle used in the transportation of hazardous materials in a~~
7 ~~quantity requiring placarding under the regulations issued under the federal Hazardous Materials~~
8 ~~Transportation Act (49 U.S.C. §§5101-5128).]~~

9 ~~[(B)]~~ The definition for commercial motor vehicle does ~~[Does]~~ not include:

10 (A) ~~[(+)]~~ a farm vehicle with a gross weight, registered weight, or ~~[and]~~
11 gross weight rating of less than 48,000 pounds;

12 (B) ~~[(+)]~~ a cotton vehicle ~~[vehicles]~~ registered under Transportation
13 Code, §504.505;

14 (C) ~~[(+)]~~ a vehicle registered with the Railroad Commission under
15 Natural Resources Code, §113.131 and §116.072;

16 (D) ~~[(+)]~~ a vehicle operated by a governmental entity;

17 (E) ~~[(+)]~~ a motor vehicle exempt from registration by the Unified Carrier
18 Registration Act of 2005; and

19 (F) ~~[(+)]~~ a tow truck, as defined by Occupations Code, §2308.002 ~~[and~~
20 ~~permitted under Occupations Code, Chapter 2308, Subchapter C].~~

21 ~~[(9) Commercial school bus – A motor vehicle owned by a motor carrier that is:]~~

22 ~~[(A) registered under Transportation Code, Chapter 643, Subchapter B;]~~

23 ~~[(B) operated exclusively within the boundaries of a municipality and used to~~

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1 ~~transport preprimary, primary, or secondary school students on a route between the students'~~
2 ~~residences and a public, private, or parochial school or daycare facility;]~~

3 ~~[(C) operated by a person who holds a driver's license or commercial driver's~~
4 ~~license of the appropriate class for the operation of a school bus;]~~

5 ~~[(D) complies with Transportation Code, Chapter 548; and]~~

6 ~~[(E) complies with Transportation Code, §521.022.]~~

7 (9) [(10)] Conspicuous--Written in a size, color, and contrast so as to be readily noticed
8 and understood.

9 (10) [(11)] Conversion--A change in an entity's organization that is implemented with a
10 Certificate of Conversion issued by the Texas Secretary of State under Business [and] Organizations
11 Code, §10.154.

12 ~~[(12) Department--Texas Department of Motor Vehicles (TxDMV).]~~

13 (11) [(13)] Director--The director of the department's Motor Carrier Division, [Texas
14 ~~Department of Motor Vehicles]~~ whom the executive director of the department designated as the
15 director under Transportation Code, §643.001(2).

16 ~~[(14) Division--The Motor Carrier Division.]~~

17 (12) [(15)] Estimate--An informal oral calculation of the approximate price of
18 transporting household goods.

19 (13) [(16)] Farmer--A person who operates a farm or is directly involved in cultivating
20 land, ~~[or in raising]~~ crops, or livestock that are owned by or are under the direct control of that person.

21 (14) [(17)] Farm vehicle--A commercial motor vehicle that is:

22 (A) controlled and operated by a farmer to transport either:

23 (i) agricultural products; or

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1 (ii) farm machinery, farm supplies, or both, to and from a farm;

2 (B) not being used in the operation of a for-hire motor carrier;

3 (C) not carrying hazardous materials of a type or quantity that requires the

4 commercial motor vehicle to be placarded in accordance with 49 C.F.R. §177.823; and

5 (D) being used within 150 air-miles of the farmer's farm. [Any vehicle or

6 combination of vehicles controlled or operated by a farmer or rancher being used to transport

7 agriculture products, farm machinery, and farm supplies to or from a farm or ranch.]

8 (15) [(18)] FMCSA--Federal Motor Carrier Safety Administration.

9 (16) [(19)] Foreign commercial motor vehicle--As defined in Transportation Code,

10 §648.001. [A commercial motor vehicle that is owned by a person or entity that is domiciled in or a

11 citizen of a country other than the United States.]

12 (17) [(20)] Gross weight rating--The maximum loaded weight of any combination of

13 truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the

14 manufacturer's rating is unknown, the gross weight rating is the greater of:

15 (A) the actual weight of the equipment and its lading; or

16 (B) the maximum lawful weight of the equipment and its lading.

17 [(21) Household goods--Personal property intended ultimately to be used in a dwelling

18 when the transportation of that property is arranged and paid for by the householder or the

19 householder's representative. The term does not include personal property to be used in a dwelling

20 when the property is transported from a manufacturing, retail, or similar company to a dwelling if the

21 transportation is arranged by a manufacturing, retail, or similar company.]

22 (18) [(22)] Household goods agent--A motor carrier who transports household goods

23 on behalf of another motor carrier.

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1 (19) ~~[(23)]~~ Household goods carrier--A motor carrier who transports household goods
2 for compensation ~~[or hire in furtherance of a commercial enterprise]~~, regardless of the size of the
3 vehicle.

4 ~~[(24) Insurer--A person, including a surety, authorized in this state to write lines of
5 insurance coverage required by Subchapter B of this chapter.]~~

6 (20) ~~[(25)]~~ Inventory--A list of the items in a household goods shipment and the
7 condition of the items.

8 (21) ~~[(26)]~~ Leasing business--A person that leases vehicles requiring registration under
9 Subchapter B of this chapter to a motor carrier that must be registered.

10 (22) ~~[(27)]~~ Mediation--A non-adversarial form of alternative dispute resolution in which
11 an impartial person, the mediator, facilitates communication between two parties to promote
12 reconciliation, settlement, or understanding.

13 (23) ~~[(28)]~~ Motor Carrier or carrier--As defined in Transportation Code, §643.001(6). ~~[A
14 person who controls, operates, or directs the operation of one or more vehicles that transport persons
15 or cargo over a public highway in this state.]~~

16 (24) ~~[(29)]~~ Motor transportation broker--As defined in Transportation Code, §646.001.
17 ~~[A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier
18 operated by another person or a person who aids and abets another person in selling, offering for sale,
19 or negotiating for the transportation of cargo by a motor carrier operated by another person.]~~

20 (25) ~~[(30)]~~ Moving services contract--A contract between a household goods carrier
21 and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of
22 the services to be provided.

23 (26) ~~[(31)]~~ Multiple user--An individual or business who has a contract with a

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1 household goods carrier and who used the carrier's services more than 50 times within the preceding 12
2 months.

3 (27) ~~[(32)]~~ Not-to-exceed proposal--A formal written offer stating the maximum price a
4 shipper can be required to pay for the transportation of specified household goods and any related
5 services. The offer may also state the non-binding approximate price. Any offer based on hourly rates
6 must state the maximum number of hours required for the transportation and related services unless
7 there is an acknowledgment from the shipper that the number of hours is not necessary.

8 (28) ~~[(33)]~~ Principal ~~[place of]~~ business address--A single location that serves as a motor
9 carrier's headquarters and where it maintains its operational records or can make them available.

10 (29) ~~[(34)]~~ Print advertisement--A written, graphic, or pictorial statement or
11 representation made in the course of soliciting intrastate household goods transportation services,
12 including, without limitation, a statement or representation made in or contained in a newspaper,
13 magazine, circular, or other publication. The term does not include direct communication between a
14 household goods carrier or carrier's representative and a prospective shipper, and does not include the
15 following:

16 (A) promotional items of nominal value such as ball caps, tee shirts, and pens;

17 (B) business cards;

18 (C) Internet websites;

19 (D) listings not paid for by the household goods carrier or its household goods
20 carrier's agent; and

21 (E) listings of a household goods carrier's business name or assumed name as it
22 appears on the motor carrier certificate of registration, and the household goods carrier's address, and
23 contact information in a directory or similar publication.

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1 (30) ~~[(35)]~~ Public highway--Any publicly owned and maintained street, road, or highway
2 in this state.

3 ~~[(36) Reasonable dispatch--The performance of transportation, other than
4 transportation provided under guaranteed service dates, during the period of time agreed on by the
5 carrier and the shipper and shown on the shipment documentation. This definition does not affect the
6 availability to the carrier of the defense of force majeure.]~~

7 (31) ~~[(37)]~~ Replacement vehicle--A vehicle that takes the place of another vehicle that
8 has been removed from service.

9 (32) ~~[(38)]~~ Revocation--The withdrawal of registration and privileges by the department
10 or a registration state.

11 (33) ~~[(39)]~~ Shipper--The owner of household goods or the owner's representative.

12 (34) ~~[(40)]~~ Short-term lease--A lease of 30 days or less.

13 ~~[(41) SOAH--The State Office of Administrative Hearings.]~~

14 (35) ~~[(42)]~~ Substitute vehicle--A vehicle that is leased from a leasing business and that is
15 used as a temporary replacement for a vehicle that has been taken out of service for maintenance,
16 repair, or any other reason causing the temporary unavailability of the permanent vehicle.

17 (36) ~~[(43)]~~ Suspension--Temporary removal of privileges granted to a registrant by the
18 department or a registration state.

19 (37) ~~[(44)]~~ Unified Carrier Registration System or UCR--A motor vehicle registration
20 system established under 49 U.S.C. §14504a or a successor federal registration program.

21 (38) ~~[(45)]~~ USDOT--United States Department of Transportation.

22 (39) ~~[(46)]~~ USDOT number--An identification number issued by or under the authority of
23 the FMCSA or its successor.

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§218.10, 218.11, 218.13, 218.14, 218.16, AND 218.18

STATUTORY AUTHORITY. The department proposes the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not operate a vehicle, regardless of size, to transport household goods for compensation on a road or highway in Texas unless the motor carrier registers with the department under Subchapter B of Transportation Code, Chapter 643; Transportation Code, §643.052, which requires a motor carrier to submit to the department an application on a form prescribed by the department to register under Subchapter B of Transportation Code, Chapter 643, as well as the required components of the application, which include information the department by rule determines is necessary for the safe operation of a motor carrier under Transportation Code, Chapter 643; Transportation Code, §643.053, which provides additional requirements for an application filed with the department under Transportation Code, §643.052; Transportation Code, §643.054, which authorizes the department to deny an application for registration under certain circumstances, in addition to authorizing the department to adopt simplified procedures for the registration of motor carriers transporting household goods as agents for carriers required to register under Transportation Code, Chapter 643; Transportation Code, §643.056, which requires a motor carrier that is required to register under Subchapter B of Transportation Code, Chapter 643, to supplement the motor carrier’s application for registration under certain circumstances; Transportation Code, §643.058, which specifies the

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1 requirements for a motor carrier to apply for renewal of registration issued under Subchapter B of
2 Transportation Code, Chapter 643, as well as the authority for the department to deny an application for
3 renewal of registration; Transportation Code, §643.0585, which specifies the requirements for a motor
4 carrier to apply for reregistration after its registration has been revoked, as well as the authority for the
5 department to deny an application for reregistration; Transportation Code, §643.061, which authorizes
6 the department to adopt rules to vary the registration period under Subchapter B of Transportation
7 Code, Chapter 643; Transportation Code, §643.062, which states that a foreign-based international
8 motor carrier that is required to register under Transportation Code, Chapter 643 or that is registered
9 under Transportation Code, Chapter 645 may not transport persons or cargo in intrastate commerce in
10 Texas; Transportation Code, §643.063, which authorizes the department to adopt rules that provide for
11 the operation of vehicles under a short-term lease under flexible procedures, which are designed to
12 avoid requiring a vehicle to be registered more than once in a calendar year and which allow a leasing
13 business to register a vehicle on behalf of a lessee; Transportation Code, §643.101(b), which authorizes
14 the department to adopt rules to set the amount of liability insurance that a motor carrier that is
15 required to register under Subchapter B of Transportation Code, Chapter 643 must maintain, at an
16 amount that does not exceed the amount required for a motor carrier under a federal regulation
17 adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes the
18 department to adopt rules to provide for a responsible system of self-insurance for a motor carrier;
19 Transportation Code, §643.103, which authorizes the department to charge a fee of \$100 when a motor
20 carrier that is required to register under Subchapter B of Transportation Code, Chapter 643 files
21 evidence of insurance in the amounts required by Transportation Code, §643.101 or §643.1015, or
22 evidence of financial responsibility as described by Transportation Code, §643.102, in a form prescribed
23 by the department; Transportation Code, §643.252, which authorizes the department to deny a

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1 registration issued under Transportation Code, Chapter 643 under certain circumstances; Transportation
2 Code, §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387
3 requiring motor carriers operating foreign commercial motor vehicles in Texas to maintain financial
4 responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are
5 necessary and appropriate to implement the powers and duties of the department under the
6 Transportation Code and other laws of this state; Government Code, §2001.004, which requires state
7 agencies to adopt rules of practice stating the nature and requirements of all available formal and
8 informal procedures; Government Code, §2001.054, which specifies the requirements regarding the
9 grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory
10 authority referenced throughout this preamble and in the rule text, which is incorporated herein by
11 reference.

12 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, Chapter
13 643; and Government Code, Chapter 2001.

14

15 TEXT.

16 §218.10. Purpose.

17 [~~Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial motor~~18 ~~vehicle or transport household goods on a for-hire basis on a road or highway of this state unless the~~19 ~~carrier registers with the department or is exempt from registration under Transportation Code,~~20 ~~§643.002.] This subchapter prescribes the procedures by which a motor carrier, leasing business, or [for-~~21 ~~hire transporter of] household goods carrier may register with the department, and sets out minimum~~22 insurance requirements and minimum [~~workers' compensation or~~] accidental insurance requirements.

23

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1 §218.11. Motor Carrier Registration.

2 (a) A motor carrier may not operate a commercial motor vehicle upon a public highway [~~the~~
3 ~~public roads or highways~~] of this state without first obtaining a certificate of registration issued by the
4 department as prescribed in this subchapter and a valid USDOT number.

5 (b) A household goods carrier may not operate a vehicle upon a public highway [~~the public roads~~
6 ~~or highways~~] of this state without first obtaining a certificate of registration issued by the department as
7 prescribed in this subchapter and a valid USDOT number.

8 (c) For the purposes of this subchapter, a valid USDOT number is an active USDOT number.

9

10 §218.13. Application for Motor Carrier Registration.

11 (a) Form of original application. An original application for motor carrier registration must be filed
12 electronically in the department's designated motor carrier registration system, [with the department's
13 ~~Motor Carrier Division and]~~ must be in the form prescribed by the director and must contain, at a
14 minimum, the following information and documents.

15 (1) USDOT number. A valid USDOT number issued to the applicant.

16 (2) Applicant information and documents. [Business or trade name.] All applications must
17 include the following information and documents:

18 (A) The applicant's name, business type (e.g., sole proprietor, corporation, or
19 limited liability company), telephone number, email address, and Secretary of State file number, as
20 applicable. The applicant's name and email address must match the information the applicant provided
21 to FMCSA to obtain the USDOT number that the applicant provided in its application to the department.

22 (B) An application submitted by an entity, such as a corporation, general
23 partnership, limited liability company, limited liability corporation, limited partnership, or partnership,

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1 must include the entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer
2 Identification Number.

3 (C) A legible and accurate electronic image of each applicable required document:

4 (i) The certificate of filing, certificate of incorporation, or certificate of
5 registration on file with the Texas Secretary of State; and

6 (ii) each assumed name certificate on file with the Secretary of State or
7 county clerk.

8 ~~[The applicant must designate the business or trade name of the motor carrier.]~~

9 (3) Information and documents regarding applicant's owners, representatives, and
10 affiliates. ~~[Owner name.]~~ All applications must include the following information and documents on the
11 applicant's owners, representatives, and affiliates, as applicable:

12 (A) The contact name, email address, and telephone number of the person
13 submitting the application. An authorized representative of the applicant who files an application with
14 the department on behalf of an applicant may be required to provide written proof of authority to act on
15 behalf of the applicant.

16 (B) The name, social security number or Individual Taxpayer Identification
17 Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of
18 birth, business address, and ownership percentage for each owner, partner, member, or principal if the
19 applicant is not a publicly traded company.

20 (C) The name, social security number or Individual Taxpayer Identification
21 Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of
22 birth, and business address for the following if the applicant is owned in full or in part by a legal entity:

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1 (i) each officer, director, or trustee authorized to act on behalf of the
2 applicant; and

3 (ii) each manager or representative who has or exercises authority to
4 direct some or all of the applicant’s operational policy regarding compliance with applicable laws
5 regarding a motor carrier, excluding sales functions, on behalf of the applicant.

6 (D) The name, employer identification number, ownership percentage, and non-
7 profit or publicly traded status for each legal entity that owns the applicant in full or in part.

8 (E) The name, social security number or Individual Taxpayer Identification
9 Number (to the extent the natural person is authorized by law to obtain one of these numbers), date of
10 birth, and business address for each person who serves or will serve as the applicant’s manager, operator,
11 or representative who has or exercises authority to direct some or all of the applicant’s operational policy
12 regarding compliance with applicable laws regarding a motor carrier, excluding sales functions.

13 (F) A legible and accurate electronic image of at least one of the following
14 unexpired identity documents for each natural person identified in the application:

15 (i) a driver license issued by a state or territory of the United States. If the
16 driver license was issued by the Texas Department of Public Safety, the image must also include the audit
17 number listed on the Texas driver license;

18 (ii) Texas identification Card issued by the Texas Department of Public
19 Safety under Transportation Code, Chapter 521, Subchapter E, or an identification certificate issued by a
20 state or territory of the United States;

21 (iii) license to carry a handgun issued by the Texas Department of Public
22 Safety under Government Code, Chapter 411, Subchapter H;

23 (iv) United States passport; or

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1 (v) United States military identification.

2 [~~If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number~~
3 ~~of the owner. A partnership must indicate the partners' names, and a corporation or other entity must~~
4 ~~indicate principal officers and titles.]~~

5 (4) Principal business address and mailing address. The applicant must provide the
6 applicant's [~~Physical address of principal place of business. A motor carrier must disclose the motor~~
7 ~~carrier's] principal business address, which must be a physical address. If the mailing address is different from the~~
8 principal business address, the applicant must also provide the applicant's mailing address [~~must also be disclosed~~].

9 (5) Legal agent.

10 (A) A Texas-domiciled motor carrier must provide the name, telephone number,
11 and address of a legal agent for service of process if the agent is different from the motor carrier.

12 (B) A motor carrier domiciled outside Texas must provide the name, telephone
13 number, and Texas address of the legal agent for service of process.

14 (C) A legal agent for service of process shall be a Texas resident, a domestic
15 corporation, or a foreign corporation authorized to transact business in Texas with a Texas physical
16 address, rather than a post office box, for service of process.

17 (6) Description of vehicles. An application must include a motor carrier equipment report
18 identifying each [~~commercial~~] motor vehicle that requires registration and that the carrier proposes to
19 operate. Each [~~commercial~~] motor vehicle must be identified by its [~~motor~~] vehicle identification number,
20 make, model year, and type of cargo and by the unit number assigned to the [~~commercial~~] motor vehicle
21 by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this
22 section.

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1 (7) Type of motor carrier operations. An applicant must state if the applicant proposes to
2 transport passengers, household goods, or hazardous materials. [:]

3 [~~(A) proposes to transport passengers, household goods, or hazardous materials;~~
4 ~~or]~~

5 [~~(B) is domiciled in a foreign country.]~~

6 (8) Insurance coverage. An applicant must indicate insurance coverage as required by
7 §218.16 of this title (relating to Insurance Requirements).

8 (9) Safety certification. Each motor carrier must complete, as part of the application, a
9 certification stating that the motor carrier knows and will conduct operations in accordance with all
10 federal and state safety regulations.

11 (10) Drug-testing certification. Each motor carrier must certify, as part of the application,
12 that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the
13 motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the
14 names of the persons operating the consortium.

15 (11) Duration of registration.

16 (A) An applicant must indicate the duration of the desired registration. Except as
17 provided otherwise in this section, registration may be for seven calendar days, 90 calendar days, one
18 year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles.

19 (i) Household goods carriers may not obtain seven-day or 90-day
20 certificates of registration.

21 (ii) Motor carriers that transport passengers in a commercial motor
22 vehicle as defined by Transportation Code, §548.001(1)(B) [~~§218.2(8)(A)(iii)~~] of this title (relating to

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1 Definitions) may not obtain seven-day or 90-day certificates of registration, unless approved by the
2 director.

3 (B) Interstate motor carriers that operate in intrastate commerce and meet the
4 requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor
5 Vehicles Registration) are not required to renew a certificate of registration issued under this section.

6 (12) Additional requirements. The following fees, documents, and information must be
7 submitted with the application. [~~all applications.~~]

8 (A) An application must be accompanied by an application fee of:

9 (i) \$100 for annual and biennial registrations;

10 (ii) \$25 for 90-day registrations; or

11 (iii) \$5 for seven-day registrations.

12 (B) An application must be accompanied by a vehicle registration fee of:

13 (i) \$10 for each vehicle that the motor carrier proposes to operate under
14 a seven-day, 90-day, or annual registration; or

15 (ii) \$20 for each vehicle that the motor carrier proposes to operate under
16 a biennial registration.

17 (C) An application must be accompanied by proof of insurance or financial
18 responsibility and the insurance filing fee as required by §218.16.

19 [~~(D) An application must include the applicant's business telephone number,
20 email address, and any cell phone number.~~]

21 (D) [(E)] An application must include the completed New Applicant Questionnaire
22 (Applicant Questionnaire), which consists of questions and requirements, such as the following:

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1 (i) Have you ever had another motor carrier certificate of registration
2 number issued by the department in the three years prior to the date of this application? If your answer
3 is yes, provide the certificate of registration number for the motor carrier(s). In the Applicant
4 Questionnaire, the word “you” means the applicant or any business that is operated, managed, or
5 otherwise controlled by or affiliated with the applicant or a family member, corporate officer, manager,
6 operator, or owner (if the business is not a publicly traded company) of the applicant. In the Applicant
7 Questionnaire, the word “manager” means a person who has or exercises authority to direct some or all
8 of the applicant’s operational policy regarding compliance with applicable laws regarding a motor carrier,
9 excluding sales functions.

10 (ii) Have you had a Compliance Review or a New Entrant Audit by the
11 Texas Department of Public Safety that resulted in an Unsatisfactory Safety Rating in the three years prior
12 to the date of your application? If your answer is yes, provide the USDOT number(s) and the certificate of
13 registration number(s) issued by the department.

14 (iii) Are you currently under an Order to Cease from the Texas
15 Department of Public Safety? If your answer is yes, provide the motor carrier’s USDOT number(s) and the
16 Carrier Profile Number(s). The Texas Department of Public Safety assigns a Carrier Profile Number (CP#)
17 when they perform a compliance review on a motor carrier’s operations to determine whether the motor
18 carrier meets the safety fitness standards.

19 (iv) Are you related to another motor carrier, or have you been related to
20 another motor carrier within the three years prior to the date of your application? The relationship may
21 be through a person (including a family member), corporate officer, or partner who also operates or has
22 operated as a motor carrier in Texas. If your answer is yes, state how you are related and provide the

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1 motor carrier's name and the motor carrier's USDOT number, or the certificate of registration number
2 issued by the department for each related motor carrier.

3 (v) Do you currently owe any administrative penalties to the department,
4 regardless of when the final order was issued to assess the administrative penalties? If your answer is yes,
5 provide the following information under which the administrative penalties were assessed:

6 (I) department's notice number(s); and

7 (II) the motor carrier's USDOT number and certificate of
8 registration number issued by the department;

9 (vi) Name and title of person completing the Applicant Questionnaire;

10 and

11 (vii) Is the person completing the Applicant Questionnaire an authorized
12 representative of the applicant? If your answer is yes, please add the person's name, job title, phone
13 number, and address.

14 (E) [(F)] An applicant must state if the applicant is domiciled in a foreign country.

15 ~~[An application submitted by an individual must include the number from one of the following forms of~~
16 ~~identification, as well as a copy of the identification document:]~~

17 ~~[(i) an unexpired driver's license issued by a state or territory of the~~
18 ~~United States. If the driver's license was issued by the Department of Public Safety, the application must~~
19 ~~also include the audit number listed on the driver's license;]~~

20 ~~[(ii) an unexpired identification certificate issued by a state or territory of~~
21 ~~the United States; or]~~

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1 (B) If the motor vehicle is not titled in the name of the household goods carrier,
2 the following lease information and documentation, notwithstanding §218.18(a) of this title (relating to
3 Short-term Lease and Substitute Vehicles):

4 (i) a copy of a valid lease agreement for each motor vehicle that the
5 household goods carrier will operate; and

6 (ii) the name of the lessor and their USDOT number for each motor
7 vehicle leased to the household goods carrier under a short-term lease.

8 (C) A certification that the household goods carrier has procedures that comply
9 with Code of Criminal Procedure, Article 62.063(b)(3), which prohibits certain people who are required to
10 register as a sex offender from providing moving services in the residence of another person without
11 supervision.

12 (14) Additional requirements for passenger carriers. The following information and
13 documents must be submitted with all applications for motor carriers that transport passengers in a
14 commercial motor vehicle as defined by Transportation Code, §548.001(1)(B) [~~§218.2(8)(A)(ii)~~] of this
15 title:

16 (A) If the commercial motor vehicle is titled in the name of the motor carrier, a
17 copy of the International Registration Plan registration receipt or a copy of the front and back of the title
18 for each commercial motor vehicle; or

19 (B) If the commercial motor vehicle is not titled in the name of the motor carrier,
20 the following lease information and documentation, notwithstanding §218.18(a) of this title:

21 (i) A copy of a valid lease agreement for each commercial motor vehicle;

22 and

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1 (ii) The name of the lessor and their USDOT number for each commercial
2 motor vehicle [~~vehicles~~] leased to the motor carrier under a short-term lease.

3 (b) Conditional acceptance of application. If an application has been conditionally accepted by the
4 director pursuant to Transportation Code, §643.055, the applicant may not operate the following until
5 the department has issued a certificate under Transportation Code, §643.054:

6 (1) a commercial motor vehicle or any other motor vehicle to transport household goods
7 for compensation, or

8 (2) a commercial motor vehicle to transport persons or cargo.

9 (c) Approved application. An applicant meeting the requirements of this section and whose
10 registration is approved shall [~~will~~] be issued the following documents:

11 (1) Certificate of registration. The department shall [~~will~~] issue a certificate of registration.
12 The certificate of registration shall [~~will~~] contain the name and address of the motor carrier and a single
13 registration number, regardless of the number of vehicles requiring registration that the carrier operates.

14 (2) Insurance cab card. The department shall [~~will~~] issue an insurance cab card listing all
15 vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be
16 continuously maintained at the motor carrier's [~~registrant's~~] principal [~~place of~~] business address. The
17 insurance cab card shall [~~will~~] be valid for the same period as the motor carrier's certificate of registration
18 and shall [~~will~~] contain information regarding each vehicle registered by the motor carrier.

19 (A) A current copy of the page of the insurance cab card on which the vehicle is
20 shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible
21 and accurate image of the insurance cab card on a wireless communication device in the vehicle or
22 chooses to display such information on a wireless communication device by accessing the department's
23 online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted

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1 if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an
2 image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab
3 card or the display of such information on a wireless communications device shall ~~[will]~~ serve as proof of
4 insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the
5 department.

6 (B) On demand by a department investigator or any other authorized government
7 personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in
8 the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier
9 chooses to display the information on a wireless communication device by accessing the department's
10 online system, the driver shall ~~[must]~~ locate the vehicle in the department's online system upon request
11 by the department-certified inspector or other authorized government personnel.

12 (C) The motor carrier shall notify the department in writing if it discontinues use
13 of a registered ~~[commercial]~~ motor vehicle before the expiration of its insurance cab card.

14 (D) Any erasure or alteration of an insurance cab card that the department
15 printed out for the motor carrier renders it void.

16 (E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes
17 illegible; or if it otherwise needs to be replaced, the department shall ~~[will]~~ print out a new insurance cab
18 card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new
19 insurance cab card using the department's online system.

20 (F) The department is not responsible for a motor carrier's inability to access the
21 insurance cab card ~~[information]~~ using the department's online system.

22 ~~[(G) The display of an image of the insurance cab card or the display of insurance~~
23 ~~information from the department's online system via a wireless communication device by the motor~~

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1 ~~carrier does not constitute effective consent for a law enforcement officer, the department investigator,~~
2 ~~or any other person to access any other content of the wireless communication device.]~~

3 (d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of
4 registration under this section shall not operate additional vehicles unless the carrier identifies the
5 vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

6 (1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of \$10 for each
7 additional vehicle that the motor carrier proposes to operate under a seven-day, 90-day, or annual
8 registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee
9 of \$20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier
10 must pay a fee of \$10 for each vehicle.

11 (2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for
12 which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier
13 must ~~shall~~ notify the department, identify the vehicle being taken out of service, and identify the
14 replacement vehicle on a form prescribed by the department. A motor carrier registered under seven-day
15 registration may not replace vehicles.

16 (e) Supplement to original application. A motor carrier required to register under this section shall
17 electronically file in the department's designated motor carrier registration system ~~submit~~ a
18 supplemental application under the following circumstances.

19 (1) Change of cargo. A registered motor carrier may not begin transporting household
20 goods or hazardous materials unless the carrier submits a supplemental application to the department
21 and shows the department evidence of insurance or financial responsibility in the amounts specified by
22 §218.16.

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1 (2) Change of name. A motor carrier that changes its name shall file a supplemental
2 application for registration no later than the effective date of the change. The motor carrier shall include
3 evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16.
4 A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State
5 before filing a supplemental application. A motor carrier incorporated outside the state of Texas must
6 complete the name change under the law of its state of incorporation before filing a supplemental
7 application.

8 (3) Change of address or legal agent for service of process. A motor carrier shall file a
9 supplemental application for any change of address or any change of its legal agent for service of process
10 no later than the effective date of the change. The address most recently filed will be presumed
11 conclusively to be the current address.

12 (4) Change in principal officers and titles. A motor carrier that is a corporation shall file a
13 supplemental application for any change in the principal officers and titles no later than the effective date
14 of the change.

15 (5) Conversion of corporate structure. A motor carrier that has successfully completed a
16 corporate conversion involving a change in the name of the corporation shall file a supplemental
17 application for registration and evidence of insurance or financial responsibility reflecting the new
18 company name. The conversion must be approved by the Office of the Secretary of State before the
19 supplemental application is filed.

20 (6) Change in drug-testing consortium status. A motor carrier that changes consortium
21 status shall file a supplemental application that includes the names of the persons operating the
22 consortium.

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1 (7) Retaining a revoked or suspended certificate of registration number. A motor carrier
2 may retain a prior certificate of registration number by:

3 (A) filing a supplemental application to reregister [~~re-register~~] instead of filing an
4 original application; and

5 (B) providing adequate evidence that the carrier has satisfactorily resolved the
6 issue [~~facts~~] that gave rise to the suspension or revocation.

7 (f) Change of ownership. A motor carrier must file an original application for registration when
8 there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

9 (g) Alternative vehicle registration for household goods agents. To avoid multiple registrations of
10 a [~~commercial~~] motor vehicle, a household goods agent's vehicles may be registered under the motor
11 carrier's certificate of registration under this subsection.

12 (1) The carrier must notify the department on a form approved by the director of its intent
13 to register its agent's vehicles under this subsection.

14 (2) When a carrier registers vehicles under this subsection, the carrier's certificate shall
15 [~~will~~] include all vehicles registered under its agent's certificates of registration. The carrier must register
16 under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's
17 certificate of registration.

18 (3) The department may send the carrier a copy of any notification sent to the agent
19 concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

20 (h) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required
21 to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a
22 business registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles). A
23 motor carrier is not required to carry proof of registration as described in subsection (d) of this section if

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1 a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary
2 replacement vehicle.

3 (i) Once the motor carrier obtains a certificate of registration, the motor carrier shall update ~~must~~
4 ~~review~~ its principal business address, mailing address, and email address in the department's online
5 system within 30 days of a change to the information. ~~every six months and shall update such information~~
6 ~~if it is no longer correct.~~

7

8 §218.14. Expiration and Renewal of ~~Commercial~~ Motor Vehicle Registration.

9 (a) Expiration and renewal dates.

10 (1) A motor carrier with annual or biennial registration shall ~~will~~ be assigned a date for
11 the expiration and renewal of its motor carrier registration according to the last digit of the carrier's
12 certificate of registration number, as outlined in the following chart:

13 Attached Graphic

14 (2) 90-day ~~90-day~~ certificates of registration are valid for 90 calendar days from the
15 effective date.

16 (3) Seven-day ~~Seven-day~~ certificates of registration are valid for seven calendar days
17 from the effective date.

18 (b) Registration renewal.

19 (1) At least 30 ~~Approximately 60~~ days before the expiration of registration, the
20 department shall ~~will~~ mail or send electronically a renewal notice to each registered motor carrier with
21 annual or biennial registration. The notice shall ~~will~~ be sent ~~mailed~~ to the carrier's last known address
22 according to the Motor Carrier Division's ~~division's~~ records. Failure to receive the notice does not relieve
23 the registrant of the responsibility to renew. ~~A motor carrier must ensure that the department receives~~

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1 ~~the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section.] A~~
2 supplement to an application for motor carrier registration renewal must be filed electronically in the
3 department's designated motor carrier registration system and must:

4 (A) supply any new information and documents required under §218.13(e) of this
5 title (relating to Application for Motor Carrier Registration) if the information or documents have [~~has~~]
6 not previously been provided [~~supplied~~] to the department; and

7 (B) include a \$10 fee for each vehicle that the carrier operates under an annual
8 certificate of registration and a \$20 fee for each vehicle that the carrier operates under a biennial
9 certificate of registration.

10 (2) Seven-day [~~Seven-day~~] and 90-day [~~90-day~~] registrations may not be renewed.

11 (3) A motor carrier shall maintain continuous insurance or evidence of financial
12 responsibility in an amount at least equal to the amount prescribed under §218.16 of this title (relating to
13 Insurance Requirements).

14 (4) The insurance cab card issued to a motor carrier is valid for the same period as the
15 motor carrier's certificate of registration.

16 (5) To renew registration after it has expired, a motor carrier must file a supplemental
17 application electronically in the department's designated motor carrier registration system within 180
18 days after the registration expiration and must include the following information, documents, and fees:

19 (A) identify its vehicles on a form prescribed by the director; [~~;~~]

20 (B) pay all vehicle fees; [~~;~~] and

21 (C) if current proof of insurance or evidence of financial responsibility is not on
22 file with the department, comply with [~~division, meet~~] all insurance requirements.

23 (c) Interstate motor carrier operating in intrastate commerce.

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1 (1) An interstate motor carrier registered under §218.17 of this title (relating to Unified
2 Carrier Registration System) is not required to renew a certificate of registration issued under §218.11 of
3 this title (relating to Motor Carrier Registration) except when the motor carrier is operating as a

4 (A) non-charter bus carrier;

5 (B) household goods carrier; or

6 (C) recyclable materials or waste carrier.

7 (2) If a motor carrier that registered under §218.17 does not maintain continuous motor
8 carrier registration under §218.11, the motor carrier must file a supplemental application to reregister
9 [~~re-register~~] under §218.13 to operate on a public highway [~~public streets and highways~~] in this state.

10 (3) The motor carrier must notify the department if the motor carrier is registered under
11 UCR. The notification must be filed with the department on a form prescribed by the department. Once
12 the department receives the notification, the department shall [~~will~~] convert the motor carrier's certificate
13 of registration to a non-expiring certificate of registration if the motor carrier qualifies for a non-expiring
14 certificate of registration.

15 (4) If the department issues the motor carrier a non-expiring certificate of registration,
16 the motor carrier shall [~~must~~] notify the department if the motor carrier is no longer registered under UCR
17 or if the motor carrier operates as a non-charter bus carrier, household goods carrier, or recyclable
18 materials or waste carrier. The notification shall [~~must~~] be filed with the department on a form prescribed
19 by the department.

20

21 §218.16. Insurance Requirements.

22 (a) Automobile liability insurance requirements. A motor carrier must file proof of [~~commercial~~]
23 automobile liability insurance with the department on a form acceptable to the director for each vehicle

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1 required to be registered under this subchapter. The motor carrier shall ~~must~~ carry and maintain
2 automobile liability insurance that is combined single limit liability for bodily injury to or death of an
3 individual per occurrence, and loss or damage to property (excluding cargo) per occurrence~~[, or both]~~.
4 Extraneous information will not be considered acceptable, and the department may reject proof of
5 ~~commercial~~ automobile liability insurance if it is provided in a format that includes information beyond
6 what is required. Minimum insurance levels are indicated in the following table. However, a motor
7 carrier that is required to register with the department under Transportation Code, Chapter 643 that
8 operates a foreign commercial motor vehicle must comply with the minimum level of financial
9 responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial
10 responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387 regarding
11 the required level of financial responsibility, including any amendments that became effective through
12 July 1, 2024. ~~[Effective October 23, 2015, the department adopts by reference the amendments to 49~~
13 ~~C.F.R. Part 387 with an effective date of October 23, 2015.]~~

14 Attached Graphic

15 (b) Cargo insurance. Household goods carriers shall file and maintain with the department proof
16 of financial responsibility.

17 (1) The minimum limits of financial responsibility for a household goods carrier ~~[for hire]~~
18 is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

19 (2) The minimum limits of financial responsibility for a household goods carrier ~~[for hire]~~
20 is \$10,000 for aggregate loss or damage to multiple shippers' ~~shipper~~ cargo carried on any one motor
21 vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage
22 is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the
23 shippers in relationship to the damage incurred by each shipper.

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1 (c) Workers' compensation or accidental insurance coverage.

2 (1) A motor carrier that is required to register under this subchapter and whose primary
3 business is transportation for compensation or hire between two or more municipalities [~~incorporated~~
4 ~~cities, towns, or villages~~] shall provide workers' compensation for all its employees or accidental
5 insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

6 (2) Accidental insurance coverage required by paragraph (1) of this subsection shall be
7 at least in the following amounts:

8 (A) \$300,000 for medical expenses [~~and coverage~~] for at least 104 weeks;

9 (B) \$100,000 for accidental death and dismemberment;

10 (C) [~~including~~] 70 percent of the employee's pre-injury income for not less than
11 104 weeks when compensating for loss of income; and

12 (D) [~~€~~] \$500 for the maximum weekly benefit.

13 (d) Qualification of motor carrier as self-insured motor carrier.

14 (1) General qualifications. A motor carrier may meet the insurance requirements of
15 subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to
16 qualify as a self-insured motor carrier. The application must include a true and accurate statement of
17 the motor carrier's financial condition and other evidence that establishes its ability to satisfy
18 obligations for bodily injury and property damage liability, or cargo liability, if applicable, without
19 affecting the stability or permanency of its business. The department may accept USDOT evidence of the
20 motor carrier's qualifications as a self-insured motor carrier.

21 (2) Applicant guidelines. In addition to filing an application as prescribed by the
22 department, an applicant for self-insured status must submit information and documents [~~materials~~]
23 that will enable [~~allow~~] the department to determine the following information.

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1 (A) Applicant's net worth. An applicant's net worth must be adequate in relation
2 to the size of its operations and the extent of its request for self-insurance authority. The applicant must
3 demonstrate that it can and will maintain an adequate net worth.

4 (B) Self-insurance program. An applicant must demonstrate that it has
5 established and shall ~~[will]~~ maintain a sound insurance program that will protect the public against all
6 claims involving motor vehicles to the same extent as the minimum insurance levels ~~[security limits]~~
7 applicable under this section. In determining whether an applicant is maintaining a sound insurance
8 program, the department shall ~~[will]~~ consider:

- 9 (i) reserves;
- 10 (ii) sinking funds;
- 11 (iii) third-party financial guarantees;
- 12 (iv) parent company or affiliate sureties;
- 13 (v) excess insurance coverage; and
- 14 (vi) other appropriate aspects of the applicant's program.

15 (C) Safety program. An applicant must submit evidence of a current
16 “satisfactory” safety rating from the Texas Department of Public Safety under Transportation Code,
17 Chapter 644 and administrative rules adopted under ~~[substantial compliance with the federal motor~~
18 ~~carrier safety regulations as adopted by the Texas Department of Public Safety and with]~~ Transportation
19 Code, Chapter 644 or a “satisfactory” safety rating from FMCSA under federal law. An application by a
20 motor carrier with less than a current “satisfactory” safety rating or no safety rating will be summarily
21 denied.

22 (3) Other securities or agreements. The department may accept an application for
23 approval of a security or agreement if satisfied that the security or agreement offered will adequately

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1 protect the public.

2 (4) Periodic reports. An approved self-insured motor carrier [~~applicant~~] shall file with the
3 department annual statements [~~, semi-annual and quarterly reports,~~] and any [~~other~~] reports required
4 by the department reflecting the motor carrier's [~~applicant's~~] financial condition and the status of its
5 self-insurance program while the motor carrier is self-insured.

6 (5) Duration and coverage of self-insured status. The department may approve an
7 applicant as a self-insured motor carrier for any specific time or for an indefinite time. An approved self-
8 insured status only applies to the type of cargo that the motor carrier [~~applicant~~] reported to the
9 department in the application for self-insured status, and is subject to any limitations, restrictions, or
10 requirements that the department includes in any letter to approve self-insured status.

11 (6) Revocation of self-insured status. On receiving evidence that a self-insured motor
12 carrier's financial condition has changed, that its safety program or record is inadequate, or that it is
13 otherwise not in compliance with this subchapter, the department may at any time require the self-
14 insured motor carrier to provide additional information and documents. On 10 days' notice from the
15 department, the self-insured motor carrier shall provide the department with information and
16 documents, as applicable, that [~~appear and~~] demonstrate that it [~~continues to have adequate financial~~
17 ~~resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The~~
18 ~~self-insured shall also demonstrate that it~~] remains in compliance with the requirements of this section
19 and of any active self-insurance requirements included in the department's approval letter. If a motor
20 carrier [~~an applicant~~] fails to comply with the applicable requirements under this section, its self-insured
21 status may be revoked. The revocation of self-insured status will be governed by Chapter 224 of this title
22 (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

23 (7) Appeal of denial of application for self-insured status. An applicant may appeal a

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1 denial of self-insured status by filing an appeal in accordance with §224.126 of this title (relating to
2 Appeal of a Denial of Self-Insured Status).

3 (e) Filing proof of insurance with the department.

4 (1) Forms.

5 (A) A motor carrier shall file and maintain proof of automobile liability insurance
6 for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a
7 form acceptable to the director.

8 (B) A household goods carrier shall also file and maintain proof of cargo
9 insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

10 (2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of
11 insurance on a form acceptable to the director:

12 (A) at the time of the original application for a motor carrier certificate of
13 registration;

14 (B) on or before the cancellation date of the insurance coverage as described in
15 subsection (f) of this section;

16 (C) when the motor carrier changes insurers;

17 (D) when the motor carrier asks to retain the certificate number of a revoked
18 certificate of registration;

19 (E) when the motor carrier changes its name under §218.13(e)(2) of this title
20 (relating to Application for Motor Carrier Registration);

21 (F) when the motor carrier, under subsection (a) of this section, changes the
22 classification of the cargo being transported; and

23 (G) when replacing another active insurance filing.

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1 (3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with
2 the department for the coverage required under this section must ~~[shall]~~ be accompanied by a
3 nonrefundable filing fee of \$100 ~~[-. This fee applies both]~~ when the carrier submits an original application
4 and when the carrier submits a supplemental application when retaining a revoked certificate of
5 registration number.

6 (4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the
7 department in a form prescribed by the department and approved by an authorized agent of the
8 insurer.

9 (f) Cancellation of insurance coverage. Except when replaced by another acceptable form of
10 insurance coverage or proof of financial responsibility approved by the department, ~~[ne]~~ insurance
11 coverage may not ~~[shall]~~ be canceled or withdrawn until 30 days after notice has been given to the
12 department by the insurer in a form approved by the department. Nonetheless, proof of insurance
13 coverage for a seven-day ~~[seven-day]~~ or 90-day ~~[90-day]~~ certificate of registration may be canceled by
14 the insurer without 30 days' notice if the certificate of registration is expired, suspended, or revoked,
15 and the insurer provides a cancellation date on the proof of insurance coverage.

16 (g) Replacement insurance filing. The department shall ~~[will]~~ consider a new insurance filing as
17 the current record of financial responsibility required by this section if:

18 (1) the new insurance filing is received by the department; and

19 (2) a cancellation notice has not been received for previous insurance filings.

20 (h) Insolvency of insurance carrier. An affidavit required by Transportation Code, §643.105 must
21 be executed by an owner, partner, or officer of the motor carrier. ~~[If the insurer of a motor carrier~~
22 ~~becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor~~
23 ~~carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner,~~

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1 ~~or officer of the motor carrier and show that:]~~

2 ~~[(1) no collisions have occurred and no claims have arisen during the insolvency of the~~

3 ~~insurance carrier; or]~~

4 ~~[(2) all claims have been satisfied.]~~

5

6 §218.18. Short-term Lease and Substitute Vehicles.

7 (a) Registration. A short-term lease vehicle registered under this section is exempt from the

8 registration requirements described in §218.13 of this title (relating to Application for Motor Carrier

9 Registration) while leased to a registered motor carrier.

10 (1) Application. A leasing business registering vehicles under this section shall file an

11 application on a form prescribed by the director.

12 (2) Annual report. The operation of a short-term lease vehicle shall be reported to the

13 department on a form prescribed by the director not later than April 1 of each calendar year for the

14 previous calendar year's operations. The report must identify the number of short-term lease vehicles

15 that would otherwise be subject to the registration requirements of this subchapter.

16 (3) Fees. An annual registration fee of \$10 per vehicle operated must be paid at the time

17 the report is filed under paragraph (2) of this subsection.

18 (4) Cancellation, expiration, and revocation.

19 (A) A leasing business must make a written request for cancellation of

20 registration.

21 (B) A leasing business registration expires on April 30 of each year unless the

22 leasing business reports by April 1 the actual number of vehicles requiring registration operated in the

23 previous calendar year.

1 (C) The department may suspend or revoke a leasing business registration under
2 §218.72 of this title (relating to Administrative Sanctions).

3 (b) Proof of contingency liability insurance. A leasing business registering a vehicle under this
4 section must file and maintain proof of liability insurance on a form prescribed by the director as
5 required by §218.16 of this title (relating to Insurance Requirements).

6 (1) Filings. A leasing business shall file proof of insurance at the time of its initial
7 registration and whenever it changes insurance carriers in accordance with §218.16.

8 (2) Filing fee. Each proof of insurance filing under this section shall be accompanied by a
9 nonrefundable \$100 filing fee.

10 (3) Cancellation of insurance coverage. Any cancellation of insurance filed under this
11 section must comply with the requirements set out in §218.16.

12 (c) Substitute vehicles. A registered motor carrier is not required to comply with the provisions
13 of §218.13(d) for a vehicle that is leased from a leasing business and that is used as a temporary
14 replacement for a vehicle that has been taken out of service for maintenance, repair, or any other
15 reason causing the temporary unavailability of the permanent vehicle.

16 (d) Identification. A registered motor carrier is not required to carry proof of registration, as
17 required by §218.13(c)(2), in a vehicle leased from a registered leasing business under a short-term
18 lease. A copy of the lease agreement or of the lease for the originally leased vehicle, in the case of a
19 temporary replacement vehicle, must be carried in the cab of the vehicle.

20

21 **SUBCHAPTER C. RECORDS AND INSPECTIONS**

22 **43 TAC §218.31 AND §218.32**

23

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1 **STATUTORY AUTHORITY.** The department proposes the amendments under Transportation Code,
2 §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter
3 643; Transportation Code, §643.051, which states that a motor carrier may not operate a commercial
4 motor vehicle, as defined by Transportation Code, §548.001, on a road or highway in Texas, and may not
5 operate a vehicle, regardless of size, to transport household goods for compensation on a road or
6 highway in Texas unless the motor carrier registers with the department under Subchapter B of
7 Transportation Code, Chapter 643; Transportation Code, §643.254, which authorizes the department to
8 investigate an alleged violation of Transportation Code, Chapter 643 or a rule or order adopted under
9 Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to
10 adopt rules that are necessary and appropriate to implement the powers and duties of the department
11 under the Transportation Code and other laws of this state; Government Code, §2001.004, which
12 requires state agencies to adopt rules of practice stating the nature and requirements of all available
13 formal and informal procedures; and the statutory authority referenced throughout this preamble and
14 in the rule text, which is incorporated herein by reference.

15 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, Chapter
16 643; and Government Code, Chapter 2001.

17

18 TEXT.

19 §218.31. Investigations and Inspections of Motor Carrier Records.

20 (a) Certification of department investigators. In accordance with Transportation Code, Chapter
21 643, the executive director or designee will designate department employees as certified for the
22 purpose of entering the premises of a motor carrier to copy or verify documents the motor carrier is
23 required to maintain according to this chapter. The executive director or designee shall provide

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1 credentials to department investigators identifying them as department employees and as certified to
2 conduct investigations and inspect records on behalf of the department.

3 (b) Investigations and Inspections.

4 (1) A motor carrier shall grant a department investigator certified under this section
5 access to the carrier's premises to conduct inspections or investigations of alleged violations of this
6 chapter and of Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate
7 work space with reasonable working conditions and allow the department investigators to copy and
8 verify records and documents the motor carrier is required to maintain according to this chapter.

9 (2) The department investigator may conduct inspections and investigations during
10 normal business hours unless mutual arrangements have been made otherwise.

11 (3) The department investigator shall ~~will~~ present his or her credentials to the motor
12 carrier prior to conducting an investigation or inspection.

13 (c) Access. A motor carrier shall provide access to requested records and documents at:

14 (1) the motor carrier's principal ~~place of~~ business address; or

15 (2) a location agreed to by the department and the motor carrier.

16 (d) Designation of meeting time. If the motor carrier's normal business hours do not provide the
17 access necessary for the investigator to conduct the investigation and the parties cannot reach an
18 agreement as to a time to meet to access the records, the department shall designate the time of the
19 meeting and provide written notice via the business address, facsimile number, or email address on file
20 with the department.

21

22 §218.32. Motor Carrier Records.

23 (a) General records to be maintained. Every motor carrier shall prepare and maintain in a

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1 complete and accurate manner:

2 (1) operational logs, insurance certificates, documents to verify the carrier's operations,

3 and proof of registration fee payments;

4 (2) records of services performed;

5 (3) all certificate of title documents, weight tickets, permits for oversize or overweight

6 vehicles and loads, dispatch records, or any other document that would verify the operations of the

7 vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

8 (4) the original certificate of registration and registration listing, if applicable.

9 (b) Proof of motor carrier registration.

10 (1) Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this

11 title (relating to Application for Motor Carrier Registration), every motor carrier shall maintain a copy of

12 its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall

13 make available to a department investigator or any law enforcement officer a copy of the current

14 registration listing upon request.

15 (2) A registered motor carrier is not required to carry proof of registration in a vehicle

16 leased from a leasing business that is registered under §218.18 of this title (relating to Short-term Lease

17 and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other

18 unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the

19 originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

20 (3) A motor carrier is not required to carry proof of compliance with UCR or the UCR

21 plan or agreement in its vehicle.

22 (c) Location of files. Except as provided in this subsection, every motor carrier shall maintain at a

23 principal ~~place of~~ business address in Texas all records and information required by the department.

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1 (1) Texas motor carriers. If a motor carrier wishes to maintain records at a specific
2 location other than its principal [~~place of~~] business address in Texas, the motor carrier shall make a
3 written request to the director. A motor carrier may not begin maintaining records at an alternate
4 location until the request is approved by the director.

5 (2) Out-of-state motor carriers. A motor carrier whose principal business address is
6 located outside the state of Texas shall maintain records required under this section at its business
7 location in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state
8 facility if the carrier reimburses the department for necessary travel expenses and per diem for any
9 inspections or investigations conducted in accordance with §218.31 of this title (relating to
10 Investigations and Inspections of Motor Carrier Records).

11 (3) Regional office or driver work-reporting location. All records and documents
12 required by this subchapter which are maintained at a regional office or driver work-reporting location,
13 whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made
14 available for inspection upon request at the motor carrier's principal [~~place of~~] business address or other
15 location specified by the department [~~Department~~] within 48 hours after a request is made. Saturdays,
16 Sundays, and federal and state holidays are excluded from the computation of the 48-hour period of
17 time [~~in accordance with 49 C.F.R. §390.29~~].

18 (d) Preservation and destruction of records. All books and records generated by a motor carrier,
19 except driver's time cards and logs, must be maintained for not less than two years at the motor
20 carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not
21 less than six months at the carrier's principal business address.

22

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1 (C) payable to the State of Texas or a person to whom the motor transportation
2 broker provides services.

3 (2) The bond shall be conditioned upon:

4 (A) the faithful performance of the contracts or agreements of transportation by
5 the motor carrier or motor carriers for whom the motor transportation broker is acting, and which were
6 negotiated by the broker; and

7 (B) the honest and faithful performance by the motor transportation broker in
8 that capacity.

9 (3) The bond shall provide that all defenses available to the motor carrier shall be
10 available to the principal and surety, but no condition or provision of the bond shall otherwise affect the
11 right of the person to whom the motor transportation broker provides services [shipper] to collect all
12 damages to which the person [it] may be entitled at law.

13 (c) Expiration or cancellation of bond. The bond shall not expire or be subject to cancellation
14 until the 30th day after written notice of expiration or cancellation has been served on the principal and
15 the department, either personally or by certified mail. Unless the principal files a new bond in
16 compliance with the requirements of this section on or before the expiration of the 30-day period, the
17 person may not act as a motor transportation broker.

18 [~~(d) Amount of recovery. In no event shall the total of all recoveries under a bond exceed the~~
19 ~~penal amount.~~]

20

21

SUBCHAPTER E. CONSUMER PROTECTION

22

43 TAC §§218.53, 218.54, 218.56, 218.57, 218.58, 218.61, 218.62, 218.64, AND 218.65

23

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1 **STATUTORY AUTHORITY.** The department proposes the amendments under Transportation Code,
2 §643.152, which authorizes the department to establish voluntary standards for uniform cargo liability
3 and uniform bills of lading or receipts for cargo, which standards must be consistent with Subtitle IV,
4 Title 49, United States Code, or a regulation adopted under that law; Transportation Code, §643.153,
5 which authorizes the department to adopt rules to protect a consumer using the service of a motor
6 carrier who is transporting household goods for compensation; and authorizes the department to adopt
7 rules that are necessary to ensure that a customer of a household goods carrier is protected from
8 deceptive or unfair practices and unreasonably hazardous activities; Transportation Code, §643.153(d),
9 which requires a household goods carrier that is required to register under Subchapter B of
10 Transportation Code, Chapter 643 to file a tariff with the department that establishes the maximum
11 charges for all transportation services; Transportation Code, §643.154(c), which authorizes the
12 department to adopt a rule to exempt a motor carrier that is required to register under Subchapter B of
13 Transportation Code, Chapter 643, from Chapter 15, Business and Commerce Code, for an activity
14 relating to the establishment of a joint line rate, route, classification, or mileage guide; Transportation
15 Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code,
16 Chapter 643; Transportation Code, §643.051, which states that a motor carrier may not operate a
17 vehicle, regardless of size, to transport household goods for compensation on a road or highway in
18 Texas unless the motor carrier registers with the department under Subchapter B of Transportation
19 Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are
20 necessary and appropriate to implement the powers and duties of the department under the
21 Transportation Code and other laws of this state; Government Code, §2001.004, which requires state
22 agencies to adopt rules of practice stating the nature and requirements of all available formal and
23 informal procedures; and the statutory authority referenced throughout this preamble and in the rule

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1 text, which is incorporated herein by reference.

2 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, Chapter

3 643; and Government Code, Chapter 2001.

4

5 TEXT.

6 §218.53. Household Goods Carrier Cargo Liability.

7 Pursuant to Transportation Code, §643.152, the voluntary standard for uniform cargo liability

8 for a household goods carrier can be found in 49 C.F.R. §375.201, which the department adopts by

9 reference, including any amendments that became effective through July 1, 2024.

10 [~~(a) Unless the carrier and shipper agree in writing to a higher limit of carrier liability, a~~

11 ~~household goods carrier's liability for loss or damage of property shall be \$.60 per pound per article.~~

12 ~~Claims for loss or damage of property may be settled based on the weight of the article multiplied by~~

13 ~~\$.60.]~~

14 [~~(b) If the carrier and shipper have agreed in writing to a higher limit of liability, the carrier may~~

15 ~~charge the shipper for this higher limit of liability. If the agreement between the carrier and shipper to a~~

16 ~~higher limit of liability provides for a deductible, the carrier's liability to pay for loss or damage of~~

17 ~~property will be reduced by the amount of the deductible.]~~

18

19 §218.54. Selling Insurance to Shippers.

20 (a) Type of insurance. A household goods carrier and its representatives may sell, or offer to sell,

21 or procure insurance for a shipper for transported or stored property. The insurance policy must cover

22 loss or damage in excess of the household goods carrier's [carrier] liability, if any, to which the parties

23 agree in the moving services contract, including a pre-existing transportation contract described by

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1 §218.57(d) of this title (Relating to Moving Services Contract). [~~as specified in §218.53 of this title~~
2 ~~(relating to Household Goods Carrier Cargo Liability).~~]

3 (b) Policy issuance. A copy of the policy or other appropriate evidence of purchased insurance
4 must be issued to the shipper before the shipment is loaded.

5 (c) Policy language. Policies or other appropriate evidence of purchased insurance must be
6 written in a clear and concise manner, specifying the nature and extent of coverage including any
7 deductibles. The policies or other appropriate evidence of purchased insurance must also clearly
8 indicate:

9 (1) the name, address, and telephone number of the insurance company;

10 (2) the policy number; and

11 (3) a statement of whether claims are to be filed with the insurance company or with
12 the household goods carrier.

13 (d) Subject to Full Liability. [~~Penalty.~~] If the shipper purchased insurance from the household
14 goods carrier and the household goods carrier does not obtain the insurance policy or other appropriate
15 evidence of purchased insurance for the shipper, the household goods carrier shall be subject to full
16 liability for all of the loss or damage caused by the household goods carrier.

17

18 §218.56. Proposals and Estimates for Moving Services.

19 (a) Written proposals. Prior to loading, a household goods carrier shall provide a written
20 proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper
21 could be required to pay for the listed transportation and listed related services. This section does not
22 apply if a pre-existing transportation contract sets out the maximum amount the shipper could be
23 required to pay for the transportation services. Pre-existing transportation contracts include, but are not

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1 limited to, corporate contracts for the relocation of multiple employees.

2 (1) A proposal must contain the name and registration number of the household goods
3 carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the
4 household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent
5 filing with the department. A proposal shall also include the street address of the household goods
6 carrier or its agent.

7 (2) A proposal must clearly and conspicuously state whether it is a binding or not-to-
8 exceed proposal.

9 (3) A proposal must completely describe the shipment and all services to be provided. A
10 proposal must state, "This proposal is for listed items and services only. Additional items and services
11 may result in additional costs."

12 (4) A proposal must specifically state when the shipper will be required to pay the
13 transportation charges, such as if payment must be made before unloading at the final destination. A
14 proposal must also state what form of payment is acceptable, such as a cashier's check.

15 (5) A proposal must conspicuously state the [that a] household goods carrier's liability, if
16 any, for loss or damage to cargo [~~is limited to \$.60 per pound per article unless the household goods~~
17 ~~carrier and shipper agree, in writing, to a higher limit of carrier liability].~~

18 (b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the
19 number of hours necessary to perform the transportation and related services. However, if the number
20 of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the
21 shipper indicating the proposal is complete without the number of hours. Also, the proposal shall state
22 the maximum amount the shipper could be required to pay for the listed transportation and listed
23 related services.

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1 (c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the
2 shipment, then the proposal is considered an addendum to the moving services contract.

3 (d) Additional items and services. If the household goods carrier determines additional items are
4 to be transported and/or additional services are required to load, transport, or deliver the shipment,
5 then before the carrier transports the additional items or performs the additional services the carrier
6 and shipper must agree, in writing, to:

7 (1) allow the original proposal to remain in effect;

8 (2) amend the original proposal or moving services contract; or

9 (3) substitute a new proposal for the original.

10 (e) Amendments and storage.

11 (1) An amendment to an original proposal or moving services contract, as allowed in
12 subsection (d) of this section, must:

13 (A) be signed and dated by the household goods carrier and shipper; and

14 (B) clearly and specifically state the amended maximum price for the

15 transportation of the household goods.

16 (2) If the household goods carrier fails to amend or substitute an original proposal as
17 required by this subsection and subsection (d) of this section, only the charges stated on the original
18 proposal for moving services may be assessed on the moving services contract. The carrier shall not
19 attempt to amend or substitute the proposal to add items or services after the items or services have
20 been provided or performed.

21 (3) If through no fault of the carrier, the shipment cannot be delivered during the agreed
22 delivery period, then the household goods carrier may place the shipment in storage and assess fees
23 relating to storage to the extent authorized in the moving services contract, [~~according to the terms in~~

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1 ~~§218.58 of this title (relating to Moving Services Contract – Options for Carrier Limitation of Liability),]~~

2 without a written agreement with the shipper to amend or substitute the original proposal.

3 (f) Combination document. A proposal required by subsection (a) of this section may be
4 combined with other shipping documents, such as the moving services contract, into a single document.

5 If a proposal is combined with other shipping documents, the purpose of each signature line on the
6 combination document must be clearly indicated. Each signature is independent and shall not be
7 construed as an agreement to all portions and terms of the combination document.

8 (g) Telephone estimates. A household goods carrier may provide an estimate for the
9 transportation services by telephone. If the household goods carrier provides the estimate by
10 telephone, then the carrier must also furnish a written proposal for the transportation services to the
11 shipper prior to loading the shipment.

12 (h) Written document. To the extent this section requires a document or communication to be
13 in writing, the document or communication may be in a printed or electronic format.

14 (i) Signatures. The signatures of the shipper and household goods carrier, as required by this
15 section, may be transmitted by facsimile or other electronic means.

16

17 §218.57. Moving Services Contract.

18 (a) Requirements. A household goods carrier must give a copy of the moving services contract to
19 the shipper prior to the loading of the shipment. This copy must include:

20 (1) the name and motor carrier registration number of the household goods carrier as
21 they appear on the motor carrier certificate of registration, and the address and telephone number of
22 the household goods carrier or the household goods agent that prepared the moving services contract;

23 (2) the date the shipment is loaded and a description of the shipment as household

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- 1 goods;
- 2 (3) the name and address of the shipper;
- 3 (4) the addresses of the:
- 4 (A) origin;
- 5 (B) destination, if known; and
- 6 (C) any stops in transit, if known;
- 7 (5) the moving services to be performed;
- 8 (6) a clear and concise disclosure of the limits of the household goods carrier's liability
- 9 for loss or damage to a shipper's household goods; however, the moving services contract must
- 10 expressly state if the household goods carrier's liability is \$0.00 for loss or damage to a shipper's
- 11 household goods; [the conspicuous statement, "A household goods carrier's liability for loss or damage
- 12 to any shipment is \$.60 per pound per article, unless the carrier and shipper agree, in writing, to a
- 13 greater level of liability.";]
- 14 (7) a clear and concise disclosure of any costs associated with an agreement regarding
- 15 the liability of the household goods carrier for loss or damage to a shipper's household goods, and a
- 16 statement that any agreement regarding the household goods carrier's liability is something different
- 17 than an insurance policy; [a conspicuous explanation of any agreement for increased carrier liability
- 18 limit, the amount of increased carrier liability, the cost of the increased limit, any deductible above the
- 19 carrier's \$.60 per pound per article liability, and the statement, "This is not insurance.";]
- 20 (8) a clear notice of the amount of any insurance for property that is transported or
- 21 stored, the amount of insurance premiums, and the insurance policy number, if insurance for the
- 22 shipment was purchased from or through the household goods carrier;
- 23 (9) a clear and conspicuous statement that this document is a contract for moving

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1 services and is subject to the terms and conditions throughout the document, including any
2 attachments; [the conspicuous statement, "This is a contract for moving services and is subject to the
3 terms and conditions on the front and back of this document and any addendum."];

4 (10) a description of whether the proposal is a binding or not-to-exceed proposal, and
5 the maximum price the shipper could be required to pay for the services listed;

6 (11) a statement authorizing performance of the listed services, signed and dated by the
7 household goods carrier and the shipper; ~~and~~

8 (12) a statement signed and dated by the shipper authorizing delivery of household
9 goods at a destination where the shipper is not present if the shipper intends for the household goods
10 carrier to deliver to a site where the shipper will not be present; and

11 (13) the following language regarding claims: "The process for filing a claim against a
12 household goods carrier and the claims procedures are provided on the website of the Texas
13 Department of Motor Vehicles (department), as well as in the department's administrative rule, 43
14 Texas Administrative Code §218.61. A shipper must file any claims against a household goods carrier
15 within 90 days of the delivery of the shipment to the final destination, or after a reasonable time for
16 delivery has elapsed in the case of failure to make delivery."

17 (b) Delivery. A household goods carrier must give a completed copy of the moving services
18 contract to the shipper upon delivery of the shipment. The household goods carrier must release the
19 household goods to the shipper at destination if the shipper pays the maximum price listed on the
20 moving services contract. Except as provided by subsection (c) of this section, the moving services
21 contract shall be signed and dated by the household goods carrier and the shipper confirming the
22 shipment has been delivered. This signature only confirms delivery of the shipment. Except as provided
23 in subsection (e) of this section, this copy must include the information listed in subsection (a) of this

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1 section and:

2 (1) the total charges for the shipment and the specific nature of each charge, including
3 the method used to calculate the minimum and total charges if the shipment was not transported based
4 on a binding proposal;

5 (2) an explanation of all additional moving services provided in accordance with
6 §218.56(d) of this title (relating to Proposals and Estimates for Moving Services); and

7 (3) the addresses of the origin, destination, and any stops in transit if not previously
8 provided on the moving services contract at the origin.

9 (c) Delivery to a destination where the shipper is not present. If a shipper authorizes the
10 household goods carrier to deliver household goods to a destination where the shipper is not present, as
11 allowed in subsection (a)(12) of this section, the moving services contract need not be signed and dated
12 by the shipper at the time of delivery.

13 (d) Pre-existing transportation contracts. A household goods carrier is not required to comply
14 with subsection (b)(1) and (2) of this section if a pre-existing transportation contract sets out the
15 maximum amount the shipper could be required to pay for the transportation services. Pre-existing
16 transportation contracts include, but are not limited to, corporate contracts for the relocation of
17 multiple employees.

18 (e) Copies. To the extent this section requires a copy of a document or a written document, the
19 document may be in a printed or electronic format.

20 (f) Signatures. The signatures of the shipper and the household goods carrier, as required by this
21 section, may be transmitted by facsimile or other electronic means. These signatures must be separate
22 from any signatures required by the household goods carrier such as the acknowledgment of the
23 statement of value of the shipment.

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1

2 §218.61. Claims.

3 (a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on
4 shipments of household goods according to this section.

5 (1) A claim must be filed in writing or by electronic format with the household goods
6 carrier or the household goods carrier's agent whose name appears on the moving services contract. A
7 claim is considered filed on the date the claim is received by the household goods carrier or its agent. A
8 shipper must file a claim either in writing or by electronic format within 90 days:

9 (A) of delivery of the shipment to the final destination; or

10 (B) after a reasonable time for delivery has elapsed in the case of failure to
11 make delivery.

12 (2) The claim must include enough facts to identify the shipment. The claim must also
13 describe the type of claim and request a specific type of remedy.

14 (3) Shipping documents may be used as evidence to support a claim, but cannot be
15 substituted for a written claim.

16 (4) A claim submitted by someone other than the owner of the household goods must
17 be accompanied by a written explanation of the claimant's interest in the claim.

18 (b) Acknowledgment and disposition of filed claims.

19 (1) A household goods carrier shall send an acknowledgment of the claim either in
20 writing or by electronic format to the claimant within 23 days [~~20 days (excluding Sundays and nationally~~
21 ~~recognized holidays)~~] after receipt of the claim by the carrier or its agent.

22 (A) The claim acknowledgment shall include the statement, "Household goods
23 carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in

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1 writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling
2 should be directed to the Texas Department of Motor Vehicles (TxDMV), Enforcement Division, via the
3 toll-free consumer helpline as listed on the department's website. Additionally, a claimant has the right
4 to request mediation from TxDMV within 35 days [~~30 days (excluding Sundays and nationally recognized~~
5 ~~holidays)~~] after any portion of the claim is denied by the carrier, the carrier makes a firm settlement
6 offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim
7 and the claim has not been resolved."

8 (B) The household goods carrier is not required to issue the acknowledgment
9 letter prescribed in this subsection if the claim has been resolved within 23 days [~~20 days (excluding~~
10 ~~Sundays and nationally recognized holidays)~~] after receipt of the claim. However, the household goods
11 carrier has the burden of proof regarding the resolution of the claim.

12 (2) After a thorough investigation of the facts, the household goods carrier shall pay,
13 decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of
14 the claim by the household goods carrier or its household goods agent. The settlement offer or denial
15 shall state, "A claimant has the right to seek mediation through the Texas Department of Motor Vehicles
16 (TxDMV) within 35 days [~~30 days (excluding Sundays and nationally recognized holidays)~~] after any
17 portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not
18 acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has
19 not been resolved."

20 (3) A household goods carrier must provide a copy of the shipping documents to the
21 shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

22 (c) Documenting loss or damage to household goods.

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1 (1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes
2 to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30
3 calendar days, after receipt of the claim.

4 (2) Payment of shipping charges. Payment of shipping charges and payment of claims
5 shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon
6 by both the household goods carrier and claimant.

7 (d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim
8 records shall be retained for two years as required by §218.32 of this title (relating to Motor Carrier
9 Records). At a minimum, the following information on each claim shall be maintained in a systematic,
10 orderly and easily retrievable manner:

11 (1) claim number (if assigned), date received, and amount of money or the requested
12 remedy;

13 (2) number (if assigned) and date of the moving services contract;

14 (3) name of the claimant;

15 (4) date the carrier issued its claim acknowledgment letter;

16 (5) date and total amount paid on the claim or date and reasons for disallowing the
17 claim; and

18 (6) dates, time, and results of any mediation coordinated by the department.

19

20

21 §218.62. Mediation by the Department.

22 (a) The claimant may make a written request to the department for mediation regarding a
23 dispute over a fee, or damage to the shipper's household goods.

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1 (b) The claimant must attempt to resolve the claim with the household goods carrier by making
2 a reasonable effort to follow the household goods carrier's claim process before requesting mediation
3 by the department.

4 (c) Requests for mediation must be made within 35 days [~~30 days (excluding Sundays and~~
5 ~~nationally recognized holidays)~~] after the earliest of the following events:

6 (1) any portion of the claim is denied by the carrier;

7 (2) the carrier makes a firm settlement offer that is not acceptable to the claimant; or

8 (3) 90 days have [~~has~~] elapsed since the carrier received the claim and the carrier has
9 not responded to the claimant as prescribed in §218.61(b)(2) of this title (relating to Claims).

10 (d) Except as provided in subsection (e) of this section, the department shall [~~will~~] deny a
11 request for mediation made more than 125 days [~~120 days (excluding Sundays and nationally recognized~~
12 ~~holidays)~~] after the carrier received the claim. Additionally, the department shall [~~will~~] deny a request
13 for mediation if the carrier did not receive the claim within 90 days after the delivery of the shipment to
14 the final destination or within 90 days after a reasonable time for delivery has elapsed in the case of
15 failure to make delivery.

16 (e) The department may grant a mediation request if the claimant and the carrier agree to
17 participate in the mediation process and:

18 (1) the claimant was not advised in writing at least one time of the right to mediation as
19 required by §218.61(b)(1)(A) or (2); or

20 (2) the claimant does not receive the written denial or settlement offer letter required
21 by §218.61(b)(2).

22 (f) For purposes of subsection (c)(1) and (2) of this section, the 35-day [~~30-day~~] deadline for
23 requesting mediation is calculated from the latter of:

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- 1 (1) the date of the claim denial or settlement offer letter; or
- 2 (2) the date the claim denial or settlement offer letter is mailed, emailed, or faxed to the
- 3 claimant.
- 4 (g) The department will not grant more than one mediation request to a claimant for one
- 5 shipment of household goods.
- 6 (h) The department will coordinate the selection of a mediator. The mediation will be conducted
- 7 by written submissions, telephone conferences, or mediation sessions held at the department's facilities
- 8 in Austin. The department will establish the time, date, and form of the mediation session.
- 9 (i) Participation in this mediation process by a household goods carrier.
- 10 (1) A household goods carrier shall participate in this mediation process if the
- 11 department grants a mediation request under this section regarding the following:
- 12 (A) a fee under the moving services contract; or
- 13 (B) the household goods carrier's liability for loss or damage to the shipper's
- 14 household goods to the extent the following occurs:
- 15 (i) the shipper and household goods carrier agreed in the moving
- 16 services contract that the household goods carrier's cargo liability would exceed \$0.00;
- 17 (ii) a pre-existing transportation contract described by §218.57(d) of this
- 18 title (Relating to Moving Services Contract) states that that the household goods carrier's cargo liability
- 19 would exceed \$0.00; or
- 20 (iii) if the shipper purchases insurance from the household goods
- 21 carrier and the household goods carrier does not obtain the insurance policy or other appropriate
- 22 evidence of purchased insurance for the shipper under §218.54 of this title (Relating to Selling Insurance
- 23 to Shippers).

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1 ~~[Household goods carriers must participate in this mediation process.]~~

2 (2) The department may impose administrative penalties, ~~[sanctions,]~~ under §218.71 of
3 this title (relating to Administrative Penalties), on a household goods carrier who refuses to participate
4 in the mediation process or otherwise fails to comply with the requirements of this section.

5 (j) If the claimant fails to appear at the mediation after due notice or, if the mediator determines
6 the claimant has not cooperated in the mediation process, the department's mediation process shall be
7 considered concluded. The claimant may consider pursuing the claim through an appropriate court of
8 law.

9 (k) The mediator shall preside and have discretion over the mediation procedures, including the
10 ability to require the claimant and the household goods carrier to provide information and documents in
11 a timely fashion.

12 (l) If the household goods carrier makes a written report of the results of the inspection
13 documenting the lost or damaged household goods and uses the report during the department's
14 mediation, then the carrier shall provide the original or a legible copy of the report to the claimant.

15
16 §218.64. Rates.

17 (a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum
18 rates and charges for services in its applicable tariff. The household goods carrier and/or its household
19 goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a
20 shipment ~~[between two incorporated cities]~~.

21 (b) Prohibited charges and allowances. A household goods carrier and/or its household goods
22 agent shall not charge more than the maximum charges published in its tariff on file with the
23 department for services associated with transportation ~~[between two incorporated cities]~~.

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1 (c) Collective ratemaking agreements.

2 (1) Eligibility. In accordance with Transportation Code, §643.154, a household goods
3 carrier and/or its household goods agent may enter into collective ratemaking agreements between one
4 or more other household goods carriers or household goods agents concerning the establishment and
5 filing of maximum rates and charges, classifications, rules, or procedures.

6 (2) Designation of collective ratemaking associations. An approved association may be
7 designated by a member household goods carrier as its collective ratemaking association for the
8 purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating
9 to Tariff Registration).

10 (3) Submission. In accordance with Transportation Code, §643.154, a collective
11 ratemaking agreement shall be filed with the department for approval. The agreement shall include the
12 following information:

13 (A) full and correct name, business address (street and number, city, state and
14 zip code), and phone number of the association;

15 (B) whether the association is a corporation or partnership; and

16 (i) if a corporation, the government, state, or territory under the laws of
17 which the association [applicant] was organized and received its present charter; and

18 (ii) if an association or a partnership, the names of the officers or
19 partners and date of formation;

20 (C) full and correct name and business address (city and state) of each
21 household goods carrier on whose behalf the agreement is filed and whether it is an association, a
22 corporation, an individual, or a partnership;

23 (D) the name, title, and mailing address of counsel, officer, or other person to

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1 whom correspondence in regard to the agreement should be addressed; and

2 (E) a copy of the constitution, bylaws, or other documents or writings, specifying

3 the organization's powers, duties, and procedures.

4 (4) Signature. The collective ratemaking agreement shall be signed by all parties subject

5 to the agreement or the association's executive officer.

6 (5) Incomplete agreement. If the department receives an agreement which does not

7 comply with this subsection, the department shall ~~[will]~~ send a letter to the individual submitting the

8 agreement. The letter shall identify the information that is missing and advise the association that the

9 agreement shall ~~[will]~~ not be processed until the information is received.

10 (6) Approval. In accordance with Transportation Code, §643.154, the director or

11 designee shall ~~[will]~~ approve a collective ratemaking agreement if the agreement provides that:

12 (A) all meetings are open to the public; and

13 (B) notice of meetings shall be sent to shippers who are multiple users of the

14 services of a household good carrier that is a party to the agreement. ~~[carriers.]~~

15 (7) Noncompliance. If the director or the director's designee determines that an

16 agreement does not comply with paragraph (6) of this subsection, the matter will be governed by

17 Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,

18 Chapter 643.

19 (8) New parties to an agreement. An updated agreement shall be filed with the

20 department as new parties are added.

21 (9) Amendments to approved agreements. Amendments to approved agreements

22 (other than as to new parties) may become effective only after approval by ~~[of]~~ the department.

23 (d) Pursuant to Transportation Code, §643.154(c), a household goods carrier required to register

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1 under Transportation Code, Chapter 643 is exempt from Chapter 15, Business and Commerce Code, for
2 an activity relating to the establishment of a joint line rate, route, classification, or mileage guide under
3 Transportation Code, §643.154(a) and (d).

4

5 §218.65. Tariff Registration.

6 (a) Submission. In accordance with Transportation Code, §643.153, a household goods carrier
7 and/or its household goods agent shall file a tariff with the department. A household goods carrier who
8 is not a member of an approved association under §218.64 of this title (relating to Rates) shall file a
9 tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent,
10 that is a member of an approved association in accordance with §218.64, may designate a collective
11 association as its ratemaking association. The association may file a tariff, as required by this subsection,
12 for member carriers.

13 (1) Contents. The tariff:

14 (A) shall set out all rates, charges, rules, regulations, or other provisions, in clear
15 and concise terms, used to determine total transportation charges;

16 (B) may provide for the offering, selling, or procuring of insurance as provided in
17 §218.54 of this title (relating to Selling Insurance to Shippers);

18 (C) may provide for the base transportation charge to include assumption by the
19 household goods carrier for the full value of the shipment in the event a policy or other appropriate
20 evidence of the insurance purchased by the shipper from the household goods carrier is not issued to
21 the shipper at the time of purchase;

22 (D) shall describe the procedure for determining charges that are below the
23 maximum rate for each service performed; and

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1 (E) shall reference a specific mileage guide or source, if information on rates and
2 charges based on mileage is included in the tariff [~~The referenced mileage guide shall be filed with the~~
3 ~~department as an addendum to the tariff. If the household goods carrier utilizes a computer database as~~
4 ~~a mileage guide, the household goods carrier shall allow department personnel free access to the~~
5 ~~system when conducting an inquiry regarding a specific movement performed by the household goods~~
6 ~~carrier)].~~

7 (2) Interstate tariff. In accordance with Transportation Code, §643.153, a household
8 goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing
9 interstate household goods transportation services.

10 (3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The
11 transmittal letter shall provide:

12 (A) the name of the household goods carrier;

13 (B) the Texas mailing address and street address of the household goods
14 carrier's principal business address [~~office~~];

15 (C) the household goods carrier's certificate of registration number, if any;

16 (D) the name and title of the household goods carrier's representative
17 authorizing the tariff filing; and

18 (E) whether the tariff is being filed on behalf of a member carrier.

19 (4) Format. Tariffs shall be filed:

20 (A) on 8 1/2" x 11" paper;

21 (B) with a cover sheet showing:

22 (i) the name of the issuing household goods carrier or collective
23 ratemaking association;

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1 (ii) the Texas mailing and street address;

2 (iii) the issuance date of the tariff;

3 (iv) the effective date of the tariff; and

4 (v) the tariff number; and

5 (C) separated into the following sections:

6 (i) general rules;

7 (ii) accessorial services; and

8 (iii) rates; and

9 (D) if the tariff references a mileage guide, the mileage guide shall be filed with
10 the department as an addendum to the tariff, unless the household goods carrier utilizes a computer
11 database as a mileage guide.

12 (5) Item numbers. Individual items shall be titled and designated by item number.

13 (6) Amendments. Any amendment to a tariff shall be filed with the department not less
14 than 10 days prior to the effective date of the amendment. The household goods carrier or collective
15 ratemaking association filing on behalf of its member may either file an amended tariff in total or an
16 amendment referencing the specific sections and items which are being amended. The amendment
17 format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing
18 the same information as required by paragraph (3) of this subsection shall accompany the amendment
19 filing.

20 (7) Rejection. The department shall ~~will~~ reject a tariff or amendment filing if it is
21 determined the tariff:

22 (A) fails to meet the requirements of this section; or

23 (B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

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1 (8) Electronic filings. A household goods carrier may file an electronic copy of its tariff
2 provided that the document is consistent with the provision of this subsection and is formatted in
3 Microsoft Word or other format approved by the director.

4 (b) Department access to computer database used as mileage guide. If the household goods
5 carrier utilizes a computer database as a mileage guide in its tariff, the household goods carrier shall
6 allow department personnel free access to the system when conducting an inquiry regarding a specific
7 movement performed by the household goods carrier.

8 ~~[(b) Operations. The department will accept a tariff which is in substantial compliance with this~~
9 ~~section if the tariff was submitted prior to November 1, 1995.]~~

10 (c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with
11 this section shall ~~will~~ be made available for public inspection at the TxDMV Enforcement Division or by
12 calling the department's toll-free consumer helpline as listed on the department's website.

13 (d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they
14 may conflict with the provisions of this chapter.

15
16 **STATUTORY AUTHORITY.** The department proposes the repeal under Transportation Code, §643.152,
17 which authorizes the department to establish voluntary standards for uniform cargo liability and
18 uniform bills of lading or receipts for cargo, which standards must be consistent with Subtitle IV, Title 49,
19 United States Code, or a regulation adopted under that law; Transportation Code, §643.003, which
20 authorizes the department to adopt rules to administer Transportation Code, Chapter 643;
21 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
22 appropriate to implement the powers and duties of the department under the Transportation Code and
23 other laws of this state; and the statutory authority referenced throughout this preamble and in the rule

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1 text, which is incorporated herein by reference.

2 **CROSS REFERENCE TO STATUTE.** The proposed repeal implements Transportation Code, Chapter 643.

3

4 TEXT.

5 [~~§218.58. Moving Services Contract—Options for Carrier Limitation of Liability.~~]

6 [(a) General.]

7 [(1) Household goods shipments transported between points in Texas shall be subject to
8 all terms and conditions of the moving services contract, as set forth in §218.57 of this title (relating to
9 Moving Services Contract), except in cases where such terms and conditions are in conflict with the laws
10 of the State of Texas.]

11 [(2) If a household goods carrier chooses to use additional limitations of liability on a
12 shipment, the limitations shall be either of the options specified in subsections (b) or (c) of this section.
13 A household goods carrier may not alter or expand on the limitation to its liability or the exact wording
14 set out in subsections (b) or (c) of this section. The option selected by the household goods carrier shall
15 be included with and is part of the moving services contract.]

16 [(b) Option 1. If this option is chosen, the following language must be used verbatim.]

17 [(1) Section 1—General Provisions.]

18 [(A) For the purposes of this subsection, the following terms will mean:]

19 [(i) Household goods carrier—The motor carrier/mover contracted to
20 transport a shipment of household goods.]

21 [(ii) Shipper—The owner of the household goods shipment or his
22 representative.]

23 [(B) Changes to the moving service contract are not valid unless agreed to in

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1 ~~writing by the household goods carrier and the shipper.]~~

2 ~~[(C) Household goods carriers will transport shipments with reasonable~~
3 ~~dispatch. Reasonable dispatch requires the transportation of a shipment within the agreed period of~~
4 ~~time shown on the moving services contract, except when circumstances beyond the carrier's control,~~
5 ~~force majeure, prevent or delay transportation.]~~

6 ~~[(D) Moving services contracts must comply with all other applicable laws of the~~
7 ~~State of Texas.]~~

8 ~~[(2) Section 2 – Cargo Liability Provisions.]~~

9 ~~[(A) The household goods carrier is liable for any loss or damage to the~~
10 ~~shipment, except as listed in subparagraphs (B) and (C) of this paragraph.]~~

11 ~~[(B) The household goods carrier is not responsible for loss, damage, or delay~~
12 ~~due to acts of God, acts of civil authorities, defects in the shipment, a riot, a strike, or an act or default of~~
13 ~~the shipper.]~~

14 ~~[(C) The household goods carrier is not liable for loss or damage caused by~~
15 ~~dangerous or explosive goods unless the shipper notifies the carrier, in writing, of the nature of the~~
16 ~~goods and the carrier agrees, in writing, to the transportation of these goods.]~~

17 ~~[(3) Section 3 – Claims Provisions.]~~

18 ~~[(A) A written claim must be filed by the shipper within 90 days of delivery of~~
19 ~~the shipment to the final destination. In case of failure to make delivery, then a written claim must be~~
20 ~~filed by the shipper within 90 days after a reasonable time for delivery has elapsed.]~~

21 ~~[(B) A household goods carrier is not liable for any claim that is not filed within~~
22 ~~90 days of the delivery of the shipment to the final destination. A household goods carrier is not liable~~
23 ~~for any claim that is not filed within 90 days after a reasonable time for delivery has elapsed for~~

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1 ~~shipments that were not delivered.]~~

2 ~~[(4) Section 4 – Payment Provisions. The shipper must pay the freight charges upon~~

3 ~~delivery unless the shipper and household goods carrier agree otherwise.]~~

4 ~~[(5) Section 5 – Provisions for Shipments Not Delivered.]~~

5 ~~[(A) A household goods carrier may place a shipment of household goods into~~

6 ~~storage if the shipper is not available for delivery of the goods as scheduled.]~~

7 ~~[(B) The cost of such storage is the responsibility of the shipper of the household~~

8 ~~goods.]~~

9 ~~[(C) A shipment of household goods placed in storage is subject to liens for~~

10 ~~storage, freight, and other lawful charges.]~~

11 ~~[(D) A household goods carrier must issue written notice of the storage of the~~

12 ~~household goods to the shipper at each address shown on the moving services contract within three~~

13 ~~days of placing the goods in storage.]~~

14 ~~[(E) If the shipper refuses to accept or does not claim the household goods~~

15 ~~within 15 days of the written notice of storage, the household goods carrier may begin the process of~~

16 ~~selling the goods at public sale, as prescribed in Transportation Code, Chapter 6.]~~

17 ~~[(F) A household goods carrier must give written notice of the public sale to the~~

18 ~~shipper at each address shown on the moving services contract.]~~

19 ~~[(G) The moving services contract does not prohibit the sale of the goods under~~

20 ~~any other lawful manner if the method set out in the contract cannot be reasonably accomplished.]~~

21 ~~[(c) Option 2. If this option is chosen, the following language must be used verbatim.]~~

22 ~~[(1) Section 1 of contract terms and conditions.]~~

23 ~~[(A) The household goods carrier or party in possession of any of the property~~

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1 herein described shall be liable at common law for any loss thereof or damage thereto, except as
2 hereinafter provided.]

3 [(B) No household goods carrier or party in possession of all or any of the
4 property herein described shall be liable for any loss thereof or damage thereto or delay caused by an
5 act of God, the public enemy, the authority of law, or an act or default of the shipper or owner. The
6 household goods carrier's liability shall be that of warehouseman only, for loss, damage, or delay caused
7 by fire occurring after the expiration of the free time (if any) allowed by tariffs lawfully on file after
8 notice of the arrival of the property at destination has been duly sent or given, and after placement of
9 the property for delivery at destination, or tender of delivery of the property to the party entitled to
10 receive it, has been made. Except in case of negligence of the household goods carrier or party in
11 possession (and the burden to prove freedom from such negligence shall be on the household goods
12 carrier or party in possession), the household goods carrier or party in possession shall not be liable for
13 loss, damage, or delay occurring while the property is stopped and held in transit upon the request of
14 the shipper, owner, or party entitled to make such request, or resulting from a defect or inherent vice of
15 the article, including susceptibility to damage because of atmospheric conditions such as temperature
16 and humidity or changes therein, or from riots or strikes. Except in the case of household goods carrier's
17 negligence, no household goods carrier, or party in possession of all or any of the property herein
18 described, shall be liable for delay caused by highway obstruction, faulty or impassable highway, or lack
19 of capacity of any highway, bridge, or ferry, and the burden to prove freedom from such negligence shall
20 be on the household goods carrier or party in possession.]

21 [(C) In case of quarantine the property may be discharged at the risk and expense of the owner
22 into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the
23 household goods carrier's dispatch at the nearest available point in the household goods carrier's

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1 judgment, and in any such case the household goods carrier's responsibility shall cease when property is
2 so discharged, or property may be returned by the household goods carrier at the owner's expense to
3 the shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or
4 in respect to property shall be borne by the owner of the property or the household goods carrier may
5 file a lien. The household goods carrier shall not be liable for loss or damage occasioned by fumigation
6 or disinfection or other acts required or done by quarantine regulations or authorities even though the
7 same may have been done by the household goods carrier's officers, local agents, or employees, nor for
8 detention, loss, or damage of any kind occasioned by the quarantine or its enforcement. A household
9 goods carrier shall not be liable, except in the case of negligence, for any mistake or inaccuracy in any
10 information furnished by the household goods carrier, its local agents, or officers, as to quarantine laws
11 or regulations. The shipper shall hold the household goods carrier harmless from any expense it may
12 incur, or damages it may be required to pay, by reason of the introduction of the property covered by
13 this contract into any place against the quarantine laws or regulations in effect at such place.]

14 [(2) Section 2 of contract terms and conditions.]

15 [(A) A household goods carrier is not bound to transport property by any
16 particular scheduled vehicle or in time for any particular market other than with reasonable dispatch. A
17 household goods carrier shall have the right, in case of physical necessity, to forward the property by
18 any household goods carrier or route between the point of shipment and the point of destination. In all
19 cases not prohibited by law, where a lower value than actual value has been represented in writing by
20 the shipper or has been agreed upon in writing as the released value of the property as determined by
21 the classification or tariffs upon which the rate is based, such lower value plus freight charges, if paid,
22 shall be the maximum amount recovered, whether or not such loss or damage occurs from negligence.]

23 [(B) As a condition precedent to recovery, a claim must be filed in writing with

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1 ~~the receiving or delivering household goods carrier, or the household goods carrier issuing the bill of~~
2 ~~lading or receipt, or the household goods carrier on whose line the loss, damage, injury, or delay~~
3 ~~occurred, or the household goods carrier in possession of the property when the loss, damage, injury, or~~
4 ~~delay occurred, within 90 days after delivery of the property or, in case of failure to make delivery, then~~
5 ~~within 90 days after a reasonable time for delivery has elapsed; and suits shall be instituted against any~~
6 ~~household goods carrier only within two years and one day from the day when notice in writing is given~~
7 ~~by the household goods carrier to the claimant that the household goods carrier has disallowed the~~
8 ~~claim or any of its part or parts specified in the notice. Where a claim is not filed or a suit is not~~
9 ~~instituted in accordance with the foregoing provisions, a household goods carrier hereunder shall not be~~
10 ~~held liable, and the claim will not be paid.]~~

11 ~~[(C) Any household goods carrier or party liable on account of loss of or damage~~
12 ~~to any of the property shall have the full benefit of any insurance that may have been effected, upon, or~~
13 ~~on account of, said property, so far as this shall not avoid the policies or contracts of insurance;~~
14 ~~provided, that the household goods carrier reimburses the claimant for the premium paid.]~~

15 ~~[(3) Section 3 of contract terms and conditions. Except where such service is required as~~
16 ~~the result of household goods carrier's negligence, all property shall be subject to necessary coeprage~~
17 ~~and baling at the owner's cost.]~~

18 ~~[(4) Section 4 of contract terms and conditions.]~~

19 ~~[(A) Property not removed by the party entitled to receive it within the free time~~
20 ~~(if any) allowed by tariff lawfully on file (such free time to be computed as therein provided), after~~
21 ~~notice of the arrival of the property at destination has been duly sent or given, and after tender of the~~
22 ~~property for delivery at destination has been made, or property not received, at time tender of delivery~~
23 ~~of the property to the party entitled to receive it has been made, may be kept in vehicle, warehouse, or~~

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1 ~~place of business of the household goods carrier, subject to the tariff charge for storage and to~~
2 ~~household goods carrier's responsibility as warehouseman, only, or at the option of the household~~
3 ~~goods carrier, may be removed to and stored in a public or licensed warehouse at the point of delivery~~
4 ~~or other available point, or if no such warehouse is available at point of delivery or at other available~~
5 ~~storage facility, at the cost of the owner and there held without liability on the part of the household~~
6 ~~goods carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge~~
7 ~~for storage. In the event consignee cannot be found at address given for delivery, notice of the placing~~
8 ~~of such goods in warehouse shall be mailed to the address given for delivery and mailed to any other~~
9 ~~address given on the bill of lading or receipt for notification, showing the warehouse in which the~~
10 ~~property has been placed.]~~

11 ~~[(B) If nonperishable property which has been transported to destination~~
12 ~~hereunder is refused by consignee or the party entitled to receive it upon tender of delivery, or said~~
13 ~~consignee or party entitled to receive it fails to receive or claim it within 15 days after notice of arrival~~
14 ~~shall have been duly sent or given, the household goods carrier may sell the same at public auction to~~
15 ~~the highest bidder, at such place as may be designated by the household goods carrier; provided, that~~
16 ~~the household goods carrier shall have first mailed, sent, or given to the consignor notice that the~~
17 ~~property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale~~
18 ~~under the terms of the bill of lading or receipt if disposition be not arranged for, and shall have~~
19 ~~published notice containing a description of the property, the name of the party to whom consigned, or,~~
20 ~~if shipped order notify, the name of party to be notified, and the time and place of sale, once a week for~~
21 ~~two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where~~
22 ~~such newspaper is published. Thirty days must elapse after notice that the property was refused or~~
23 ~~remains unclaimed was mailed, sent, or given before notice of sale may be published.]~~

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1 ~~[(C) If perishable property which has been transported is refused by the~~
2 ~~consignee or party entitled to receive it, or the consignee or party entitled to receive it shall fail to~~
3 ~~receive it promptly, the household goods carrier may, in its discretion, to prevent deterioration or~~
4 ~~further deteriorations, sell the same to the best advantage at private or public sale; provided, that if~~
5 ~~time serves for notification to the consignor or owner of the refusal of the property or the failure to~~
6 ~~receive it and request for disposition of the property, notification shall be given, in such manner as the~~
7 ~~exercise of due diligence requires before the property is sold.]~~

8 ~~[(D) If the procedure provided for in this section is not possible, it is agreed that~~
9 ~~nothing contained in the section shall be construed to abridge the right of the household goods carrier~~
10 ~~at its option to sell the property under such circumstances and in such manner as may be authorized by~~
11 ~~law.]~~

12 ~~[(E) The proceeds of the sale shall be applied by the household goods carrier to~~
13 ~~the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice,~~
14 ~~advertisement, sale, and other necessary expense and of caring for and maintaining the property, if~~
15 ~~proper care requires special expense. If there is a balance it shall be paid to the owner of the property.]~~

16 ~~[(F) If the household goods carrier is directed by the consignor or its agent to~~
17 ~~load property from (or render any services at) a place or places at which the consignor or its agent is not~~
18 ~~present, the property shall be at the risk of the owner before loading.]~~

19 ~~[(G) If the household goods carrier is directed by the consignee or its agent to~~
20 ~~unload or deliver property (or render any services) at the place or places at which the consignee or its~~
21 ~~agent is not present, the property shall be at the risk of the owner after unloading or delivery.]~~

22 ~~[(5) Section 5 of contract terms and conditions. A household goods carrier shall not carry~~
23 ~~or be liable in any way for documents, specie, or for articles of extraordinary value not specifically rated~~

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1 in the published classification or tariffs unless a special agreement to do so and a stipulated value of the
2 articles are endorsed.]

3 ~~[(6) Section 6 of contract terms and conditions. Every party, whether the principal or~~
4 ~~local agent, shipping explosives or dangerous goods, without previous full written disclosure to the~~
5 ~~household goods carrier of their nature, shall be liable for and indemnify the household goods carrier~~
6 ~~against all loss or damage caused by the goods, and the goods may be warehoused at the owner's risk~~
7 ~~and expense or destroyed without compensation.]~~

8 ~~[(7) Section 7 of contract terms and conditions.]~~

9 ~~[(A) The owner or consignee shall pay the freight and all other lawful charges~~
10 ~~accruing on said property; but, except in those instances where it may lawfully be authorized to do so,~~
11 ~~no household goods carrier shall deliver or relinquish possession at destination of the property covered~~
12 ~~by this bill of lading or receipt until all rates and charges have been paid. The consignor shall be liable for~~
13 ~~the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space~~
14 ~~provided for that purpose on the face of this bill of lading or receipt that the household goods carrier~~
15 ~~shall not make delivery without requiring payment of the charges and the household goods carrier,~~
16 ~~contrary to such stipulation shall make delivery without requiring such payment, the consignor (except~~
17 ~~as hereinafter provided) shall not be liable for the charges. Where the household goods carrier has been~~
18 ~~instructed by the shipper or consignor to deliver the property to a consignee other than the shipper or~~
19 ~~consignor, the consignee shall not be legally liable for transportation charges in respect of the~~
20 ~~transportation of the property (beyond those billed against him at the time of delivery for which he is~~
21 ~~otherwise liable) which may be found to be due after the property has been delivered to him, if the~~
22 ~~consignee is an agent only and has no beneficial title in said property, and prior to delivery of said~~
23 ~~property has notified the delivering household goods carrier in writing of the fact of such agency and~~

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1 ~~absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than~~
2 ~~that specified in the original bill of lading or receipt, has also notified the delivering household goods~~
3 ~~carrier in writing of the name and address of the beneficial owner of said property; and, in such cases~~
4 ~~the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner~~
5 ~~shall be liable for such additional charges.]~~

6 ~~[(B) If the consignee has given to the household goods carrier erroneous~~
7 ~~information as to whom the beneficial owner is, such consignee shall be liable for the additional~~
8 ~~charges. Nothing herein shall limit the right of the household goods carrier to require at time of~~
9 ~~shipment the payment or guarantee of the charges. If upon inspection it is ascertained that the articles~~
10 ~~shipped are not those described in this bill of lading or receipt, the freight charges must be paid on the~~
11 ~~articles actually shipped.]~~

12 ~~[(8) Section 8 of contract terms and conditions. If this bill of lading or receipt is issued on~~
13 ~~the order of the shipper or his agent, in exchange or in substitution for another bill of lading or receipt,~~
14 ~~the shipper's signature to the prior bill of lading or receipt as to the statement of value or otherwise, or~~
15 ~~election of common law or bill of lading or receipt, in or in connection with such prior bill of lading or~~
16 ~~receipt, shall be considered a part of this bill of lading or receipt as fully as if the same were written or~~
17 ~~made in or in connection with this bill of lading or receipt.]~~

18 ~~[(9) Section 9 of contract terms and conditions. Any alteration, addition, or erasure in~~
19 ~~this bill of lading or receipt which shall be made without the special notation herein of the agent of the~~
20 ~~household goods carrier issuing this bill of lading or receipt, shall be without effect, and this bill of lading~~
21 ~~or receipt shall be enforceable according to its original tenor.]~~

22

1 **SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS**

2 **43 TAC §218.72**

3

4 **STATUTORY AUTHORITY.** The department proposes the amendments under Transportation Code,
5 §643.252, which authorizes the department to suspend or revoke a registration issued under
6 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is
7 suspended; Transportation Code, §643.257, which authorizes the department to order a motor carrier
8 that violates Transportation Code, Chapter 643 or a rule or order adopted under Transportation Code,
9 Chapter 643 to pay a refund to a consumer who paid the motor carrier to transport household goods;
10 Transportation Code, §643.003, which authorizes the department to adopt rules to administer
11 Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to
12 adopt rules that are necessary and appropriate to implement the powers and duties of the department
13 under the Transportation Code and other laws of this state; Government Code, §2001.004, which
14 requires state agencies to adopt rules of practice stating the nature and requirements of all available
15 formal and informal procedures; and the statutory authority referenced throughout this preamble and
16 in the rule text, which is incorporated herein by reference.

17 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, Chapter
18 643; and Government Code, Chapter 2001.

19

20 TEXT.

21 §218.72. Administrative Sanctions.

22 (a) Grounds for suspension, revocation, denial, and probation. Transportation Code, §643.252
23 provides the grounds on which the department can suspend, revoke, or deny a certificate of registration

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1 issued under Transportation Code, Chapter 643. Transportation Code, §643.252 also provides the
2 grounds on which the department can place on probation a motor carrier whose registration is
3 suspended.

4 (b) Texas Department of Public Safety enforcement recommendations.

5 (1) The department may suspend or revoke a certificate of registration of a motor
6 carrier upon a written request by the Texas Department of Public Safety, if a motor carrier:

7 (A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

8 (B) has multiple violations of Transportation Code, Chapter 644, a rule adopted
9 under that chapter, or Transportation Code, Title 7, Subtitle C.

10 (2) A request under paragraph (1) of this subsection must include documentation
11 showing the violation.

12 (c) Refund.

13 (1) The department may order a household goods [~~motor~~] carrier that violates
14 Transportation Code Chapter 643, department rules, or a department order adopted under
15 Transportation Code Chapter 643 to issue a refund to a customer who paid the household goods
16 [~~motor~~] carrier to transport household goods.

17 (2) Under this subsection, a refund is the return of any percentage of funds paid, or
18 contracted to be paid, to a household goods [~~motor~~] carrier transporting household goods, whether
19 those funds are documented as a separate line item or included in the overall amount paid by a
20 customer.

21 (A) A refund includes overpayments, fees paid for services not rendered, and
22 fees paid for charges not listed on the household goods carrier's [~~mover's~~] tariff after the household
23 goods carrier [~~mover~~] takes possession of the customer's property.

1 (B) A refund does not include any consideration of damages or harm over the
2 amount paid by the customer.

3

4 **SUBCHAPTER G. FINANCIAL RESPONSIBILITY FOR FOREIGN COMMERCIAL MOTOR VEHICLES**

5 **43 TAC §218.80 AND §218.82**

6

7 **STATUTORY AUTHORITY.** The department proposes the amendments under Transportation Code,
8 §648.102, which authorizes the department to adopt rules that conform with 49 C.F.R. Part 387 requiring
9 motor carriers operating foreign commercial motor vehicles in Texas to maintain financial responsibility;
10 Transportation Code, §643.101(b), which authorizes the department to adopt rules to set the amount of
11 liability insurance that a motor carrier that is required to register under Subchapter B of Transportation
12 Code, Chapter 643 must maintain, at an amount that does not exceed the amount required for a motor
13 carrier under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.003,
14 which authorizes the department to adopt rules to administer Transportation Code, Chapter 643;
15 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
16 appropriate to implement the powers and duties of the department under the Transportation Code and
17 other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of
18 practice stating the nature and requirements of all available formal and informal procedures; and the
19 statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein
20 by reference.

21 **CROSS REFERENCE TO STATUTE.** The proposed amendments implement Transportation Code, §648.102;
22 and Government Code, §2001.004.

23

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Chapter 218 – Motor Carriers

1 TEXT.

2 §218.80. Purpose and Scope.

3 The purpose of this subchapter is to comply with Transportation Code, §648.102. For the
4 purposes of this subchapter, the term “motor carrier” is defined by Transportation Code, §648.001, and
5 does not include the following:

6 (1) a motor carrier that is required to register with the department under Transportation
7 Code, Chapter 643; or

8 (2) a motor carrier that is required to register with FMCSA for interstate transportation, and
9 is not operating in intrastate transportation within this state.

10 If a motor carrier is required to register with the department under Transportation Code,
11 Chapter 643, the motor carrier must comply with the financial responsibility requirements in §218.16 of
12 this title (relating to Insurance Requirements).

13

14 §218.82. Financial Responsibility.

15 (a) Intrastate transportation. No motor carrier shall operate a foreign commercial motor vehicle
16 in intrastate transportation in Texas, unless the motor carrier obtains and has in effect an insurance
17 policy which covers at least the minimum level required by 49 C.F.R. Part 387. [~~However, if the motor~~
18 ~~carrier is required to register with the department under Transportation Code, Chapter 643, the motor~~
19 ~~carrier must comply with the financial responsibility requirements in §218.16 of this title (relating to~~
20 ~~Insurance Requirements).] For the purposes of this subsection, intrastate transportation is any
21 transportation on a public [~~road or~~] highway in Texas that is not described in 49 U.S.C. §13501.~~

22 (b) The department adopts by reference 49 C.F.R. Part 387 regarding the required level of
23 financial responsibility, including any amendments that became effective through July 1, 2024. [Effective

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Chapter 218 – Motor Carriers

- 1 ~~October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an~~
- 2 ~~effective date of October 23, 2015.]~~

Figure: 43 TAC §218.16(a)

Type of Vehicle	Minimum Insurance Level
1. Vehicles transporting household goods (gross vehicle weight, registered weight, or gross weight rating of 26,000 lbs. or less).	\$300,000
2. <u>Vehicles, including buses, [Buses]</u> designed or used to transport more than 15 people, but fewer than 27 people, <u>including the driver.</u>	\$500,000
3. <u>Vehicles, including buses, [Buses]</u> designed or used to transport 27 or more people, <u>including the driver.</u>	\$5,000,000
4. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015.	\$500,000
5. Farm trucks (gross vehicle weight, registered weight, or gross weight rating of 48,000 lbs. or more).	\$500,000
6. Commercial motor vehicles and vehicles transporting household goods (gross vehicle weight, registered weight, or gross weight rating in excess of 26,000 lbs.).	\$500,000
7. Commercial motor vehicles - Oil listed in 49 C.F.R. §172.101; hazardous waste, hazardous materials, <u>or [and]</u> hazardous substances defined in 49 C.F.R. §171.8 and listed in 49 C.F.R. §172.101, but not mentioned in items 8 or 9 of this table.	\$1,000,000
8. Commercial motor vehicles with a gross vehicle weight rating of 10,001 or more pounds - Hazardous substances, as defined in 49 C.F.R. §171.8, transported in <u>bulk in</u> cargo tanks, portable tanks, or hopper-type vehicles with capacities in <u>bulk</u> ; [excess of 3,500 water gallons; or] in bulk Division 1.1, 1.2, <u>or [and]</u> 1.3 materials; <u>in bulk</u> [-] Division 2.3, Hazard Zone A material; <u>in bulk</u> [-or] Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2 <u>material</u> ; or highway route controlled quantities of a Class 7 material, as defined in 49 C.F.R. §173.403.	\$5,000,000
9. Commercial motor vehicles with a gross vehicle weight rating of less than 10,001 pounds – <u>In bulk</u> [Any quantity of] Division 1.1, 1.2, or 1.3 material; <u>in bulk</u> [any quantity of a] Division 2.3, Hazard Zone A <u>material</u> ; <u>in bulk</u> [-or] Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 C.F.R. §173.403.	\$5,000,000

Board Meeting Date: 8/8/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Corrie Thompson, Enforcement Division Director
Agenda Item: 12
Subject: Chapter 224, Adjudicative Practice and Procedure
Amendments: §224.27 and §224.54
(Relating to Cleanup)

RECOMMENDATION

Action Item. Approval to publish the proposed amendments to 43 Texas Administrative Code (TAC), §224.27 and §224.54 in the Texas Register for public comment.

PURPOSE AND EXECUTIVE SUMMARY

Proposed amendments to §224.27 and §224.54 make minor conforming changes to support the implementation of House Bill (HB) 718 enacted during the 88th Legislature, Regular Session (2023). HB 718 eliminated temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates effective July 1, 2025, so related references are being proposed for amendment.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Proposed amendments in §224.27 would delete the phrase “temporary tag database” and substitute the phrase “license plate system.”

Proposed amendments in §224.54 would delete the phrases “or temporary tags” and “use an internet down tag to.” Another proposed amendment to §224.54 would correct missing punctuation.

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PROPOSAL OF REVISIONS TO

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §224.27

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

43 TAC §224.54

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §224.27, concerning final orders and motions for rehearing, and Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §224.54, concerning the assessment of civil penalties and license revocation. These amendments are necessary to conform these rules with House Bill (HB) 718 enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates effective July 1, 2025. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and requires the department to adopt related rules by December 1, 2024.

The department also proposes a non-substantive change to add missing punctuation in §224.54(c)(6).

EXPLANATION.

Subchapter A. General Provisions.

Proposed amendments to §224.27(d) would delete the phrase “temporary tag database” and substitute the phrase “license plate system.” This proposed amendment recognizes that under HB 718, the purpose of the database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025.

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Part 10. Texas Department of Motor Vehicles

Chapter 224 – Adjudicative Practice and Procedure

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

2 A proposed amendment to §224.54(b)(5)(C) would delete the phrase “or temporary tags” because
3 effective July 1, 2025, a dealer may only issue a license plate or set of license plates, rather than a temporary tag,
4 under Transportation Code, Chapter 503, as amended by HB 718.

5 Proposed amendments to §224.54(c)(4) would delete the phrases “or temporary tags” and “use an
6 internet down tag to” because effective July 1, 2025, a dealer may only issue a license plate or set of license plates,
7 rather than a temporary tag or internet down tag, under Transportation Code, Chapter 503, as amended by HB
8 718.

9 A proposed nonsubstantive amendment to §224.54(c)(6) would add a period to the end of the sentence
10 to correct missing punctuation.

11 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has
12 determined that for each year of the first five years the amendments will be in effect, there will be no fiscal impact
13 to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson,
14 Director of the Enforcement Division, has determined that there will be no measurable effect on local employment
15 or the local economy as a result of the proposal.

16 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five years
17 the amendments are in effect, public benefits include improved consistency and clarity in rule language, which
18 will be helpful to dealers and the public.

19 Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that there will be no costs to
20 comply with this proposal as the proposal would not change a process and does not place a new requirement on
21 a dealer.

22 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code,
23 §2006.002, the department has determined that the proposed amendments will not have an adverse economic

1 effect on small businesses or micro-businesses because the amendments implement conforming language
2 changes related to a continuing statutory requirement to prevent fraud – one that first applied to temporary tags
3 and will now apply to license plates obtained or issued by a dealer. The amendments will also not have an adverse
4 impact on rural communities because rural communities are not required to hold a general distinguishing number.
5 The proposed amendments do not require small businesses or micro-businesses to pay a fee or incur any new
6 costs to comply with the amendments unless a dealer commits acts considered fraudulent. Therefore, the
7 department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

8 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are
9 affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would
10 otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a
11 takings impact assessment under Government Code, §2007.043.

12 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five
13 years the proposed amendments are in effect, no government program would be created or eliminated.
14 Implementation of the proposed amendments would not require the creation of new employee positions or
15 elimination of existing employee positions. Implementation would not require an increase or decrease in future
16 legislative appropriations to the department or an increase or decrease of fees paid to the department. The
17 proposed amendments do not create a new regulation and do not expand, limit, or repeal an existing regulation.
18 Lastly, the proposed amendments do not increase the number of individuals subject to the rules and will not affect
19 this state's economy.

20 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by
21 5:00 p.m. Central Time (CDT or CST as applicable) on MM, DD, YYYY. A request for a public hearing must be sent
22 separately from your written comments. Send written comments or hearing requests by email to
23 rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson

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1 Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public
2 testimony presented at the hearing.

3

4

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Chapter 224 – Adjudicative Practice and Procedure

1 database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the
2 department to establish the maximum number of license plates or sets of license plates a dealer may
3 obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011,
4 which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation
5 Code, §520.003 which authorizes the department to adopt rules to administer Chapter 520;
6 Transportation Code, §520.021, which allows the department to adopt rules and policies for the
7 maintenance and use of the department's automated registration and titling system; and Transportation
8 Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to
9 implement the powers and the duties of the department, as well as the statutes referenced throughout
10 this preamble.

11 The department also proposes amendments under the authority of Government Code, §2001.004
12 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government
13 Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements
14 of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements
15 regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

16 **CROSS REFERENCE TO STATUTE.** These proposed revisions implement Government Code, Chapter 2001;
17 Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 504, 520, 1001, and 1002.

18

19 Text.

20 §224.27. Final Order; Motion for Rehearing.

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

23 (b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to

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1 Delegation of Final Order Authority), the board has final order authority in a contested case filed under
2 Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623,
3 643, 645, and 1001-1005.

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

6 (d) A department determination and action denying access to the license plate system
7 [~~temporary tag database~~] becomes final within 26 days of the date of the notice denying access to a
8 database, unless the dealer or converter:

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

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

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

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

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

19

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

21 **STATUTORY AUTHORITY.** In addition to the rulemaking authority provided in Section 34 of HB 718, the
22 department proposes amendments to Chapter 224 under Occupations Code, §2301.151, which gives the
23 board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take

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1 any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which
2 authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale,
3 and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair
4 practices, discrimination, impositions, and other abuses in connection with the distribution and sale of
5 motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code,
6 Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or
7 convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before
8 the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a
9 license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license
10 holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution,
11 financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement
12 with a retail purchaser of a motor vehicle; Transportation Code, §501.0041, which authorizes the
13 department to adopt rules to administer Transportation Code, Chapter 501; Transportation Code,
14 §502.0021 which authorizes the department to adopt rules to administer Transportation Code, Chapter
15 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of
16 Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt
17 rules for certain contested cases; Transportation Code, §503.061, as amended by HB 718, which allows
18 the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code,
19 §503.0631, which requires the department to adopt rules to implement and manage the department's
20 database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the
21 department to establish the maximum number of license plates or sets of license plates a dealer may
22 obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011,
23 which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation

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1 Code, §520.003 which authorizes the department to adopt rules to administer Chapter 520;
2 Transportation Code, §520.021, which allows the department to adopt rules and policies for the
3 maintenance and use of the department’s automated registration and titling system; and Transportation
4 Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to
5 implement the powers and the duties of the department, as well as the statutes referenced throughout
6 this preamble.

7 The department also proposes amendments under the authority of Government Code, §2001.004
8 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government
9 Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements
10 of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements
11 regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

12 **CROSS REFERENCE TO STATUTE.** These proposed revisions implement Government Code, Chapter 2001;
13 Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 504, 520, 1001, and 1002.

14

15 §224.54. Civil Penalty and Revocation Assessment.

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

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

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

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

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

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

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

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

6 (B) whether the consumer received a title;

7 (C) whether the license holder misused license plates ~~[or temporary tags]~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3) efforts to correct a violation.

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

16

To: Texas Department of Motor Vehicles Board
From: John Ralston, Director of Budget & Forecasting
Agenda Item: 13.A
Subject: FY 2025 Recommended Operating Budget for the Fiscal Year that begins September 1, 2024, and ends August 31, 2025

RECOMMENDATION

Recommend approving the Fiscal Year (FY) 2025 Operating Budget.

PURPOSE AND EXECUTIVE SUMMARY

The recommended FY 2025 operating budget totals \$301.7 million, with 902 FTEs, and is structurally balanced to support the operational needs of the department. The recommended budget includes amounts appropriated in the General Appropriations Act (GAA) and unexpended balances carried forward from FY 2024 to FY 2025.

FINANCIAL IMPACT

The recommended FY 2025 operating budget of \$301.7 million will be funded by General Revenue Fund 0001 (\$75.5 million), TxDMV Fund 0010 (\$225.5 million), and federal reimbursements (\$743,750).

BACKGROUND AND DISCUSSION

Operating Budget by Goal and Strategy

The operating budget is appropriated (funded) by the Legislature according to goals and strategies. The department’s goals and related budget amounts as authorized in the General Appropriations Act for FY 2025 are as follows:

Goal A: Optimize Services and Systems	\$102,876,377
Goal B: Protect the Public	\$32,541,162
Goal C: Indirect Administration	\$60,045,129
Salary Adjustments	\$5,248,747
U.B., Capital Appropriations	\$14,901,606
U.B., HB 2 Supplemental Appropriations	\$700,000
Contingency Appropriations	
• HB 718	\$34,600,000
• SB 224 – new funding for FY 2025	\$30,378,803
• SB 224 – UB from FY 2024	\$20,200,000
• SB 505	\$214,440
Total	\$301,706,264

Goal A is supported by five strategies: Titles, Registrations and Plates; Vehicle Dealer Licensing; Motor Carrier Permits & Credentials; Technology Enhancement & Automation; and the Customer Contact Center. Goal B is supported by two

strategies: Enforcement and Motor Vehicle Crime Prevention Authority (MVCPA). Goal C includes Central Administration, Information Resources and Other Support Services.

Unexpended Balances (UB) will be carried forward from FY 2024 to FY 2025 for TxDMV Automation Systems, Cybersecurity, RSC Expansion in Dallas and Houston, Headquarters Maintenance, RSC Maintenance, the Accounts Receivable System, and RTS Replacement Phase I, and for contingency appropriations authorized in FY 2024 for the implementation of House Bill 718, and Senate Bills 224 and 505.

Revenues

TxDMV collects revenue from a variety of sources and deposits those revenues across multiple funds.

TxDMV Fund 0010 revenues are estimated to total \$193.6 million in FY 2025. The majority of revenues will come from title and registration fees totaling \$99.6 million, processing and handling fees of \$58.6 million, and oversize/overweight permit fees of \$15.1 million.

The department also receives revenue pursuant to Section 1006.153 of the Texas Transportation Code, to support the activities of MVCPA. These revenues are deposited to General Revenue Fund 0001 and are estimated to total \$24.9 million in FY 2025. In addition, MVCPA is appropriated approximately \$30.4 million in FY 2025 through the enactment of SB 224 for the coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter crime in Texas.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Texas Department of Motor Vehicles FY 2025 Recommended Operating Budget

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Executive Summary

The FY 2025 recommended operating budget totals \$301.7 million, with 902 full-time equivalents (FTEs), and is structurally balanced to support the operational needs of the department. The recommended budget includes:

- FY 2025 amounts appropriated to the TxDMV in the General Appropriations Act (GAA); and
- Unexpended balances carried forward from FY 2024 to FY 2025.

The FY 2025 recommended operating budget includes several new projects and initiatives that began in FY 2024 and will continue into FY 2025. Major items funded in the budget in FY 2024 that will continue in FY 2025 include:

- RTS Replacement Phase One
- Additional Regional Service Center locations in Dallas and Houston. This includes eight (8) new full-time equivalents (FTEs) that were authorized beginning in FY 2024.
- Implementation of House Bill (HB) 718 which replaces most temporary paper tags with metal plates. This includes two (2) new FTEs authorized in FY 2024 and forty-two (42) new FTEs in FY 2025.
- Implementation of Senate Bill (SB) 224 to coordinate with other state agencies to develop a plan to detect and prevent catalytic converter theft. This includes four (4) new FTEs that were authorized beginning in FY 2024.

The recommended budget focuses on continuous, secure, and uninterrupted delivery of services to our stakeholders and customers through maximizing technology and adapting to new service needs.

FY 2025 Recommended Operating Budget by Goal and Strategy

The following table reflects the amounts approved in the GAA (HB 1, 88th Legislature, Regular Session), plus other appropriations, including carry-forward funds from previous years that are available for the department to spend in FY 2025, supplemental appropriations, and contingency appropriations.

A. Goal: Optimize Services and Systems	FY 2025 Recommended Operating Budget	
Strategy:		
A.1.1. Titles, Registrations, and Plates	\$	82,454,963
A.1.2. Vehicle Dealer Licensing	\$	4,746,172
A.1.3. Motor Carrier Permits & Credentials	\$	9,563,874
A.1.4. Technology Enhancement & Automation	\$	2,704,575
A.1.5. Customer Contact Center	\$	3,406,793
Total, Goal A: Optimize Services and Systems	\$	102,876,377
B. Goal: Protect the Public		
Strategy:		
B.1.1.: Enforcement	\$	7,641,662
B.2.1. Motor Vehicle Crime Prevention Authority	\$	24,899,500
Total, Goal B: Protect the Public	\$	32,541,162
C. Goal: Indirect Administration		
Strategy:		
C.1.1. Central Administration	\$	9,671,320
C.1.2. Information Resources	\$	31,088,455
C.1.3. Other Support Services	\$	19,285,354
Total, Goal C: Indirect Administration	\$	60,045,129
D. Goal: Salary Adjustments		
Strategy:		
D.1.1. Salary Adjustments	\$	5,248,747
Total, Goal D: Salary Adjustments	\$	5,248,747
Grand Total TxDMV (GAA, Article VII Line-Item Appropriations)	\$	200,711,415
Other Appropriations		
Capital Appropriations		
- RSC Expansion in Dallas and Houston (U.B carry forward)	\$	931,606
- HQ Maintenance (U.B.)	\$	1,000,000
- RSC Maintenance (U.B.)	\$	600,000
- Automation (U.B.)	\$	7,900,000
- Cybersecurity (U.B.)	\$	270,000
- RTS Replacement Phase I (U.B.)	\$	4,200,000
Contingency Appropriations		
- HB 718 (U.B.)	\$	34,600,000
- SB 224 – new funding for FY 2025	\$	30,378,803
- SB 224 (U.B.)	\$	20,200,000
- SB 505 (U.B.)	\$	214,440
Total, Other Appropriations	\$	100,994,849
Total TxDMV Operating Budget	\$	301,706,264

FY 2025 Recommended Operating Budget by Method of Finance

The following table reflects the amounts approved in the GAA (HB 1, 88th Legislature, Regular Session), plus other appropriations, including carry-forward funds from previous years, supplemental appropriations, and contingency appropriations, by the method of finance.

Method of Finance	
General Revenue Fund 0001	\$ 75,478,303
TxDMV Fund 0010	\$ 225,484,211
Federal Reimbursements	\$ 743,750
Total, Method of Finance	\$ 301,706,264
Total Authorized FTEs	902.0

FY 2023-2025 Revenue Summary

TxDMV collects revenue from registrations, dealer licenses, titles, permits, credentials and some miscellaneous revenue. Collections are distributed to the General Revenue Fund, the State Highway Fund, and the TxDMV Fund (0010).

TxDMV Fund 0010 Revenue

TxDMV Fund revenue collections are projected to total \$191.0 million in FY 2024 and \$193.6 million in FY 2025

FYs 2023-2025 Revenue Summary			
<i>Revenue Fund and Fee Categories</i>	<i>FY 2023 Actual</i>	<i>FY 2024 Estimated</i>	<i>FY 2025 Estimated</i>
Texas Department of Motor Vehicles Fund 0010			
Motor Vehicle Certificates of Title	\$ 48,817,248	\$ 49,609,000	\$ 50,209,000
Motor Vehicle Registration	\$ 43,485,545	\$ 43,170,000	\$ 49,374,000
Motor Carrier - Oversize/Overweight	\$ 14,399,066	\$ 14,868,000	\$ 15,070,000
Motor Vehicle Business Licenses	\$ 7,085,090	\$ 6,430,000	\$ 6,430,000
Miscellaneous Revenue	\$ 17,617,652	\$ 18,648,000	\$ 13,908,000
Processing and Handling Fee	\$ 58,024,615	\$ 58,315,000	\$ 58,606,000
Total Fund 0010 Revenue	\$ 189,429,217	\$ 191,040,000	\$ 193,597,000

Motor Vehicle Crime Prevention Authority Revenues

The Motor Vehicle Crime Prevention Authority (MVCPA) is a division of TxDMV, governed by a seven-member board. MVCPA is funded by statutorily directed fees deposited to the General Revenue Fund.

In accordance with Transportation Code, Section 1006.153, MVCPA collects a \$5 fee on motor vehicle insurance policies delivered, issued, or renewed in Texas. Out of each fee collected, \$1 is to be used only for coordinated regulatory and law enforcement activities intended to detect and prevent catalytic converter theft in this state. The remaining \$4 is allocated across three programs, with 20% allocated to the MVCPA to combat motor vehicle burglary or theft and fraud-related motor vehicle crime.

In FY 2025, MVCPA revenues are estimated, as follows.

Motor Vehicle Theft and Crime Prevention	\$24,899,500
Catalytic Converter Crime Prevention	\$30,378,803

FY 2025 Recommended Operating Budget by Budget Category

The table below outlines the total FY 2025 recommended operating budget by budget category.

Expenditure Area	FY 2025 Recommended Operating Budget
Salaries and Wages	\$ 58,137,832
Other Personnel Costs	\$ 1,416,545
Professional Fees and Services	\$ 39,340,369
Fuels & Lubricants	\$ 65,550
Consumable Supplies	\$ 1,375,508
Utilities	\$ 4,526,471
Travel In-State	\$ 446,870
Travel Out-of-State	\$ 86,100
Rent – Building	\$ 1,234,913
Rent - Machine and Other	\$ 350,246
Purchased Contract Services	\$ 70,085,746
Advertising & Promotion	\$ 307,242
Computer Equipment Software	\$ 2,226,867
Fees & Other Charges	\$ 962,129
Freight	\$ 6,753,648
Maintenance & Repair	\$ 5,560,897
Memberships & Training	\$ 330,767
Other Expenses	\$ 5,655,728
Postage	\$ 17,790,250
Reproduction & Printing	\$ 5,166,811
Debt Service	\$ 12,522,000
Grants	\$ 65,568,471
Other Capital	\$ 1,795,304
Total	\$ 301,706,264

Capital Project Details

TxDMV FY 2025 Capital Budget

TxDMV Capital Project Appropriations		FY 2025
Fiscal Year 2025 Appropriation	\$	18,089,033
Estimated Unexpended Balance Carry-Forward	\$	14,901,606
Total Capital Appropriations	\$	32,990,639
Facilities		
Regional Service Center Expansion ¹ (UB)	\$	931,606
Regional Service Center Maintenance ¹ (UB)	\$	600,000
HQ Maintenance ¹ (UB)	\$	1,000,000
Acquisition of Information Resource Technologies		
TxDMV Automation System ¹		
TxDMV Automation System ¹ (UB)	\$	7,900,000
Other Technology Projects		
PC Replacement	\$	685,000
Technology Replacement & Upgrades - County Support	\$	5,000,000
RTS Replacement Phase I ¹ (UB)	\$	4,200,000
Data Center Consolidation		
Data Center Consolidation	\$	12,404,033
Cybersecurity		
Cybersecurity ¹ (UB)	\$	270,000
TxDMV Total Capital Budget		\$ 32,990,639

¹Includes projects that will be funded from balances remaining at the end of FY 2024.

FY 2025 Contract Summary

The FY 2025 budget currently includes thirty-six (36) contracts that each have a value of more than \$200,000 over the life of the contract. These contracts are listed on the following pages for informational purposes. The listed contracts are subject to change based on the final terms and conditions negotiated.

Contracts Greater than \$200,000

The following contracts have a value of more than \$200,000. They are provided for informational purposes, but they are excluded from the Board approval requirement in accordance with the board's Contract Approval Procedures.

Division	Vendor	Purpose	Contract Award Date	Contract End Date	FY 2025 Amount	Total Lifetime Contract Amount Through FY 2025
VTR	TEXAS DEPARTMENT OF CRIMINAL JUSTICE	License Plates Manufacturing	9/1/2019	8/31/2025	\$17,015,000	\$68,490,482
VTR	PITNEY BOWES	Postage	9/1/2016	8/31/2025	\$16,400,000	\$111,278,631
IT	TEXAS DEPARTMENT OF INFORMATION RESOURCES	Data Center Services	9/1/2020	8/31/2025	\$12,404,033	\$29,722,677
VTR	TAYLOR COMMUNICATIONS	Vehicle Registration Decals	8/26/2014	8/31/2025	\$4,684,500	\$40,950,215
ITD	PENDING PROCUREMENT	HB 718 Inventory Management System	TBD	8/31/2025	\$4,000,000	\$4,000,000
FAO	OPEN TEXT	Digital Imaging	9/1/2020	8/31/2025	\$2,800,000	\$26,357,457
IT	ALCHEMY TECHNOLOGY GROUP	Okta Multi-Factor Authentication	11/1/2023	8/31/2025	\$2,600,000	\$5,600,000
ITD	AT&T	Voice-to-Cloud	6/6/2024	8/31/2025	\$2,568,384	\$2,568,384
MVCPA	DPS	SB 224 IAC	4/15/2024	8/31/2025	\$2,367,166	\$2,367,166
IT	CARAHSOFT	<u>eLICENSING</u>	8/31/2022	8/31/2025	\$1,190,000	\$2,485,231
VTR	WORKQUEST	Specialty Plates Mailing	8/26/2014	8/31/2025	\$1,185,285	\$4,330,592
VTR	PENDING PROCUREMENT	HB 718 License Plate Distribution	TBD	8/31/2025	\$1,000,000	\$1,000,000

Division	Vendor	Purpose	Contract Award Date	Contract End Date	FY 2025 Amount	Total Lifetime Contract Amount
VTR	WORKQUEST	Huntsville Freight	8/31/2022	8/31/2025	\$927,000	\$1,847,000
ITD	THOMSONS-REUTERS	Identity Validation	7/1/2023	8/31/2025	\$924,861	\$924,861
FAO	WALDEN SECURITY	Security Guard Services - Austin	9/1/2020	8/31/2025	\$808,192	\$3,095,428
FAO	PRESTIGE ELEVATOR SERVICES	Elevator Maintenance	9/1/2022	8/31/2025	\$748,790	\$1,224,790
VTR	TAYLOR COMMUNICATIONS	VTR-500 Form	9/1/2023	8/31/2025	\$720,510	\$1,441,020
VTR	AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS	Title Check Services	10/1/2018	8/31/2025	\$706,555	\$3,984,472
MCD	PROMILES	Annual Support and Hosting Fees	9/1/2016	8/31/2025	\$700,000	\$4,319,080
MCD	SOUTHWEST RESEARCH INSTITUTE	CVIEW – Maintenance Support	2/1/2020	8/31/2025	\$650,000	\$7,250,000
VTR	RR DONNELLY	Title & Registration Forms	3/6/2015	8/31/2025	\$526,050	\$5,030,725
MVCPA	TDLR	SB 224 IAC	6/25/2024	8/31/2025	\$500,000	\$500,000
IT	CDW GOVERNMENT	Cisco Smartnet	11/1/2020	8/31/2025	\$484,000	\$1,903,909
ITD	22ND CENTURY TECHNOLOGIES	County Refresh	10/20/2022	10/19/2027	\$348,572	\$348,572
ITD	EXPLORE INFORMATION	Texas International Registration Plan (TxIRP)	4/18/2018	8/31/2025	\$336,640	\$336,640
FAO	WORKQUEST	Janitorial Services – Camp Hubbard	9/1/2020	8/31/2025	\$331,183	\$2,621,855

Division	Vendor	Purpose	Contract Award Date	Contract End Date	FY 2025 Amount	Total Lifetime Contract Amount
FAO	RAGSDALE-BROOKWOOD VENTURE	Lease 20399 Houston	11/1/2016	8/31/2025	\$302,112	\$3,332,184
FAO	DLT SOLUTIONS	Facilities Management SaaS	9/1/2022	8/31/2025	\$290,064	\$290,064
FAO	PITNEY BOWES	Presort Barcode Mail service	9/1/2023	8/31/2025	\$273,000	\$273,000
FAO	JOHNSON CONTROLS	JCI Controls	9/1/2021	8/31/2025	\$271,140	\$897,606
ITD	GARTNER	IT Leadership Program	9/7/2023	8/31/2025	\$253,088	\$253,088
FAO	FEDERAL EXPRESS	Freight/Small Package Shipping	8/21/2023	8/31/2025	\$232,000	\$232,000
FAO	WILLBANKS	Boiler Maintenance	9/1/2022	8/31/2025	\$200,000	\$600,000
ITD	INSIGHT GROUP	Bldg 6 Network Buildout	6/12/2024	8/31/2025	\$197,693	\$197,693
FAO	TIGHT GROUP	General Facilities Maintenance	9/1/2022	8/31/2025	\$184,792	\$184,792
FAO	JOHNSON CONTROLS	Chiller/cooling tower	9/1/2021	8/31/2025	\$173,700	\$926,700

Board Meeting Date: 8/8/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: John Ralston, Director of Budget & Forecasting
Agenda Item: 13.B
Subject: Delegation of Contract Approval and Signature Authority to the Executive Director or the Executive Director's Designee under Government Code §2261.254

RECOMMENDATION

Recommend approving the updated 'Contract Approval Procedures' and specifically delegate contract approval and signature authority to the executive director or designee.

PURPOSE AND EXECUTIVE SUMMARY

This agenda item is to obtain the board's delegation of approval of contracts and signature authority (delegation) for contracts up to and including \$1 million as well as those exceeding \$1 million as authorized under Government Code §2261.254.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Texas Government Code, §2261.254 authorizes a state agency to enter into a contract for the purchase of goods or services that has a value exceeding \$1 million only if the governing body of the state agency approves the contract and the approved contract is signed by the presiding officer of the governing body.

However, §2261.254 also allows the governing body to delegate this authority for approval and signature to the executive director or a deputy executive director of the agency.

These updated contract approval procedures will simplify the delegation of approval and signature to align with the authorities in statute. Contracts up to and including \$1 million will be delegated to the Executive Director and he may further delegate that authority if he so chooses. Those exceeding \$1 million will be delegated to only the Executive Director.

The department will continue to present the department's operating budget including all contracts expected to exceed \$200,000 for informational purposes and will continue to report on and seek approval for other contracts for which it is statutorily required.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES
CONTRACT APPROVAL PROCEDURES

Revised August 8, 2024

The Board of the Texas Department of Motor Vehicles (Board) finds it necessary to adopt procedures relating to contracts executed on behalf of the Texas Department of Motor Vehicles (department). The Executive Director (or designee) has the authority to sign and/or approve contracts on behalf of the department without Board approval, to the extent the contract approval procedures do not require prior Board approval and Board approval is not required by law. The Board authorizes the Executive Director to adopt separate internal procedures to assist with the implementation of these contract approval procedures.

Procurement Process:

The department may enter into the procurement process to acquire goods and/or services without consultation or prior Board approval provided that the department complies with the General Contract Approval procedures below.

General Contract Approval:

Expected department contracts will be presented to the Board by the Executive Director (or designee) as a part of the department's operating budget for informational purposes.

The Executive Director is delegated the approval and signature authority for all agency contracts, including those over \$1,000,000.00 as authorized by Texas Government Code Section 2261.254.

The Executive Director may further delegate approval and signature authority for those contracts up to and including \$1,000,000.00 but may not delegate this authority for contracts exceeding \$1,000,000.00.

At the discretion of the Executive Director (or designee), the department may request the Board consider any contract of any amount.

Budgeting and Reporting:

The Executive Director (or designee) must still ensure that all contracts are within budget guidelines and adhere to all established procurement and contract laws, rules, regulations, and policies of oversight agencies.

No later than August 31st of each fiscal year, the Chief Financial Officer (or designee) shall submit to the Board an annual report which identifies all agency contracts which are expected to exceed \$200,000 in the next fiscal year. This report shall include, but not be limited to, vendor name, contract purpose, contract amount, and contract duration. Additionally, the Chief Financial Officer (or designee) shall state whether sufficient funds are available in the agency's proposed operating budget for such contracts.

IT IS THEREFORE ORDERED by the Board that these contract approval procedures are adopted. The contract approval procedures dated February 10, 2022, and titled *Board of the Texas*

Order Number: _____

Date Passed: August 8, 2024

Page 1 of 2

Department of Motor Vehicles, Contract Approval Procedures are rescinded, effective August 8, 2024.

The department is directed to take the necessary steps to implement the actions authorized in these contract approval procedures.

August 8, 2024

Charles Bacarisse, Chair
Board of the Texas Department of Motor Vehicles

To: Texas Department of Motor Vehicles Board
From: Glenna Bowman, Chief Financial Officer
Agenda Item: 13.C
Subject: FY 2026 – 2027 Legislative Appropriations Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

The proposed Legislative Appropriations Request (LAR) items for the Fiscal Year (FY) 2026-2027 biennium were presented to the Legislative and Public Affairs Committee at its meeting on June 26, 2024. This item provides an update on the proposed LAR items prior to submission to the Legislative Budget Board (LBB).

As presented in June, the LAR is divided into two components, Baseline Funding and Exceptional Items.

FINANCIAL IMPACT

In June 2024, the board approved a motion to authorize a baseline funding increase not to exceed 5%. After additional analysis, the baseline funding amount is \$424.5 million, which represents a 4.7% increase over FY 2024-25. The major components of the increase include postage and freight, data center charges, and the implementation of communication and technology contracts.

The exceptional items presented in June have not changed.

BACKGROUND AND DISCUSSION

Baseline Increases

Baseline increases include estimated cost increases for postage and freight services, charges for data center services, and the implementation of communication and technology contracts.

Exceptional Items

The exceptional items presented in June have not changed.

- **Registration and Title System (RTS) Modernization Phase Two** \$125 million
- **Enhance and Improve Core Services and Customer Support** \$8.7 million
This budget would support 50.0 full-time equivalent positions (FTEs).

To: Texas Department of Motor Vehicles Board
From: Jason Gonzalez, Interim Internal Audit Division Director
Agenda Item: 13.D
Subject: Internal Audit Division Status Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

This status update provides information on current Internal Audit Division (IAD) activities.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Internal Engagements

IAD started recommendation follow-up to validate whether divisions have implemented outstanding recommendations. There are 40 recommendations from audits that are tracked, and IAD requested documentation from relevant divisions to determine if recommendations can be closed. IAD will have information on all outstanding recommendation statuses, including those with extended due dates. This project will conclude in August 2024.

IAD completed the Investigation Processes Audit. The audit objective was to evaluate the intake process for complaints, the method for how investigations are prioritized, and the actions taken on investigation results. There were four results and eight recommendations:

- **Result #1:** Complaint priority levels can be better defined and used to effectively manage cases.
- **Result #2:** While there is consistency in investigation documentation, opportunities exist to strengthen case communication and oversight.
- **Result #3:** Actions and penalties were enforced, but penalties were not always assessed within established guidelines.
- **Result #4:** Key performance indicators were accurately reported but could be expanded to provide more visibility.

The Inventory Management Audit is in reporting phase. The audit objective was to evaluate Department processes on accounting for and reporting on controlled assets throughout the State. The audit report is pending management responses. The audit recognizes the Department's efforts in leveraging technology to be more efficient in conducting annual inventory verifications but also finds opportunities to improve verification and reporting processes.

Lastly, IAD completed the Fiscal Year (FY) 2025 risk assessment and created the FY 2025 Internal Audit Plan for Board approval.

External Engagements

The Comptroller of Public Accounts (CPA) completed its first annual Commercial Charge Card Rebate Program desk audit for 99 state agencies which included the Department. The objective of the audit was to determine compliance with Texas Government Code for agencies to take advantage of early payment discounts and/or rebates. Rebates are earned when agencies pay their Citibank credit card statements within the required 30 days or as early as three days after the receipt of the credit card statements.

In FY 2023, the Department spent approximately \$282,000 with Citibank credit cards. The Department paid 89% of its expenses (~\$252,000) in less than 30 days, earning 93% of the minimum rebate amount. However, the Department incurred \$104.44 in late interest payments. CPA recommended that agencies change payment processes to take advantage of rebates by receiving commercial card account statement online, work with Citibank to develop automated reconciliation, and make partial payments based on supporting documentation as costs arise.

Internal Audit Division Status

Internal Engagements

	Planning	N/A
	Fieldwork	Recommendation Implementation Follow-up
	Reporting	Inventory Management Audit
	Completed	<ul style="list-style-type: none"> Investigations Processes Audit FY 2025 Risk Assessment & Internal Audit Plan

External Engagements

	In-Progress	N/A
	Completed	CPA: Commercial Charge Card Rebate Program Desk Audit



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Investigation Processes Audit Report 24-03

Internal Audit Division
June 2024

Investigation Processes Audit, 24-03

Executive Summary

The Enforcement Division (ENF) of the Texas Department of Motor Vehicles (TxDMV or Department) investigates consumer complaints dealing with motor vehicles, motor carriers, and lemon law matters. ENF processes cases from consumers, law enforcement and other agencies on the business practices of dealers, manufacturers, converters, and motor carriers. ENF also provides education and training opportunities to licensees. The objectives of this audit were to evaluate the intake process for complaints, the method for how investigations are prioritized, and the actions taken on investigation results.

WHAT WE FOUND

The audit found that ENF processes are at a Level 3 – Established: The function achieves its purpose in an organized way, following established processes, but those processes may not be consistently followed or well communicated. The Internal Audit Division (IAD) issued four results related to the audit objectives.

- **Result #1:** Complaint priority levels can be better defined and used to effectively manage cases.
- **Result #2:** While there is consistency in investigation documentation, opportunities exist to strengthen case communication and oversight.
- **Result #3:** Actions and penalties were enforced, but penalties were not always assessed within established guidelines.
- **Result #4:** Key performance indicators were accurately reported but could be expanded to provide more visibility.

WHAT WE RECOMMEND

IAD made eight recommendations in this audit related to the following areas:



Updating procedures to better define complaint priority levels and provide training to ensure consistency.



Working with the Information Technology Services Division to ensure system flags and notifications are set up properly



Establishing processes for timely notices to be sent to ensure efficient case closure.



Ensuring that introductory and closure emails are provided to complainants.



Considering the expansion of Key Performance Indicators for more transparency.



Making sure that penalties assessed in cases are within the ranges in the Disciplinary Matrix or providing comments that support decisions.

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Background

The Enforcement Division (ENF) of the Texas Department of Motor Vehicle (TxDMV or The Department) enforces statutes and administrative rules affecting the motor vehicle distribution, salvage, and motor carrier industries. This includes laws governing the transportation of household goods, oversize/overweight motor carrier permits, and motor vehicle dealer advertising. The division is also responsible for administering the state's lemon law program and for recommending best practices to assist tax assessor-collector offices and TxDMV Regional Service Centers.

ENF has 55 investigators, 12 attorneys, and two case advisors to handle complaints dealing with motor vehicles, motor carriers, and lemon law matters. In fiscal year 2023, ENF received 23,000 cases and closed over 20,000 cases on these types of complaints.

Motor Vehicle Complaints



Motor vehicle dealers, whether franchise, independent, unlicensed or salvage dealers, have allegedly violated one of the statutes or rules regulated by the agency. The number one motor vehicle violation investigated by ENF is the failure to properly or timely apply for title. Other violations investigated include frauds, premise violations, and tag and plate violations.

Motor Carrier Complaints



Motor carriers who failed to maintain current insurance requirements for their license, or complaints against household goods carriers that have allegedly failed to fulfill terms of a contract with a consumer. Motor Carrier complaints also include violations of the size/weight restrictions of a permit or license.

Lemon Law Complaints



Complaints from the public about manufacturers that fail to fulfill the terms of a new vehicle warranty.

The scope of the audit was September 2022 to January 2024 (time period) and included complaints investigated by ENF's Motor Vehicle Section. During the time period, ENF closed a total of 17,303 cases and had 8,346 cases open as of January 2024.

Strengths

- ENF started the process of updating its procedures to ensure that investigations are conducted in a timely manner and that documentation is uniform.
- ENF is working with licensees to settle cases and reduce the need for hearings which could potentially lead to shorter case closure times.
- ENF has processes in place to ensure that penalties are collected and forwarded to collections when necessary.
- ENF ensured Key Performance Indicators were accurately reported.

Audit Engagement Team

The audit was performed by Angel Flores (Principal Internal Auditor), Sonja Murillo (Senior Internal Auditor), and Salem Chuah (Internal Audit Director).

Audit Results

Audit Results #1: Complaint priority levels can be better defined and used to effectively manage cases.

Priority Levels. ENF assigns priority levels to complaints it receives, which provides investigators with a timeframe in which an investigation should be completed. In 17 (38 percent) of 45 cases, ENF did not ensure that the complaint was assigned the appropriate priority level.

According to ENF, eLicensing, the Department's complaint tracking system for motor vehicle cases, will automatically assign cases a priority level based on predetermined criteria that may not be working as intended. Further, multiple Assistant Chief Investigators assign priority levels to incoming cases and may use their discretion in considering factors such as the dealer's violation history, the dealer's current open cases, how late title transfers are occurring, and how many customers the late title transfers are affecting. There may also be limited training for assigning priority levels amongst Assistant Chief Investigators to ensure uniformity of applying priority levels to incoming complaints.

Investigation Completion. ENF closed a total of 17,303 cases between September 2022 and January 2024. On average, all cases were closed in 271 days. (see **Figure 1**). Specifically, high priority cases were closed with a median of 49 days and low priority cases were closed with a median of 385 days.

Figure 1 also shows the average and median days cases have been with investigators. As cases progress from investigators to attorneys, there may be required minimum waiting periods defined in ENF's procedures which the Department cannot control that impacts the total complaint closure time. Cases with investigators take on average 132 days to complete both high and low priority cases with the median being 23 days and 74 days, respectively.

Figure 1: Cases and Closure Time

Priority Level	Total Cases	Average days to close	Median days to close	Average days with Investigator	Median days with Investigator
High	2,428	177	49	132	23
Medium	12	361	266	124	13.5
Low	14,863	286	385	132	74
Total	17,303	271	266	132	23

According to ENF, there was a high volume of temporary tag complaints which increased the number of high priority cases. The procedures include criteria on days to complete high, medium, and low priority cases:

- High priority cases involving public safety, red flag referrals or premise cases should be completed in 30 days.

- Medium priority cases involving licensee conducting business outside of license classification or licensee offering and/or selling off their license location to be completed in 60 days.
- Low priority cases involving advertising cases and any other case that does not fall into the other two categories to be completed in 90 days.

Separately, only 12 (0.07 percent) of 17,303 closed cases were assigned a medium priority level with almost all cases assigned either as high or low priority levels. Limiting the use of priority levels to only two or not assigning the appropriate priority level to complaints could cause ineffective allocation of resources to resolve consumer damages.

According to ENF, not every case can be given a high priority level. When Assistant Chief Investigators are performing the intake process, they tend to view cases in high or low priority and therefore there is limited use of other categories.

The June 2019 Sunset Advisory Commission Report directed the Department to identify and implement methods to reduce its complaint resolution timeframes and to develop clear guidance and criteria for prioritizing investigations. Additionally, the Texas Transportation Code 1003.0055(a) states “The department shall maintain a system to promptly and efficiently act on complaints filed with the department.”

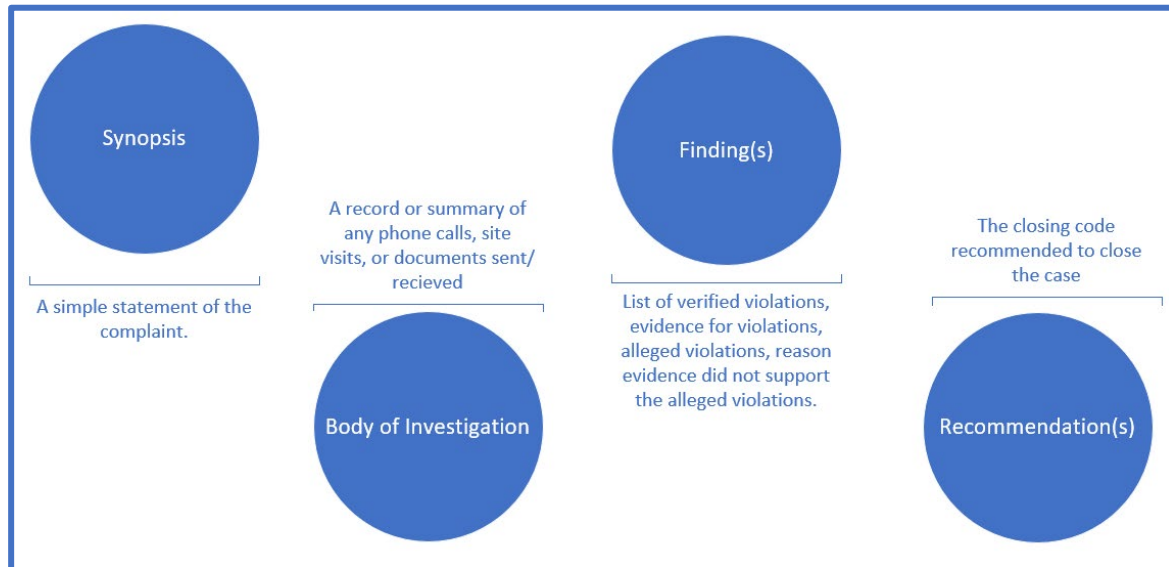
Recommendations

1. The Enforcement Division should revise its procedures for assigning complaint priority levels to include additional factors taken into consideration (e.g., dealer violation history, number of customers affected, etc.) and expand the use of priority levels. The Department should also conduct training to ensure the consistency of assigning complaint priority levels.
2. The Enforcement Division should work with the Information Technology Services Division to ensure that the automatic assignment of priority levels in eLicensing, if used, is working as intended.

Audit Results #2: While there is consistency in investigation documentation, opportunities exist to strengthen case communication and oversight.

Investigations. ENF generally ensured that cases were documented uniformly in accordance with its procedures (see **Figure 2**). Specifically, 27 (90 percent) of 30 cases had all elements of an investigation completed.

Figure 2: Documentation elements for investigations



Opening/Closing E-mails. ENF provides each complainant with an acknowledgement email that provides the following information:

- Inform the complainant that the complaint has been received
- A case has been opened by TxDMV
- The case number
- Assigned investigator name and contact details
- Complainant responsibilities

ENF did not consistently ensure that opening and closing emails to the complainant were provided as stated in its procedures. Specifically, 5 (23 percent) of 22 cases were missing an opening and/or a closing e-mail.

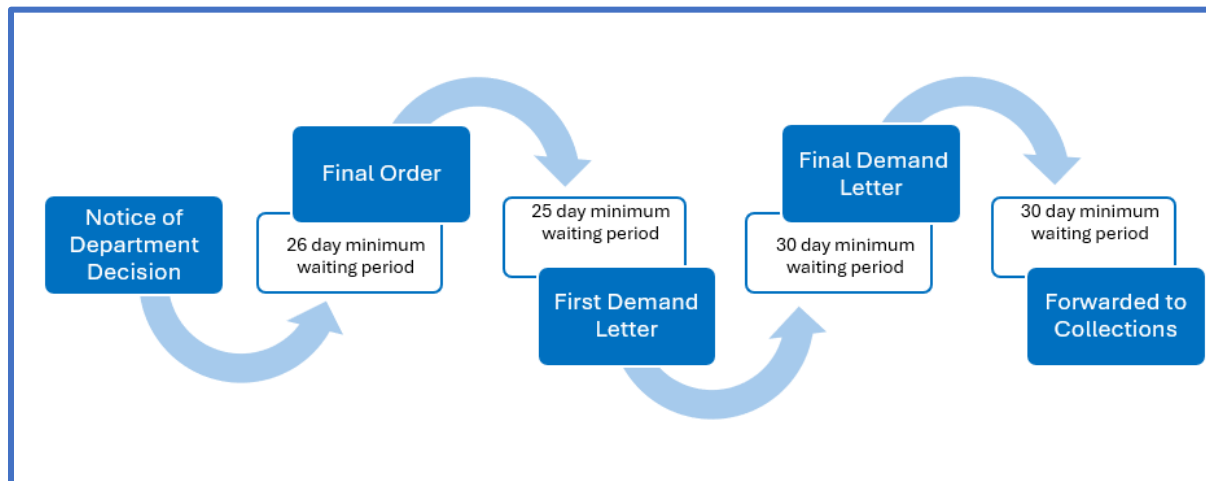
90-day Status Updates. Auditors determined that only 6 of 30 cases took longer than 90 days to complete the investigation process therefore requiring periodic updates. However, ENF did not consistently provide updates. Specifically, 4 (67 percent) of 6 cases did not have any updates provided despite having the option for periodic status updates selected. In addition, one case that did not require updates received updates after the closing email was provided.

The 90-day status update provides the complainants with periodic status updates regarding the complaint while the closing email provides the complainants with information concerning how their case concluded. Not providing these updates could cause additional work for investigators as complainants could be unaware of the progress of the case and may contact investigators for updates.

According to ENF, periodic status updates are automated by eLicensing and investigators have the option to deselect the option for periodic status updates when they believe the notification could interfere with the pending investigation.

Contested Cases. In 4 (25 percent) of 16 contested cases where additional notices were sent after the Notice of Department Decision (NODD), ENF took 15 to 46 days longer than the minimum waiting period to proceed in its process which impacts complaint closure times (see **Figure 3**).

Figure 3: Attorney notification process with required minimum waiting periods



According to ENF, the respondent is often given additional time to resolve violations because it reduces the need for a hearing or from having to forward the penalty assessed to collections for non-payment.

Recommendations

3. The Enforcement Division should ensure that investigation results are documented consistently.
4. The Enforcement Division should ensure that opening and closing emails are provided to complainants. It should also update the opening email template to include all elements stated in its procedures.

5. The Enforcement Division should work with the Information Technology Services Division to ensure that the 90-day status updates are sent appropriately (e.g., sent if cases are over 90 days and ceased when closing email has been sent).
6. The Enforcement Division should ensure that it sends all notices after the minimum waiting period in instances where doing so may reduce case closure times (e.g., non-responsive cases).

Audit Results #3: Actions and penalties were enforced, but penalties were not always assessed within established guidelines.

Actions and/or Penalties Completed or Collected. ENF ensured actions and/or penalties were completed or collected. Of the 30 cases reviewed:

- 23 cases had a penalty collected and/or license revoked
- 7 cases had a license revoked and/or forwarded to collections

According to eLicensing, out of the 30 cases, ENF assessed a total of \$372,122 in penalties and revoked six dealer licenses. Further, ENF collected \$151,122 of the total penalties assessed and forwarded the remaining total of \$221,000 associated with five cases to collections following the process.

Assessing Penalties. ENF generally applied the disciplinary matrix when assessing penalties on its cases. However, 6 (20 percent) of 30 closed cases did not have a final penalty assessed within the range provided in the disciplinary matrix. These six cases had final penalties that were 50 to 75 percent less than the stated minimum.

In the six cases, case notes indicated that respondents reached out to ENF attorneys and negotiated with the attorney for a reduced penalty amount. However, the disciplinary matrix ensures visibility into the Department's enforcement decisions and clear understanding among licensees regarding expected penalties.

According to ENF, when attorneys apply the matrix when reviewing violations, they only ensure that they do not exceed the maximum amount stated. ENF attorneys also give the respondent credit against the penalty amount for costs the respondent incurred for resolving the issue with the complainant leading to a lower amount than stated in the established matrices.

ENF's procedures state that the agreed final order penalty amounts must be within the disciplinary matrix guidelines, unless a comment is entered into the case citing the reason for the deviation.

Recommendations

7. The Enforcement Division should ensure that penalties assessed in cases are within the range provided in the Disciplinary Matrix or document the justification to support assessing a penalty outside the range.

Audit Results #4: Key performance indicators were accurately reported but could be expanded to provide more visibility.

ENF administrative staff collect and report Key Performance Indicators (KPIs) to Department management and the Board. The goal for the total number of motor vehicle cases in progress longer than two years is 4 percent or less. For the audit period of September 1, 2022 through January 31, 2024, ENF reported 1 percent to 5 percent of cases that are in progress longer than two years.

Auditors reviewed supporting documentation for 6 of the 17 months within the audit scope period and determined that KPIs were supported and accurately reported.

Other Texas regulatory agencies have metrics such as the percentage of complaints resolved within six months and average time (days) for resolution with pre-determined goals. For example, one agency has a goal of closing 65 percent of complaints within six months while another agency has a goal of 90 percent with the average days for resolution being 192 and 100 days, respectively. Also, the June 2019 Sunset Advisory Commission Report directed the Department to revise and expand KPIs and annual enforcement reports to better assess effectiveness and efficiency and provide more visibility of the enforcement program. Examples included the average number of days to resolve a complaint, the complaint type, and the actions taken on complaints among other measures. Reporting on these measures could allow ENF to effectively allocate resources and identify inefficiencies or other issues.

Recommendations

8. The Enforcement Division should consider revising and expanding its key performance indicators to provide more visibility.

Appendix 1: Objectives, Scope, Methodology, and Rating Information

Objectives

The objectives of this audit were to evaluate the intake process for complaints, the method for how investigations are prioritized, and the actions taken on investigation results.

Scope and Methodology

The scope of the audit included closed motor vehicles cases from September 2022 to January 2024 and open motor vehicles cases as of January 2024.

Information and documents evaluated in the audit included the following:

- Interviewed Enforcement Division (ENF) senior management, investigators, attorneys and administrative staff.
- Obtained and analyzed ENF motor vehicle closed cases
- Selected a sample of 30 closed and 15 open motor vehicle cases
- Analyzed penalties assessed, collected and forwarded to collections
- Reviewed case details in eLicensing
- Developed complaint notification process flowchart
- Reviewed Transportation and Occupations Code to identify statutes relevant to audit
- Reviewed the ENF's procedures and disciplinary matrices
- Obtained ENF's Key Performance Indicators reported and supporting documentation
- Reviewed Key Performance Indicators reported by licensing state agencies

This audit was included in the Fiscal Year 2024 Internal Audit Plan. IAD conducted this performance audit in accordance with Generally Accepted Government Auditing Standards and in conformance with the Internal Standards for the Professional Practice of Internal Auditing. Those standards require that IAD plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on our audit objectives. IAD believe that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Report Distribution

In accordance with the Texas Internal Auditing Act, this report is distributed to the Board of the Texas Department of Motor Vehicles, Governor's Office of Budget, Planning, and Policy, Legislative Budget Board, and the State Auditor's Office.

Ratings Information

Maturity Assessment Rating Definition

IAD derived the maturity assessment ratings and definitions from the Control Objectives of Information and Related Technologies (COBIT) 5 IT Governance Framework and Maturity Model, the Enterprise Risk Management (ERM) Maturity Model, and the ISACA Maturity Model. The model was adapted for assurance audit purposes and does not provide a guarantee

against reporting misstatement and reliability, non-compliance, or operational impacts. The ratings and definitions are provided in Table 1.

Table 1. Maturity Assessment/Process Capability Rating Definitions

Rating	Name	Definition
1	Minimal	The function may have policies and procedures established for some activities but relies on intuition and handles issues on an ad-hoc basis.
2	Informal and Reactive	The function achieves its purpose with basic processes and activities that are not very organized or followed.
3	Established	The function achieves its purpose in an organized way, following established processes, but those processes may not be consistently followed or well communicated.
4	Predictable	The function fully achieves its purpose, is well-defined, and its performance is quantitatively measured. The function is fully integrated within the Department, the function has full resources to achieve business objectives, and policies and procedures are regularly improved.
5	Optimized	The function fully achieves its purpose, is well-defined, and its performance is quantitatively measured. There is continuous improvement that is pursued, and technology is heavily leveraged to automate workflow and improve quality and effectiveness of processes.

Appendix 2: Management Response and Action Plan

The Enforcement Division provided the following response:

Recommendation	Responsible Department and Section/Unit	Department Response	Completion Date
1. The Enforcement Division should revise its procedures for assigning complaint priority levels to include additional factors taken into consideration (e.g., dealer violation history, number of customers affected, etc.) and expand the use of priority levels. The Department should also conduct training to ensure the consistency of assigning complaint priority levels.	Enforcement Division Motor Vehicle, Investigative Section	<p>The division will revise its standard operating procedures to change guidance on how priority levels are assigned as well as the expanded use of the medium priority level.</p> <p>The division will ensure supervisors are trained in the usage of the new priority levels to ensure consistent assignment of priority levels.</p>	August 1, 2024
2. The Enforcement Division should work with the Information Technology Services Division to ensure that the automatic assignment of priority levels in eLicensing, if used, is working as intended.	Enforcement Division, Motor Vehicle Investigative Section	The division will file one or more tickets with ITSD to ensure that the system is correctly assigning priority levels to incoming complaints.	August 1, 2024
3. The Enforcement Division should ensure that investigation results are documented consistently.	Enforcement Division, Motor Vehicle Investigative Section	The division will reinforce training concerning documentation at investigator trainings.	October 1, 2024
4. The Enforcement Division should ensure that opening and closing emails are provided to complainants. It should also update the opening email template	Enforcement Division, Motor Vehicle Investigative Section	The division will revise standard operating procedures to document the instances where opening or closing emails will be sent and what elements should be contained in said emails.	August 1, 2024

Recommendation	Responsible Department and Section/Unit	Department Response	Completion Date
to include all elements stated in its procedures.			
5. The Enforcement Division should work with the Information Technology Services Division to ensure that the 90-day status updates are sent appropriately (e.g., sent if cases are over 90 days and ceased when the closing email has been sent).	Enforcement Division, Motor Vehicle Investigative Section	The division will file one or more tickets with ITSD to ensure that quarterly status updates are sent appropriately.	August 1, 2024
6. The Enforcement Division should ensure that it sends all notices after the minimum waiting period in instances were doing so may reduce case closure times (e.g., non-responsive cases).	Enforcement Division, Motor Vehicle Attorney Section	The division will reinforce attorney training concerning when to issue notices. In instances were sending a notice after the minimum waiting period will reduce case closure times or are otherwise consistent with the interests of justice, the division will do so.	July 1, 2024
7. The Enforcement Division should ensure that penalties assessed in cases are within the range provided in the Disciplinary Matrix or provide/document aggravating and/or mitigating factor(s) to support assessing a penalty outside the range.	Enforcement Division, Motor Vehicle Attorney Section	The division has already implemented procedures whereby if an attorney seeks to assess a penalty lower than what is found in the disciplinary matrix the attorney will document in objective terms why the deviation is justified. Legal staff have additionally been trained on what constitutes “objective justification.”	July 1, 2024
8. The Enforcement Division should consider revising and expanding its key performance indicators to provide more visibility.	Enforcement Division Director	Prior to issuance of the Sunset Report, the division KPIs were based on average days to case resolution. The metrics were amended following the issuance of the Sunset Report to place focus on overall case processing time frames. The	September 1, 2024

Recommendation	Responsible Department and Section/Unit	Department Response	Completion Date
		<p>division currently maintains internal monthly metrics on both investigator and attorney case processing. Additionally, the division's Annual Report includes case open and close counts, the source and disposition of complaints, days to resolution, violation type and volume, and reimbursements to consumers.</p> <p>Existing metrics aside, the division will explore additional measures that may provide more visibility into program efficacy.</p>	



A Statewide Desk Audit

Commercial Charge Card Rebate Program

Audit Report #001-24-01
July 3, 2024

Glenn Hegar
Texas Comptroller of Public Accounts



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Executive Summary

Purpose and Scope

The Texas Comptroller of Public Accounts (Comptroller's office) performed a desk audit of the Commercial Charge Card Rebate Program and rebates earned at state agencies (agencies).

The objective of the audit was to determine whether agencies complied with the requirement of [Texas Government Code, Section 2251.030](#) for agencies to take advantage of early payment discounts and/or rebates. The audit was conducted in accordance with Texas Government Code, Section 403.071.

The audit scope included review of the semiannual rebate reports from the charge card program provider, Citibank, and comparisons of the actual rebates earned to the minimum and maximum rebates that could have been earned if agencies had paid their Citibank statements within the required 30 days or as early as three days after the receipt of the credit card statements. Auditors also ran and reviewed three Uniform Statewide Accounting System (USAS) ad hoc reports for audited agencies for payment dates, prompt payment interest paid to Citibank for late payments, and payments agencies waived interest on by overriding the interest payment calculations during fiscal 2023.

Background

Citibank, N.A. is the current state of Texas commercial charge card services provider for procurement and travel purchases and related services. The Citibank charge card contract [946-M2](#) contains a rebate program based on the total annual expenditures of all participating entities. In addition to the rebate percentage, an early payment incentive increases for each day a payment is received in full before 30 days from Citibank's statement date. Statements are issued on the third of every month and are available to the agencies on the Citibank online website the next day, the fourth. The discount rebate calculation starts the day after the statement is available on the website. Additionally, since charge-offs for delinquent accounts are deducted from the rebate as credit losses at the rebate-payable level, agencies should pay account balances as quickly as possible.

Transaction Rates

- Standard transactions: **193 basis points**
- Large-ticket rebate: **60 basis points**
- Merchant-negotiated transactions: **25 basis points**

Citibank currently pays a base rebate of 1.93 percent on payments received 30 days after the statement date, which increases by .75 basis points for each day a payment is processed before 30 days from the statement date. The first day for calculating the



rebate for the semiannual period is the next calendar day after the billing cycle date for each billing account provided for a state agency. If a cycle date falls on a weekend or New Year’s Day, Thanksgiving or Christmas, Citibank will cycle on the previous business day and the statement will be available the following calendar day. For example, if the cycle date falls on a Saturday, the account would cycle on the Friday before and the statement would be available the following day, Saturday. At 31 or more days from the statement date, no rebate is paid.

Rebates accrue from the first dollar of spend on all card products including Virtual Card and ePayables (excluding individual charge cards issued to employees). Citibank also pays rebates on large-ticket transactions with merchants typically considered business-to-business, and offers a lower interchange rate on merchant-negotiated transactions with merchants who have negotiated a lower interchange rate.

Citibank pays a semiannual rebate based on spend in March through August and September through February, starting at a base rebate of 1.93 percent with possible additional rebate tiers and a bonus for early payment.

Citibank pays rebates for balances paid up to 30 days from the statement date. If a partial payment is paid within 30 days, that partial payment will earn a rebate. If agencies make multiple payments until the 30-day point, the amounts paid will receive the respective payment incentives based on the timeliness of each payment.

Early Payment Incentive Chart	
Days Paid After Statement Becomes Available	Basis Points
3	213.25
5	211.75
10	208
15	204.25
20	200.50
25	196.75
26	196
27	195.25
28	194.50
29	193.75
30	193
31	0

Audit Results

Auditors reviewed fiscal 2023 Citibank rebate earned reports for 99 agencies. Because agencies paid late and did not take advantage of the early rebate incentives, the state lost nearly \$1,518,236, or 50 percent of the minimum rebates that would have been earned if statements had been paid within the required 30 days.

Chart 1: Number of Agencies in Each % Group of Actual Earned to Minimum Rebates

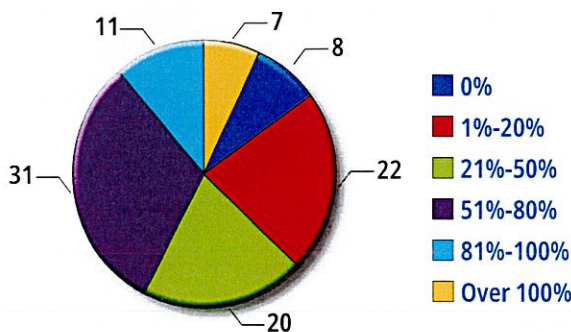
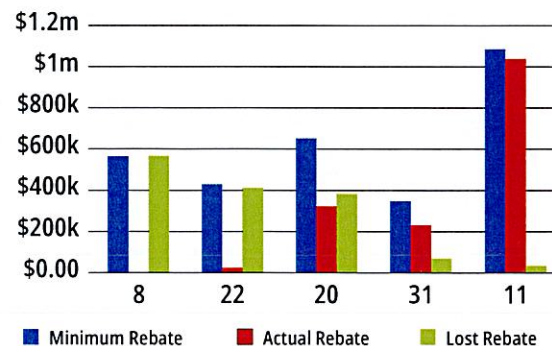


Chart 2: Minimum/Actual/Lost Rebates for Each % Group From Chart 1





Seven agencies did earn rebates consistently by paying their Citibank statements within the required 30 days or less to earn the minimum rebate. Some earned a little more than the minimum. One other agency earned 99 percent of the minimum rebate offered.

According to [eXpendit - Prompt Payment](#) and [Texas Government Section 2251.021](#), a state agency's payment is due on the 30th day after the latest of:

- The date the agency receives the goods under the contract.
- The date the performance of the contracted service is completed.
- The date the agency receives an invoice for the goods or services.

In fiscal 2023, agencies paid \$34,993.05 in prompt payment interest to Citibank because the agencies paid their statements late.

See [Table 1](#) for a list of audited agencies, total annual credit card spending using Citibank charge cards for each agency, and the actual amount of rebate earned by each agency. The table also shows the minimum and maximum rebates that agencies could have earned if Citibank statements had been paid at three and 30 days after receipt. Citibank statements are issued on the third of every month and are available to the agencies on the Citibank online website the next day, the fourth. The table also shows the percentage of actual rebates earned to the minimum rebate (30 days).

See [Table 2](#) for the average number of days it took to pay the monthly Citibank statements, late payment interest that agencies paid, and the separate rebates earned by some agencies due to large-ticket and merchant-negotiated transactions.

Citibank determines an agency's rebate amount based on "turn days," the average number of days after the statement date that Citibank has to fund the receivable on the account. "File turn" is calculated by dividing the sum of the daily balance by the net charge volume. See [Table 3](#) for each agency's spend amount that was paid after more than 30 turn days (in dollars and percent). This explains why an agency is not receiving even the minimum rebate amount, since payments made after 30 days earn no rebate.

The rebate is paid on net charge volume. Annual net charge volume is calculated as purchases less returns, credits, cash advances and convenience checks. It does not include adjustments unless the adjustment is related to the transfer of a purchase or cash advance between accounts. In addition, net charge volume does not include Citibank credit cards that are individually billed to and are the responsibility of agency employees, so spending with these types of cards is not included in the tables.



Detailed Findings

Loss to the Rebate Payment Card Program

Of the 99 agencies audited, 92 were not in full compliance with the early payment discount and/or rebate requirements for state agencies because they failed to fully take advantage of early discounts and/or rebates offered by the payment card vendor.

Based on the Citibank semiannual rebate reports and the analysis in Table 1 and Table 2, auditors noted:

- 99 agencies lost a combined discount/rebate amount ranging from the minimum of \$1,518,235.80 to the maximum of \$1,846,796.47.
- 92 agencies did not meet the prompt payment requirement of paying on the 30th day.
- 49 agencies paid a total of \$34,399.05 in late payment interest to the credit card vendor.

In addition, \$30,391,638.30 of credit card spending was paid to the credit card vendor without interest being calculated. Auditors did not verify if interest on some of these payments should have been paid because confirming the validity of agencies' recorded statement/invoice dates, payment dates or override reason codes for not calculating interest was not within the scope of this audit. However, it should be noted that for some of these payments, reports showed that agencies may have used incorrect statement/invoice dates that allowed the payments to be processed without a late interest being calculated. Other payments were processed without interest being calculated due to agencies overriding the system by indicating that interest is not applicable to their transactions. Some of these cited reason codes appeared to be inappropriate, such as paying a "state agency" or "no invoice received," while the payment was for Citibank and the statements/invoices are always available to agencies on Citibank's website.

The agencies did not take advantage of the discounts and/or rebates offered by Citibank and paid their invoices over 90 days after the statement dates and/or paid their largest payments after 30 turn days. In addition to costing the state money in lost interest payments and unearned rebates, when these agencies fail to take advantage of the rebates, they also hinder the Comptroller's Statewide Procurement Division's ability to negotiate rebates on future contracts.

According to [Texas Government Code, Section 2251.030](#), the Legislature expects government agencies to take advantage of early payment discounts, so agencies must submit payment documents to the Comptroller's office in time to do so. See Table 2 for agencies that are not complying.



Recommendation/Requirement

Agencies must change their payment processes to comply with requirements, take advantage of rebates, and avoid the double penalty of lost rebates and late payment interest. Agencies should:

- Receive Citibank Commercial Card account statements online. Citibank statements are issued on the third of every month and are available to the agencies on the Citibank online website the next day, the fourth.
- Work with Citibank to develop automated reconciliation for travel and purchase receipts as transactions occur or shortly after the statement is issued.
- Make partial payments based on supporting documentation received and reconcile and pay as costs arise.



Tables

Table 1: Audit Results by Agency – Spend and Rebate

Agy Nbr	Agency Name	Spend Amount	Regular Rebate (Does Not Include Other Refunds)			% of Actual to Min.
			Actual	Min. (30 days)	Max. (3 Days)	
101	Senate	\$66,817.21	\$673.54	\$1,289.57	\$1,424.88	52%
102	House of Representatives	\$239,688.47	\$0.00	\$4,625.99	\$5,111.36	0%
103	Texas Legislative Council	\$337,005.81	\$6,702.73	\$6,504.21	\$7,186.65	103%
104	Legislative Budget Board	\$9,250.07	\$139.49	\$178.53	\$197.26	78%
105	Legislative Reference Library	\$8,739.64	\$150.65	\$168.68	\$186.37	89%
116	Sunset Advisory Commission	\$8,830.49	\$128.77	\$170.43	\$188.31	76%
201	Supreme Court	\$66,509.53	\$915.50	\$1,283.63	\$1,418.32	71%
202	State Bar of Texas	\$137,425.64	\$2,703.66	\$2,652.31	\$2,930.60	102%
203	Board of Law Examiners	\$42,857.33	\$662.71	\$827.15	\$913.93	80%
211	Court of Criminal Appeals	\$11,034.79	\$87.61	\$212.97	\$235.32	41%
212	Office of Court Administration	\$99,793.33	\$134.30	\$1,926.01	\$2,128.09	7%
215	Office of Capital and Forensic Writs	\$67,757.19	\$1,024.27	\$1,307.71	\$1,444.92	78%
222	Court of Appeals – Second Court of Appeals District	\$2,965.67	\$0.00	\$57.24	\$63.24	0%
224	Court of Appeals – Fourth Court of Appeals District	\$1,684.65	\$10.58	\$32.51	\$35.93	33%
225	Court of Appeals – Fifth Court of Appeals District	\$40,219.49	\$331.20	\$776.24	\$857.68	43%
233	Court of Appeals – Thirteenth Court of Appeals District	\$6,811.98	\$10.05	\$131.47	\$145.27	8%
242	State Commission on Judicial Conduct	\$48,351.00	\$522.95	\$933.17	\$1,031.09	56%
243	State Law Library	\$9,898.50	\$199.19	\$191.04	\$211.09	104%
301	Governor – Executive	\$139,392.25	\$648.05	\$2,690.27	\$2,972.54	24%
302	Attorney General	\$908,220.33	\$3,989.46	\$17,528.65	\$19,367.80	23%
303	Texas Facilities Commission	\$1,350,934.46	\$19,059.59	\$26,073.04	\$28,808.68	73%
304	Comptroller of Public Accounts	\$297,391.73	\$3,930.32	\$5,739.66	\$6,341.88	68%
305	General Land Office	\$437,557.57	\$1,532.34	\$8,444.86	\$9,330.92	18%
306	Texas State Library and Archives Commission	\$50,669.01	\$308.47	\$977.91	\$1,080.52	32%
307	Secretary of State	\$43,783.33	\$469.57	\$845.02	\$933.68	56%
308	State Auditor	\$162,876.82	\$2,453.69	\$3,143.52	\$3,473.35	78%
312	State Securities Board	\$16,058.56	\$239.66	\$309.93	\$342.45	77%
313	Department of Information Resources	\$119,362.50	\$816.47	\$2,303.70	\$2,545.41	35%
320	Texas Workforce Commission	\$706,706.82	\$5,512.96	\$13,639.44	\$15,070.52	40%
323	Teacher Retirement System of Texas	\$825,441.47	\$369.87	\$15,931.02	\$17,602.54	2%
325	Firefighter's Pension Commissioner	\$25,381.01	\$64.69	\$489.85	\$541.25	13%
327	Employees Retirement System of Texas	\$360,258.74	\$4,640.45	\$6,952.99	\$7,682.52	67%
329	Texas Real Estate Commission	\$40,717.92	\$634.33	\$785.86	\$868.31	81%
332	Texas Department of Housing and Community Affairs	\$208,913.08	\$2,381.15	\$4,032.02	\$4,455.07	59%
338	State Pension Review Board	\$16,819.75	\$13.24	\$324.62	\$358.68	4%
347	Texas Public Finance Authority	\$479.97	\$9.41	\$9.26	\$10.24	102%



Agy Nbr	Agency Name	Spend Amount	Regular Rebate (Does Not Include Other Refunds)			% of Actual to Min.
			Actual	Min. (30 days)	Max. (3 Days)	
352	Bond Review Board	\$451.98	\$8.86	\$8.72	\$9.64	102%
356	Texas Ethics Commission	\$4,668.91	\$0.47	\$90.11	\$99.56	1%
359	Office of Public Insurance Counsel	\$9,965.32	\$0.00	\$192.33	\$212.51	0%
360	State Office of Administrative Hearings	\$3,924.17	\$81.42	\$75.74	\$83.68	108%
362	Texas Lottery Commission	\$65,210.93	\$105.91	\$1,258.57	\$1,390.62	8%
364	Health Professions Council	\$9,228.09	\$143.24	\$178.10	\$196.79	80%
401	Texas Military Department	\$3,711,206.77	\$3,583.49	\$71,626.29	\$79,141.48	5%
403	Texas Veterans Commission	\$427,861.78	\$11.27	\$8,257.73	\$9,124.15	0%
405	Department of Public Safety	\$29,477,254.25	\$249,208.26	\$568,911.01	\$628,602.45	44%
407	Texas Commission on Law Enforcement	\$46,200.35	\$161.72	\$891.67	\$985.22	18%
409	Commission on Jail Standards	\$13,404.96	\$168.84	\$258.72	\$285.86	65%
411	Texas Commission on Fire Protection	\$37,708.34	\$37.62	\$727.77	\$804.13	5%
448	Office of Injured Employee Counsel	\$6,220.69	\$62.81	\$120.06	\$132.66	52%
450	Department of Savings and Mortgage Lending	\$38,532.79	\$534.91	\$743.68	\$821.71	72%
451	Texas Department of Banking	\$108,743.40	\$1,486.91	\$2,098.75	\$2,318.95	71%
452	Texas Department of Licensing and Regulation	\$170,462.90	\$944.88	\$3,289.93	\$3,635.12	29%
454	Texas Department of Insurance	\$193,930.91	\$837.96	\$3,742.87	\$4,135.58	22%
455	Railroad Commission of Texas	\$354,603.68	\$665.53	\$6,843.85	\$7,561.92	10%
456	Texas State Board of Plumbing Examiners	\$20,877.34	\$92.90	\$402.93	\$445.21	23%
457	Texas State Board of Public Accountancy	\$2,851.07	\$37.37	\$55.03	\$60.80	68%
458	Texas Alcoholic Beverage Commission	\$42,254.32	\$60.96	\$815.51	\$901.07	7%
459	Texas Board of Architectural Examiners	\$24,936.99	\$410.98	\$481.28	\$531.78	85%
460	Texas Board of Professional Engineers and Land Surveyors	\$47,331.27	\$744.58	\$913.49	\$1,009.34	82%
466	Office of Consumer Credit Commissioner	\$100,795.46	\$1,221.06	\$1,945.35	\$2,149.46	63%
469	Credit Union Department	\$45,706.48	\$702.14	\$882.14	\$974.69	80%
473	Public Utility Commission of Texas	\$37,348.97	\$408.57	\$720.84	\$796.47	57%
475	Office of Public Utility Counsel	\$1,615.02	\$20.29	\$31.17	\$34.44	65%
476	Texas Racing Commission	\$112,494.93	\$496.88	\$2,171.15	\$2,398.95	23%
477	Commission on State Emergency Communications	\$33,649.54	\$434.58	\$649.44	\$717.58	67%
479	State Office of Risk Management	\$3,360.54	\$70.52	\$64.86	\$71.66	109%
481	Texas Board of Professional Geoscientists	\$2,845.92	\$28.59	\$54.93	\$60.69	52%
503	Texas Medical Board	\$35,987.02	\$253.14	\$694.55	\$767.42	36%
504	State Board of Dental Examiners	\$41,185.83	\$674.83	\$794.89	\$878.29	85%
507	Texas Board of Nursing	\$32,421.55	\$47.68	\$625.74	\$691.39	8%
508	Texas Board of Chiropractic Examiners	\$12,289.79	\$0.00	\$237.19	\$262.08	0%
514	Texas Optometry Board	\$9,000.00	\$0.00	\$173.70	\$191.93	0%
515	Texas State Board of Pharmacy	\$25,984.52	\$360.75	\$501.50	\$554.12	72%
520	Texas State Board of Examiners of Psychologists	\$5,089.30	\$92.17	\$98.22	\$108.53	94%
529	Health and Human Services Commission	\$12,561,962.64	\$176,820.88	\$242,445.88	\$267,883.85	73%



Agy Nbr	Agency Name	Spend Amount	Regular Rebate (Does Not Include Other Refunds)			% of Actual to Min.
			Actual	Min. (30 days)	Max. (3 Days)	
530	Department of Family and Protective Services	\$14,856,399.76	\$238,789.51	\$286,728.52	\$316,812.72	83%
533	Executive Council of Physical and Occupational Therapy Examiners	\$2,984.13	\$38.07	\$57.59	\$63.64	66%
537	Department of State Health Services	\$1,494,760.94	\$25,788.26	\$28,848.89	\$31,875.78	89%
542	Cancer Prevention and Research Institute of Texas	\$23,182.64	\$0.00	\$447.42	\$494.37	0%
551	Department of Agriculture	\$349,624.68	\$3,859.18	\$6,747.76	\$7,455.75	57%
554	Texas Animal Health Commission	\$559,604.05	\$310.96	\$10,800.36	\$11,933.56	3%
578	State Board of Veterinary Medical Examiners	\$7,018.56	\$50.48	\$135.46	\$149.67	37%
580	Texas Water Development Board	\$509,782.20	\$1,457.86	\$9,838.80	\$10,871.11	15%
582	Texas Commission on Environmental Quality	\$1,884,661.56	\$590.26	\$36,373.97	\$40,190.41	2%
592	Soil and Water Conservation Board	\$60,809.87	\$204.87	\$1,173.63	\$1,296.77	17%
601	Texas Department of Transportation	\$40,326,804.32	\$770,131.04	\$778,307.32	\$859,969.10	99%
608	Texas Department of Motor Vehicles	\$281,708.70	\$5,046.94	\$5,436.98	\$6,007.44	93%
644	Texas Juvenile Justice Department	\$836,348.64	\$1,907.17	\$16,141.53	\$17,835.13	12%
696	Texas Department of Criminal Justice	\$28,925,756.08	\$0.00	\$558,267.09	\$616,841.75	0%
701	Texas Education Agency	\$217,927.67	\$1,950.43	\$4,206.00	\$4,647.31	46%
706	Texas Permanent School Fund Corporation	\$10,807.07	\$20.04	\$208.58	\$230.46	10%
771	Texas School for the Blind and Visually Impaired	\$1,149,942.93	\$10,467.67	\$22,193.90	\$24,522.53	47%
772	Texas School for the Deaf	\$911,253.09	\$8,181.20	\$17,587.18	\$19,432.47	47%
781	Texas Higher Education Coordinating Board	\$135,346.51	\$548.77	\$2,612.19	\$2,886.26	21%
802	Parks and Wildlife Department	\$13,902,766.96	\$28,838.89	\$268,323.40	\$296,476.51	11%
808	Texas Historical Commission	\$624,531.99	\$7,094.14	\$12,053.47	\$13,318.14	59%
809	State Preservation Board	\$329,204.08	\$5,296.95	\$6,353.64	\$7,020.28	83%
813	Texas Commission on the Arts	\$8,505.78	\$59.99	\$164.16	\$181.39	37%
930	Texas Treasury Safekeeping Trust Company	\$46,273.38	\$104.71	\$893.08	\$986.78	12%
Total — 99 State Agencies		\$162,252,180.42	\$1,613,231.28	\$3,131,467.08	\$3,460,027.75	

*Minimum Lost Rebate \$1,518,235.80

*Maximum Lost Rebate \$1,846,796.47


Table 2: Audit Results by Agency – Other Refunds and Prompt Payment Interest

Agy Nbr	Agency Name	% of Actual to Min.	Average # of Days From Statement to Payment	Other Refunds		Late Payment Interest Paid
				Large Tickets	Merchant Negotiated	
101	Senate	52%	35	\$0.00	\$12.32	\$17.53
102	House of Representatives	0%	39	\$0.00	\$0.00	\$38.88
104	Legislative Budget Board	78%	39	\$0.00	\$3.07	
105	Legislative Reference Library	89%	23	\$0.00	\$3.17	
116	Sunset Advisory Commission	76%	26	\$0.00	\$3.99	\$1.13
201	Supreme Court	71%	26	\$0.00	\$0.00	\$0.27
203	Board of Law Examiners	80%		\$0.00	\$17.94	
211	Court of Criminal Appeals	41%	26	\$0.00	\$113.43	
212	Office of Court Administration	7%	48	\$0.00	\$23.22	\$85.50
215	Office of Capital and Forensic Writs	78%	61	\$0.00	\$5.88	
222	Court of Appeals – Second Court of Appeals District	0%	33	\$0.00	\$3.37	
224	Court of Appeals – Fourth Court of Appeals District	33%	40	\$0.00	\$31.75	
225	Court of Appeals – Fifth Court of Appeals District	43%		\$0.00	\$0.00	
233	Court of Appeals – Thirteenth Court of Appeals District	8%	15	\$0.00	\$5.24	
242	State Commission on Judicial Conduct	56%	24	\$0.00	\$2.08	\$0.08
301	Governor – Executive	24%	76	\$0.00	\$0.00	\$36.60
302	Attorney General	23%	61	\$0.00	\$0.00	\$1,944.68
303	Texas Facilities Commission	73%	17	\$0.00	\$1.12	
304	Comptroller of Public Accounts	68%	25	\$0.00	\$45.44	\$14.78
305	General Land Office	18%	31	\$0.00	\$77.75	\$15.14
306	Texas State Library and Archives Commission	32%	38	\$0.00	\$179.05	\$29.88
307	Secretary of State	56%	43	\$0.00	\$54.62	\$1.49
308	State Auditor	78%	20	\$0.00	\$34.79	
312	State Securities Board	77%	29	\$0.00	\$0.00	
313	Department of Information Resources	35%	36	\$0.00	\$2.58	
320	Texas Workforce Commission	40%	30	\$0.00	\$10.95	\$0.56
323	Teacher Retirement System of Texas	2%	29	\$0.00	\$0.89	\$73.55
325	Firefighter's Pension Commissioner	13%		\$0.00	\$5.04	
327	Employees Retirement System of Texas	67%	24	\$0.00	\$61.38	\$40.22
329	Texas Real Estate Commission	81%	15	\$0.00	\$33.98	
332	Texas Department of Housing and Community Affairs	59%	29	\$0.00	\$2.43	\$102.13
338	State Pension Review Board	4%	60	\$0.00	\$0.00	
356	Texas Ethics Commission	1%	41	\$0.00	\$0.00	\$0.16
359	Office of Public Insurance Counsel	0%	50	\$0.00	\$0.00	\$38.88
362	Texas Lottery Commission	8%	24	\$0.00	\$0.00	\$5.29
364	Health Professions Council	80%	13	\$0.00	\$0.00	
401	Texas Military Department	5%	170	\$0.00	\$1.26	\$17,692.08
403	Texas Veterans Commission	0%	51	\$0.00	\$21.40	\$15.26



Agy Nbr	Agency Name	% of Actual to Min.	Average # of Days From Statement to Payment	Other Refunds		Late Payment Interest Paid
				Large Tickets	Merchant Negotiated	
405	Department of Public Safety	44%	90	\$0.00	\$6.31	\$4,751.17
407	Texas Commission on Law Enforcement	18%	56	\$0.00	\$25.48	
409	Commission on Jail Standards	65%	29	\$0.00	\$0.00	
411	Texas Commission on Fire Protection	5%	35	\$0.00	\$653.13	\$0.07
448	Office of Injured Employee Counsel	52%	24	\$0.00	\$0.00	\$0.50
450	Department of Savings and Mortgage Lending	72%	43	\$0.00	\$0.00	
451	Texas Department of Banking	71%	57	\$0.00	\$0.71	
452	Texas Department of Licensing and Regulation	29%	131	\$0.00	\$0.00	\$446.46
454	Texas Department of Insurance	22%	29	\$0.00	\$7.07	\$0.87
455	Railroad Commission of Texas	10%	147	\$0.00	\$109.00	\$1,120.52
456	Texas State Board of Plumbing Examiners	23%	50	\$0.00	\$2.94	
457	Texas State Board of Public Accountancy	68%	26	\$0.00	\$28.11	
458	Texas Alcoholic Beverage Commission	7%	47	\$0.00	\$13.79	
459	Texas Board of Architectural Examiners	85%	10	\$0.00	\$0.00	
460	Texas Board of Professional Engineers and Land Surveyors	82%	22	\$0.00	\$3.66	
466	Office of Consumer Credit Commissioner	63%	43	\$0.00	\$6.32	
469	Credit Union Department	80%	23	\$0.00	\$5.64	
473	Public Utility Commission of Texas	57%	18	\$0.00	\$8.70	
475	Office of Public Utility Counsel	65%	28	\$0.00	\$12.19	
476	Texas Racing Commission	23%	113	\$0.00	\$0.05	
477	Commission on State Emergency Communications	67%	105	\$0.00	\$1.13	\$95.17
481	Texas Board of Professional Geoscientists	52%	25	\$0.00	\$0.00	
503	Texas Medical Board	36%	47	\$0.00	\$6.68	
504	State Board of Dental Examiners	85%	15	\$0.00	\$10.12	
507	Texas Board of Nursing	8%	43	\$0.00	\$9.21	
508	Texas Board of Chiropractic Examiners	0%	31	\$0.00	\$0.00	
514	Texas Optometry Board	0%	27	\$0.00	\$0.00	
515	Texas State Board of Pharmacy	72%	19	\$0.00	\$5.83	
520	Texas State Board of Examiners of Psychologists	94%		\$0.00	\$2.48	
529	Health and Human Services Commission	73%	57	\$0.00	\$5,471.62	\$1,917.36
530	Department of Family and Protective Services	83%	36	\$0.00	\$6,305.31	\$1,996.26
533	Executive Council of Physical and Occupational Therapy Examiners	66%	18	\$0.00	\$0.00	
537	Department of State Health Services	89%	24	\$0.00	\$247.55	\$53.73
542	Cancer Prevention and Research Institute of Texas	0%	90	\$0.00	\$0.00	\$0.15
551	Department of Agriculture	57%	42	\$0.00	\$28.64	\$24.43
554	Texas Animal Health Commission	3%	66	\$0.00	\$1.73	\$10.14
578	State Board of Veterinary Medical Examiners	37%	54	\$0.00	\$14.96	\$2.62
580	Texas Water Development Board	15%	47	\$0.00	\$0.00	\$70.60
582	Texas Commission on Environmental Quality	2%	41	\$0.00	\$11.62	\$28.59
592	Soil and Water Conservation Board	17%	34	\$0.00	\$0.00	\$12.43



Agy Nbr	Agency Name	% of Actual to Min.	Average # of Days From Statement to Payment	Other Refunds		Late Payment Interest Paid
				Large Tickets	Merchant Negotiated	
601	Texas Department of Transportation	99%	24	\$61.49	\$661.19	\$1,725.85
608	Texas Department of Motor Vehicles	93%	17	\$0.00	\$70.57	\$104.44
644	Texas Juvenile Justice Department	12%	41	\$0.00	\$25.74	\$1,449.06
696	Texas Department of Criminal Justice	0%	28	\$0.00	\$0.00	
701	Texas Education Agency	46%	50	\$0.00	\$19.29	\$487.15
706	Texas Permanent School Fund Corporation	10%	19	\$0.00	\$3.46	
771	Texas School for the Blind and Visually Impaired	47%	32	\$0.00	\$170.94	\$219.30
772	Texas School for the Deaf	47%	32	\$0.00	\$184.76	\$95.84
781	Texas Higher Education Coordinating Board	21%	29	\$0.00	\$5.94	\$2.49
802	Parks and Wildlife Department	11%	27	\$0.00	\$299.37	\$152.72
808	Texas Historical Commission	59%	24	\$0.00	\$119.16	\$20.99
809	State Preservation Board	83%	29	\$0.00	\$79.61	\$24.95
813	Texas Commission on the Arts	37%	27	\$0.00	\$0.16	\$25.10
930	Texas Treasury Safekeeping Trust Company	12%		\$0.00	\$14.66	


Table 3: Audit Results by Agency – Payments and Turn Days

Agy Nbr	Agency Name	Total Spend	Annual Payment by Turn Days		% of \$ Paid in > 30 Turn Days
			\$ Paid in <= 30 Turn Days	\$ Paid in > 30 Turn Days	
102	House of Representatives	\$239,688.47	\$0.00	\$239,688.47	100%
222	Court of Appeals – Second Court of Appeals District	\$2,965.67	\$0.00	\$2,965.67	100%
359	Office of Public Insurance Counsel	\$9,965.32	\$0.00	\$9,965.32	100%
508	Texas Board of Chiropractic Examiners	\$12,289.79	\$0.00	\$12,289.79	100%
514	Texas Optometry Board	\$9,000.00	\$0.00	\$9,000.00	100%
542	Cancer Prevention and Research Institute of Texas	\$23,182.64	\$0.00	\$23,182.64	100%
696	Texas Department of Criminal Justice	\$28,925,756.08	\$0.00	\$28,925,756.08	100%
403	Texas Veterans Commission	\$427,861.78	\$525.00	\$427,336.78	100%
582	Texas Commission on Environmental Quality	\$1,884,661.56	\$28,452.04	\$1,856,209.52	98%
323	Teacher Retirement System of Texas	\$825,441.47	\$18,884.65	\$806,556.82	98%
554	Texas Animal Health Commission	\$559,604.05	\$16,049.39	\$543,554.66	97%
401	Texas Military Department	\$3,711,206.77	\$171,767.14	\$3,539,439.63	95%
338	State Pension Review Board	\$16,819.75	\$800.69	\$16,019.06	95%
411	Texas Commission on Fire Protection	\$37,708.34	\$1,882.85	\$35,825.49	95%
356	Texas Ethics Commission	\$4,668.91	\$240.10	\$4,428.81	95%
212	Office of Court Administration	\$99,793.33	\$6,802.68	\$92,990.65	93%
233	Court of Appeals – Thirteenth Court of Appeals District	\$6,811.98	\$468.18	\$6,343.80	93%
507	Texas Board of Nursing	\$32,421.55	\$2,433.74	\$29,987.81	92%
458	Texas Alcoholic Beverage Commission	\$42,254.32	\$3,256.46	\$38,997.86	92%
362	Texas Lottery Commission	\$65,210.93	\$5,738.94	\$59,471.99	91%
455	Railroad Commission of Texas	\$354,603.68	\$32,614.35	\$321,989.33	91%
706	Texas Permanent School Fund Corporation	\$10,807.07	\$1,014.94	\$9,792.13	91%
802	Parks and Wildlife Department	\$13,902,766.96	\$1,446,944.52	\$12,455,822.44	90%
644	Texas Juvenile Justice Department	\$836,348.64	\$95,204.26	\$741,144.38	89%
325	Firefighter's Pension Commissioner	\$25,381.01	\$3,322.56	\$22,058.45	87%
930	Texas Treasury Safekeeping Trust Company	\$46,273.38	\$6,241.97	\$40,031.41	87%
580	Texas Water Development Board	\$509,782.20	\$74,277.52	\$435,504.68	85%
592	Soil and Water Conservation Board	\$60,809.87	\$10,317.40	\$50,492.47	83%
305	General Land Office	\$437,557.57	\$77,328.38	\$360,229.19	82%
407	Texas Commission on Law Enforcement	\$46,200.35	\$8,251.52	\$37,948.83	82%
781	Texas Higher Education Coordinating Board	\$135,346.51	\$27,950.42	\$107,396.09	79%
454	Texas Department of Insurance	\$193,930.91	\$42,950.06	\$150,980.85	78%
476	Texas Racing Commission	\$112,494.93	\$25,193.47	\$87,301.46	78%
456	Texas State Board of Plumbing Examiners	\$20,877.34	\$4,732.44	\$16,144.90	77%
301	Governor – Executive	\$139,392.25	\$32,917.92	\$106,474.33	76%
452	Texas Department of Licensing and Regulation	\$170,462.90	\$47,145.24	\$123,317.66	72%
302	Attorney General	\$908,220.33	\$260,056.97	\$648,163.36	71%
306	Texas State Library and Archives Commission	\$50,669.01	\$15,520.84	\$35,148.17	69%
224	Court of Appeals – Fourth Court of Appeals District	\$1,684.65	\$540.00	\$1,144.65	68%



Agy Nbr	Agency Name	Total Spend	Annual Payment by Turn Days		% of \$ Paid in > 30 Turn Days
			\$ Paid in <= 30 Turn Days	\$ Paid in > 30 Turn Days	
313	Department of Information Resources	\$119,362.50	\$41,487.10	\$77,875.40	65%
813	Texas Commission on the Arts	\$8,505.78	\$3,177.16	\$5,328.62	63%
211	Court of Criminal Appeals	\$11,034.79	\$4,201.98	\$6,832.81	62%
320	Texas Workforce Commission	\$706,706.82	\$274,693.49	\$432,013.33	61%
503	Texas Medical Board	\$35,987.02	\$14,080.04	\$21,906.98	61%
578	State Board of Veterinary Medical Examiners	\$7,018.56	\$2,783.86	\$4,234.70	60%
225	Court of Appeals – Fifth Court of Appeals District	\$40,219.49	\$16,071.66	\$24,147.83	60%
405	Department of Public Safety	\$29,477,254.25	\$12,171,398.05	\$17,305,856.20	59%
701	Texas Education Agency	\$217,927.67	\$96,560.11	\$121,367.56	56%
772	Texas School for the Deaf	\$911,253.09	\$406,691.07	\$504,562.02	55%
771	Texas School for the Blind and Visually Impaired	\$1,149,942.93	\$528,701.46	\$621,241.47	54%
481	Texas Board of Professional Geoscientists	\$2,845.92	\$1,454.54	\$1,391.38	49%
101	Senate	\$66,817.21	\$34,258.22	\$32,558.99	49%
448	Office of Injured Employee Counsel	\$6,220.69	\$3,215.99	\$3,004.70	48%
242	State Commission on Judicial Conduct	\$48,351.00	\$26,148.10	\$22,202.90	46%
473	Public Utility Commission of Texas	\$37,348.97	\$20,317.57	\$17,031.40	46%
307	Secretary of State	\$43,783.33	\$24,117.57	\$19,665.76	45%
332	Texas Department of Housing and Community Affairs	\$208,913.08	\$119,451.11	\$89,461.97	43%
551	Department of Agriculture	\$349,624.68	\$200,970.31	\$148,654.37	43%
808	Texas Historical Commission	\$624,531.99	\$363,854.92	\$260,677.07	42%
466	Office of Consumer Credit Commissioner	\$100,795.46	\$61,284.26	\$39,511.20	39%
477	Commission on State Emergency Communications	\$33,649.54	\$20,761.18	\$12,888.36	38%
409	Commission on Jail Standards	\$13,404.96	\$8,559.50	\$4,845.46	36%
533	Executive Council of Physical and Occupational Therapy Examiners	\$2,984.13	\$1,907.66	\$1,076.47	36%
327	Employees Retirement System of Texas	\$360,258.74	\$233,815.35	\$126,443.39	35%
475	Office of Public Utility Counsel	\$1,615.02	\$1,051.52	\$563.50	35%
451	Texas Department of Banking	\$108,743.40	\$72,291.39	\$36,452.01	34%
304	Comptroller of Public Accounts	\$297,391.73	\$199,733.54	\$97,658.19	33%
457	Texas State Board of Public Accountancy	\$2,851.07	\$1,922.07	\$929.00	33%
515	Texas State Board of Pharmacy	\$25,984.52	\$18,064.09	\$7,920.43	30%
450	Department of Savings and Mortgage Lending	\$38,532.79	\$26,946.55	\$11,586.24	30%
303	Texas Facilities Commission	\$1,350,934.46	\$952,309.67	\$398,624.79	30%
529	Health and Human Services Commission	\$12,561,962.64	\$8,941,821.70	\$3,620,140.94	29%
215	Office of Capital and Forensic Writs	\$67,757.19	\$49,849.19	\$17,908.00	26%
116	Sunset Advisory Commission	\$8,830.49	\$6,523.40	\$2,307.09	26%
312	State Securities Board	\$16,058.56	\$11,882.05	\$4,176.51	26%
469	Credit Union Department	\$45,706.48	\$33,850.38	\$11,856.10	26%
308	State Auditor	\$162,876.82	\$121,262.30	\$41,614.52	26%
203	Board of Law Examiners	\$42,857.33	\$32,260.31	\$10,597.02	25%
104	Legislative Budget Board	\$9,250.07	\$7,024.74	\$2,225.33	24%



Agy Nbr	Agency Name	Total Spend	Annual Payment by Turn Days		% of \$ Paid in > 30 Turn Days
			\$ Paid in <= 30 Turn Days	\$ Paid in > 30 Turn Days	
201	Supreme Court	\$66,509.53	\$51,784.09	\$14,725.44	22%
364	Health Professions Council	\$9,228.09	\$7,208.90	\$2,019.19	22%
460	Texas Board of Professional Engineers and Land Surveyors	\$47,331.27	\$37,125.36	\$10,205.91	22%
329	Texas Real Estate Commission	\$40,717.92	\$32,158.53	\$8,559.39	21%
530	Department of Family and Protective Services	\$14,856,399.76	\$11,754,442.12	\$3,101,957.64	21%
459	Texas Board of Architectural Examiners	\$24,936.99	\$20,084.56	\$4,852.43	19%
504	State Board of Dental Examiners	\$41,185.83	\$33,225.19	\$7,960.64	19%
809	State Preservation Board	\$329,204.08	\$268,527.21	\$60,676.87	18%
537	Department of State Health Services	\$1,494,760.94	\$1,304,253.30	\$190,507.64	13%
105	Legislative Reference Library	\$8,739.64	\$7,673.78	\$1,065.86	12%
608	Texas Department of Motor Vehicles	\$281,708.70	\$251,970.25	\$29,738.45	11%
520	Texas State Board of Examiners of Psychologists	\$5,089.30	\$4,666.76	\$422.54	8%
601	Texas Department of Transportation	\$40,326,804.32	\$38,562,378.50	\$1,764,425.82	4%
103	Texas Legislative Council	\$337,005.81	\$337,005.81	\$0.00	0%
202	State Bar of Texas	\$137,425.64	\$137,425.64	\$0.00	0%
243	State Law Library	\$9,898.50	\$9,898.50	\$0.00	0%
347	Texas Public Finance Authority	\$479.97	\$479.97	\$0.00	0%
352	Bond Review Board	\$451.98	\$451.98	\$0.00	0%
360	State Office of Administrative Hearings	\$3,924.17	\$3,924.17	\$0.00	0%
479	State Office of Risk Management	\$3,360.54	\$3,360.54	\$0.00	0%
Total — 99 State Agencies		\$162,252,180.42	\$80,454,626.96	\$81,797,553.46	

To: Texas Department of Motor Vehicles Board
From: Jason Gonzalez, Interim Internal Audit Division Director
Agenda Item: 13.E
Subject: FY 2025 Internal Audit Plan

RECOMMENDATION

Recommend to approving the FY 2025 Internal Audit Plan.

PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles Board approves an internal audit plan each year in compliance with Texas Government Code s2102.008 (Texas Internal Auditing Act). The Fiscal Year (FY) 2025 Internal Audit Plan includes 13 engagements consisting of five risk-based audits, three advisory services, and five required activities. It also includes four alternative engagements, value-added services, and division initiatives. The Internal Audit Plan can also be amended with Board approval, ensuring flexibility to adapt to evolving organizational needs.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Texas Government Code §2102.008 (Texas Internal Auditing Act) states that the annual audit plan developed by the internal auditor must be approved by the state agency's governing board or by the administrator of a state agency if the state agency does not have a governing board.

The FY 2025 Internal Audit Plan, from September 1, 2024, to August 31, 2025, provides information on risk-based audits, advisory services, required activities, value-added services, and division initiatives for approval. The Internal Audit Plan was developed using a risk-based methodology which included discussions with Department management, analysis of past coverage of department divisions, internal audit and industry publications, and audit topics by the State Auditor's Office and other state agencies. The Internal Audit Plan can be amended with Board approval, ensuring flexibility to adapt to evolving organizational needs.

Audits, Advisory Services, and Required Activities

IAD identified 13 engagements to be conducted in the next fiscal year consisting of five risk-based audits, three advisory services, and five required activities (see Table 1). The Internal Audit Plan also includes four alternative engagements (see Figure 2).

Table 1: Planned Engagements

#	Type	Engagement Topic	Primary Division
1	Audit	Fleet Management	FAO
2	Audit	Information Security	ITSD
3	Audit	Public Information Request	OGC
4	Audit	Network Infrastructure and Monitoring	ITSD
5	Audit	Special Plates	VTR
6	Advisory	Motor Carrier Licensing	MCD
7	Advisory	Consumer Relations Division Quality Assurance	CRD
8	Advisory	Contract Monitoring	FAO/MULTIPLE
9	Required Activity	FY 2024 Internal Audit Annual Report	IAD
10	Required Activity	Quality Assurance and Improvement Program - Internal Assessment	IAD
11	Required Activity	Audit Recommendation Implementation Status	IAD
12	Required Activity	FY 2026 Risk Assessment and Internal Audit Plan	IAD
13	Required Activity	Internal Audit Division Peer Review	IAD

Table 2: Alternative Engagements

#	Type	Engagement Topic	Primary Division
1	Audit	Key Performance Metrics	MULTIPLE
2	Audit	Closed Data Portal	ENF
3	Audit	Leave and Overtime	MULTIPLE
4	Audit	Information Technology Governance	ITSD

Value-Added Services and Divisional Initiatives

IAD also conducts value-added services and works on division initiatives to enhance organizational value and improve IAD's effectiveness and efficiency. Items in these categories include investigations on internal fraud, waste, and abuse, external audit/review coordination, workgroup participation, and staff development.

History of Past Engagements by the Internal Audit Division

Table 3 below presents a six-year year history of past engagements by IAD, spanning fiscal years 2019 to 2024, detailing the primary division for each engagement. It also includes the primary division for the proposed FY 2025 Internal Audit Plan.

Table 3: Engagement History by Division

Fiscal Year	CRD	ENF	FAO	GSC	HRD	ITSD	MCD	MULTIPLE	MVD	OAH	OGC	VTR (largest Division)
2019			2		1	2				1		
2020		1				2		1				
2021		1	1		1	3		1				1
2022				1		2			1			
2023			1		1	2						
2024		1	1									1
2025 PROPOSED	1		1			2	1	1			1	1



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Fiscal Year 2025 Internal Audit Plan

Internal Audit Division

August 2024

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Executive Summary

The Internal Audit Division's (IAD) Internal Audit Plan (Plan) for fiscal year (FY) 2025 covers the period of September 2024 through August 2025. This Plan includes risk-based audits, advisory services, required activities, value-added services, and division initiatives as illustrated in Figure 1 below.

Figure 1. Summary of the FY 2025 Internal Audit Plan:



Detailed Information

Engagements

Tables 1 provides information on the planned risk-based audits, advisory services, and required activities for FY 2025 while Table 2 provides information on alternative engagements in place of those presented in Table 1.

Table 1. Planned Engagements

Topic	Potential Objective
Fleet Management Audit	This audit could determine the effectiveness of the vehicle maintenance practices, compliance with the State Fleet Plan, and fleet monitoring.
Information Security Audit	This audit could evaluate how the Department assesses and tracks vulnerabilities, the defenses in place to prevent malware, and the methods used to establish and maintain a security awareness program.
Public Information Request Audit	This audit could evaluate the internal controls on the Department's processes used to receive, track, and fulfill public information requests.
Network Infrastructure and Monitoring Audit	This audit could evaluate how the Department establishes, implements, and actively manages network devices as well as the processes in monitoring the network.
Special Plates Audit	This audit could evaluate the process and controls in processing special plates, such as personalized and military service license plates.
Motor Carrier Licensing Processes Advisory	This advisory could look at the licensing/renewal process for credentialing.
Consumer Relations Division Quality Assurance Advisory	This advisory could review the quality assurance program for opportunities to improve efficiency in current processes.
Contract Monitoring Advisory	This advisory could determine how contracts are being managed.

Topic	Potential Objective
FY 2024 Internal Audit Annual Report	A report produced in FY 2025 that summarizes IAD's activities conducted in FY 2024. This report will be submitted to the State Auditor's Office.
Quality Assurance and Improvement Program - Internal Assessment	A report produced in FY 2025. This is an internal assessment to determine IAD's compliance with audit standards and performance.
Audit Recommendation Implementation Status	An engagement to verify if outstanding audit recommendations have been fully implemented.
FY 2026 Risk Assessment and Internal Audit Plan	An enterprise-wide risk assessment to identify risk areas for the upcoming year. The Internal Audit Plan will be submitted to the State Auditor's Office.
Internal Audit Division Peer Review	Description

Table 2: Alternative Engagements

Topic	Potential Objective
Key Performance Metrics Audit	This audit could determine the accuracy of the reported performance metrics and the adequacy of related controls over the collection and reporting of selected performance metrics.
Closed Data Portal Audit	This audit could evaluate the controls in place prior to granting access to the Closed Data Portal and for ensuring appropriate use.
Leave and Overtime Advisory	This advisory could provide analysis on leave balances (e.g., vacation/comp time) in various divisions and approval processes.
Information Technology Governance Advisory	This advisory could assess the effectiveness of the governance structure in providing oversight over key information technology projects.

Value-Added Services and Division Initiatives

Value-Added Services

- Investigations on Fraud, Waste, and Abuse:** Detecting, tracking, and reviewing any internal fraud, waste, and abuse allegations, complaints from external parties, and those from the State Auditor's Office. IAD investigates internal fraud, waste, and abuse allegations.

- **External Audit/Review Coordination:** Coordinating external audits or reviews by providing audit status updates and facilitating management responses to recommendations.
- **Workgroup Participation / Ad-hoc Advisory:** Participating in TxDMV workgroups, such as the Executive Steering Committee and the Governance Team, to help identify unforeseen risks in enterprise projects or activities. IAD also sets aside hours to address any short-term assessment or information requests by TxDMV staff.
- **Department Training:** Providing training to help TxDMV staff understand the role of IAD and staff's responsibilities in recommendation implementation and prevention of fraud, waste, and abuse.

Division Initiatives

- **TeamMate+ Process Optimization:** Enhancing the software's functionality by continuing to update the risks stored within the software, creating and automating reports, and staying current on best practices for optimized software functionality.
- **Staff Development & Hiring:** Taking the minimum required hours of training each year (40 hours) in accordance with auditing standards. This includes creating development plans to obtain required knowledge, skills, and abilities for audit and advisory services. Hiring internal audit staff to fill IAD vacancies and providing training to integrate new hires into the office.

Scope and Methodology

Scope

The Internal Audit Plan covers engagements and activities for the period of September 1, 2024 to August 31, 2025 (fiscal year 2025).

Risk Assessment

Risk Methodology

The audit plan was developed using a risk-based methodology which included input from discussions with TxDMV management and risks identified by audit staff through previous engagements and observations. IAD also analyzed TxDMV information, reviewed internal audit and industry publications, and analyzed audit topics by the State Auditor's Office and other State agencies. Finally, risks reviewed took into consideration additional factors such as:

- Operational impact;
- Reputational impact;
- Financial impact;
- Legal or regulatory impact;
- Degree of change in the program, function, or process;
- Degree of complexity;
- Control design strength.

Acceptable Risk Level

IAD aim to cover all Department functions or risks in its FY 2025 Internal Audit Plan. IAD's objective is to focus on key processes and areas of risk identified during the risk assessment to improve Department processes. Recognizing that IAD cannot address every key process and risk, it is important for the Board and executive management to understand the limits of the internal audit plan's coverage and the areas not audited. IAD believes the FY 2025 Internal Audit Plan adequately addresses key risks within IAD's capabilities and resources.

Board Meeting Date: 8/8/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Keith Yawn, Government & Strategic Communications Division Director
Agenda Item: 14
Subject: 89th Regular Session Legislative Recommendations

RECOMMENDATION

Action Item. Staff recommends the Texas Department of Motor Vehicles Board approve legislative recommendations to the 89th Texas Legislature as proposed.

PURPOSE AND EXECUTIVE SUMMARY

Approve final statutory amendments developed by staff for the board to recommend to the 89th Texas Legislature.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

The 89th Texas Legislature convenes in regular session on January 14, 2025. Transportation Code Section 1001.025 authorizes the board to recommend to the legislature statutory changes that would improve department operations. The board has made recommendations for statutory changes prior to each legislative session since the department was created.

The Government and Strategic Communications Division (GSC) team has worked with internal subject matter experts and external stakeholders to identify and review statutory change needs. The final recommendations are grouped into three sections: (1) amendments to Title Act requirements; (2) amendments to registration and license plate requirements; and (3) amendments to oversize/overweight permitting requirements. These sections include 12 general recommendations, half of which have been approved as board recommendations in previous sessions.

Input received from board members, stakeholders and other interested parties since the June board meeting did not require material revisions to the draft recommendations presented at that time. One non-substantive grammatical correction was identified and made to recommendation 10c.

Following approval by the board, department government relations staff will inform interested legislative offices about the recommendations.

Title Act Items

New Proposals

1. **Modify bonded title requirements.**

A person can receive a bonded title in certain circumstances when the regular title process cannot be followed. However, bonded titles can be opportunities for fraud or vehicle theft, and disputes and lawsuits related to bonded title cases occur and require department resources to resolve. Modifying the bonded title process in Section 501.053, Transportation Code, to require, in most cases, notice of the application and a timeframe for interested parties to object to the issuance of the title could reduce opportunities for fraud and the number of resulting disputes and lawsuits, improving the efficiency and cost effectiveness of related department operations.

Sec. 501.053: (a) As an alternative to the procedure provided by Section 501.052, the person may obtain a title by filing a bond with the department if the vehicle is in the possession of the applicant and:

- (1) there is no security interest on the vehicle;
- (2) any lien on the vehicle is at least 10 years old; ~~or~~
- (3) the person provides a release of all liens ~~[with bond]~~ less than

10 years old; or

(4) the lienholder has gone out of business and the security interest was not transferred to or acquired by another entity, and the applicant provides evidence of lien satisfaction as determined by the department in rule.

(b) The bond must be: . . .

(c) The department shall send notice of the application to any recorded owner and lienholder of the vehicle as indicated in department records.

(d) If the applicant is not a person who holds a general distinguishing number issued under Transportation Code, Chapter 503:

(1) the department will not issue title until at least thirty days have passed since the application is submitted under Section 501.023, and

(2) if any recorded owner or lienholder with an interest in the vehicle objects to the issuance of the title prior to issuance, the department shall not issue title.

(e) An interested person has a right of action to recover on the bond for a breach of the bond's condition. The aggregate liability of the surety to all persons may not exceed the amount of the bond. Failure to object under subsection (d) (2) does not waive the right of a person with an interest in the vehicle to bring an action to recover on the bond.

(f ~~[d]~~) A bond under this section expires on the third anniversary of the date the bond became effective.

(g ~~[e]~~) The board by rule may establish a fee to cover the cost of administering this section.

(h ~~[f]~~) A person may not obtain a title under this section for a salvage motor vehicle or a nonrepairable motor vehicle, as defined by Section 501.091.

2. **Rulemaking Authorization to Expand Required 68A Inspections.**

The department's authority to require vehicle identification number (aka 68A) inspections in cases other than those in statute is unclear. Clarifying in Section 501.032, Transportation Code, that the department clearly can adopt rules to require inspections in additional cases will ensure there is flexibility to better prevent fraudulent transactions and identify potentially stolen vehicles.

Sec. 501.032. IDENTIFICATION NUMBER INSPECTION REQUIRED. (a) ~~[In addition to any requirement established by department rule, a]~~ A motor vehicle, trailer, or semitrailer must have an identification number inspection under Section 501.0321 if:

(1) the department does not have a motor vehicle record for the motor vehicle, trailer, or semitrailer in the department's registration and title system, and the owner of the motor vehicle, trailer, or semitrailer is filing a bond with the department under Section 501.053;

(2) the motor vehicle, trailer, or semitrailer was last titled or registered outside of the United States and imported into the United States; or

(3) the owner or person claiming ownership requires an assigned or reassigned identification number under Section 501.033.

(a-1) The department may establish by rule additional categories of motor vehicles, trailers, or semitrailers requiring an identification number inspection under Section 501.0321 that are not specified in this section.

(b) An active duty member of a branch of the United States armed forces, or an immediate family member of such a member, returning to Texas with acceptable proof of the active duty status is exempt from an identification number inspection required under Subsection (a) (2).

Previous Board Recommendations

3. Define auction sales receipt & allow its use for reporting scrapped vehicles (Transportation Code, Sections 501.091 & 501.1003)

Salvage vehicle dealers that purchase vehicles from law enforcement auctions or foreclosure sales do not receive standard evidence of ownership documents like a title. An auction sales receipt is often the only proof of ownership available. The term auction sales receipt is defined in Section 501.091. Amendments to Section 501.1003, Transportation Code, allow an auction sales receipt to be submitted by salvage vehicle dealers when they report that a salvage or nonrepairable motor vehicle will be scrapped, dismantled, or destroyed. This eliminates the need for an unnecessary title application for a vehicle that is going to be scrapped and improves department operational efficiencies. These changes were included in House Bills 5269 (88R) & 3531 (87R).

Section 501.091: (1-a) "Auction sales receipt" means a document certifying the sale of a motor vehicle at auction by a law enforcement agency or public sale for a lien foreclosure.

Sec. 501.1003. SALVAGE VEHICLE DEALER RESPONSIBILITIES. (a) If a salvage vehicle dealer acquires ownership of a nonrepairable motor vehicle or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, the dealer shall, before the 31st day after the date the dealer acquires the motor vehicle, submit to the department a report stating that the motor vehicle will be dismantled, scrapped, or destroyed. The dealer shall:

(1) make the report in a manner prescribed by the department; and

(2) submit with the report a properly assigned manufacturer's certificate of origin, ~~[regular certificate of]~~ title, nonrepairable vehicle title, salvage vehicle title, auction sales receipt, or comparable out-of-state ownership document for the motor vehicle.

(b) After receiving the report and title, manufacturer's certificate of origin, auction sales receipt, or document, the department shall issue the salvage vehicle dealer a receipt for the manufacturer's certificate of origin, ~~[regular certificate of]~~ title, nonrepairable vehicle title, salvage vehicle title, auction sales receipt, or comparable out-of-state ownership document.

(c) The department shall adopt rules to notify the salvage vehicle dealer if the vehicle was not issued a printed title, but has a record of title in the department's titling system.

4. Allow wider range of ownership evidence when insurance companies apply for title (Transportation Code, Section 501.0925)

Section 501.0925 requires a vehicle to have been issued a paper title in Texas or another state for insurance companies to apply for title when unable to obtain the current title for the vehicle. The following amendment allows insurance companies to obtain title for a new vehicle that has been damaged, but not yet titled, and for vehicles that have been issued an electronic title with improved operational efficiency. These changes were included in House Bills 5269 (88R) & 3531 (87R).

Sec. 501.0925. INSURANCE COMPANY NOT REQUIRED TO SURRENDER EVIDENCE OF OWNERSHIP [~~CERTIFICATES OF TITLE~~] IN CERTAIN SITUATIONS.

Section 501.0925: (a) An insurance company that acquires, through payment of a claim, ownership or possession of a motor vehicle covered by a [~~certificate of~~] title or a manufacturer's certificate of origin that the company is unable to obtain may obtain from the department not earlier than the 30th day after the date of payment of the claim:

(1) a salvage vehicle title for a salvage motor vehicle;

(2) a nonrepairable vehicle title for a nonrepairable motor vehicle; or

(3) a [~~regular certificate of~~] title for a motor vehicle other than a salvage motor vehicle or a nonrepairable motor vehicle.

(b) An application for a title under Subsection (a) must be submitted to the department on a form prescribed by the department and include:

(1) a statement that the insurance company has provided at least two written notices attempting to obtain the evidence of ownership [~~certificate of title~~] for the motor vehicle; and

(2) evidence acceptable to the department that the insurance company has made payment of a claim involving the motor vehicle.

(c) An insurance company that acquires, through payment of a claim, ownership or possession of a motor vehicle covered by a [~~certificate of~~] title or a manufacturer's certificate of origin for which the company is unable to obtain proper assignment of the title or manufacturer's certificate of origin [~~certificate~~] may obtain from the department not earlier than the 30th day after the date of payment of the claim:

(1) a salvage vehicle title for a salvage motor vehicle;

(2) a nonrepairable vehicle title for a nonrepairable motor vehicle; or

(3) a [~~regular certificate of~~] title for a motor vehicle other than a salvage motor vehicle or a nonrepairable motor vehicle.

(d) An application for a title under Subsection (c) must be submitted to the department on a form prescribed by the department and include:

(1) a statement that the insurance company has provided at least two written notices attempting to obtain a proper assignment of the evidence of ownership [~~certificate of title~~]; and

(2) the evidence of ownership [~~certificate of title~~].

(f) An insurance company that acquires, through payment of a claim, ownership or possession of a motor vehicle, salvage motor vehicle, or nonrepairable motor vehicle covered by an out-of-state title or out-of-state ownership document may obtain from the department a title, salvage vehicle title, or nonrepairable vehicle title, as appropriate, if:

(1) the motor vehicle was damaged, stolen, or recovered in this state;

(2) the motor vehicle owner from whom the company acquired ownership resides in this state; or

(3) otherwise allowed by department rule.

5. Allow vehicles with out of state salvage-type titles to receive a rebuilt title (Transportation Code, Section 501.100)

Section 501.100 requires issuance of a salvage vehicle title before a rebuilt Texas title can be obtained. The following amendment allows a vehicle with an out-of-state title comparable to a salvage vehicle title to be issued a rebuilt Texas title without the owner first having to apply for a salvage vehicle title with the department. This eliminates the need for customers to apply for a salvage vehicle title just to immediately surrender it for a rebuilt title and improves department operational efficiency. These changes were included in House Bills 5269 (88R) & 3531 (87R).

Sec. 501.100. APPLICATION FOR ~~[REGULAR CERTIFICATE OF]~~ TITLE FOR SALVAGE VEHICLE.

Section 501.100: (a) The owner of a motor vehicle for which a nonrepairable vehicle title issued prior to September 1, 2003, ~~[or]~~ for which a salvage vehicle title or salvage record of title has been issued, or for which a comparable out-of-state ownership document for a salvage motor vehicle has been issued may apply for a title under Section 501.023 after the motor vehicle has been repaired, rebuilt, or reconstructed and, in addition to any other requirement of law, only if the application:

(1) describes each major component part used to repair, rebuild, or reconstruct the motor vehicle;

(2) states the name of each person from whom the parts used in repairing, rebuilding, or reconstructing ~~[assembling]~~ the vehicle were obtained; and

(3) shows the identification number required by federal law to be affixed to or inscribed on the part.

(f) The department may not issue a ~~[regular]~~ title for a motor vehicle based on a:

(1) nonrepairable vehicle title issued on or after September 1, 2003, or comparable out-of-state ownership document or record, or evidence of a notation described by Section 501.09113(a)(2) on an out-of-state ownership document or record in the National Motor Vehicle Title Information System;

(2) receipt issued under Section 501.1003(b); or

(3) certificate of authority issued under Chapter 683.

Registration & License Plate Items**New Proposals****6. Clean-up Statutory References Authorizing the Electric Vehicle Registration Fee**

For the electric vehicle (EV) fee in Transportation Code 502.360, strike the cross-reference to the inspection code and replace with language saying the EV fee is \$200 per year of registration. This corrects a conflict created by the passage of Senate Bill 505 and House Bill 3297 during the 88th Session, as well as re-setting the authorization for 2-year initial registration following the repeal of the 2-year safety inspection process in HB 3297.

Section 502.044. REGISTRATION PERIOD.

(a-1) The department shall designate a vehicle registration period of 24 consecutive months to begin on the first day of a calendar month and end on the last day of the 24th calendar month for a passenger car or light truck that:

(1) is sold in this state or purchased by a commercial fleet buyer described by Section 501.0234(b)(4) for use in this state;

(2) has not been previously registered in this or another state;
and

(3) on the date of sale is of the current or preceding model year.

Section 502.360. ADDITIONAL FEE FOR ELECTRIC VEHICLES.

(b) In addition to other fees authorized under this chapter, at the time of application for registration or renewal of registration of an electric vehicle, the applicant shall pay an additional fee of [+

~~(1) \$400, for the registration of a new vehicle to which Section 548.102 applies; or~~

~~(2)] \$200, for the registration or renewal of registration of a vehicle for each 12 months of registration [to which Section 548.101 applies].~~

7. Clean-up for Dealer Temporary License Plate Fee

Legal analysis of the enacted language in House Bill 718 (Transportation Code, Section 503.008) determined the \$10 fee for each issued dealer temporary license plate is payable every two years at the time of license renewal. However, legislators, stakeholders, and department staff involved in the bill's deliberations during the 88th Session understood that the fee was to be a one-time fee. The following language would ensure the dealer temporary license plate fee is a one-time \$10 per plate.

Sec. 503.008. FEES FOR LICENSE PLATES.

(a) The fee for:

(1) a dealer's license plate issued under Section 503.061 is \$20 a year; and

(2) a dealer's temporary license plate issued under Section 503.062 is \$10 for a new plate and \$0 for renewing the same plate.

8. Allow denial of access to the dealer-issued license plate database for fraudulent vehicle inspection reports

The department has the authority under Section 503.0633, Transportation Code, to deny a dealer access to the dealer-issued license plate database if the dealer fraudulently issues license plates or fraudulently uses the database. That authority does not extend to a dealer issuing/obtaining fraudulent vehicle inspection reports. Adding inspection fraud to the instances when the current database access denial process can be used will allow better enforcement of vehicle inspection requirements.

Texas Transportation Code Section 503.0633. DEPARTMENT REGULATION OF DEALER-ISSUED LICENSE PLATES AND ACCESS TO DATABASE OF DEALER-ISSUED LICENSE PLATES.

(f) If the department determines that a dealer is fraudulently obtaining license plates or sets of license plates, or fraudulently using the database of dealer-issued license plates, or obtaining or using fraudulent vehicle inspection reports under Chapter 548, the department may, after giving notice electronically and by certified mail to the dealer, deny access to the database of dealer-issued license plates to the dealer. A dealer denied access to the database of dealer-issued license plates under this subsection may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code.

9. Modify procedure for denying or revoking a vehicle registration in certain circumstances.

The department has the authority under Chapter 502, Transportation Code, to deny or revoke a vehicle's registration. Specifically, Section 502.048 allows denial or revocation of a vehicle registration if the vehicle is unsafe, improperly equipped, or otherwise unfit to be operated on a public highway. The law in general, such as the due process clauses of the Constitution and Chapter 2001 of the Government Code, requires agencies to follow procedural steps to take certain actions on registrations. To expedite enforcement of fraudulent activities, denials and revocations of vehicle registrations could be added to the list of exceptions to contested case requirements in Section 2001.223, Government Code. Also, the requirement

for notice and opportunity to respond, but not an actual hearing, could be added to Section 502.048, Transportation Code.

Government Code Section 2001.223. EXCEPTIONS FROM DECLARATORY JUDGMENT, COURT ENFORCEMENT, AND CONTESTED CASE PROVISIONS. Section 2001.038 and Subchapters C through H do not apply to:

(1) except as provided by Subchapter D, Chapter 545, the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs that were operated by the former Texas Department of Human Services before September 1, 2003, and are operated on and after that date by the Health and Human Services Commission or a health and human services agency, as defined by Section 521.0001;

(2) action by the Banking Commissioner or the Finance Commission of Texas regarding the issuance of a state bank or state trust company charter for a bank or trust company to assume the assets and liabilities of a financial institution that the commissioner considers to be in hazardous condition as defined by Section 31.002(a) or 181.002(a), Finance Code, as applicable;

(3) a hearing or interview conducted by the Board of Pardons and Paroles or the Texas Department of Criminal Justice relating to the grant, rescission, or revocation of parole or other form of administrative release; or

(4) the suspension, revocation, or termination of the certification of a breath analysis operator or technical supervisor under the rules of the Department of Public Safety.

(5) the denial, renewal, revocation, suspension, annulment, or withdrawal of a registration under Texas Transportation Code §502 and the rules of the Department of Motor Vehicles.

Transportation Code Section 502.048. REFUSAL TO REGISTER UNSAFE VEHICLE. The department may refuse to register a motor vehicle and may cancel, suspend, or revoke a registration after notice and an opportunity to respond but without a hearing if the department determines that a motor vehicle is unsafe, improperly equipped, or otherwise unfit to be operated on a public highway.

Previous Board Recommendations

10. Clarify certain specialty license plate fees.

- a. Eligible customers are issued one set of Legion of Merit license plates, authorized under Section 504.316, Transportation Code, without having to pay registration fees. This matches the treatment of similar types of military-related license plates. However, the statute needs clarification under Section 504.3015 regarding the fee exemption. This change was included in Senate Bill 1182 (88R) & House Bill 3531 (87R).

Section 504.3015: (a) A person applying for a set of license plates under this subchapter shall pay the registration fee required under Chapter 502 and the applicable special plate fee required under this section, except that one set of license plates shall be issued without the payment of the registration fee under:

- (1) Section 504.308;
- (2) Section 504.310(b);
- (3) Section 504.315, other than Subsections (c) and (q) of that section; ~~and~~
- (4) Section 504.316; and
- (5) Section 504.319.

- b. Transportation Code Section 504.512 is not clear that the Gold Star license plate is issued with no plate fee. The other license plates in the subchapter are expressly stated to have no fee for issuance; amendment provides clarity and consistency. This change was included in Senate Bill 1182 (88R).

Sec. 504.512:

(c) There is no fee for issuance of the license plates.

- c. Transportation Code Sections 504.513 is not clear that the Firefighter license plate is issued with no plate fee. The other license plates in the subchapter are expressly stated to have no fee for issuance; amendment provides clarity and consistency. The proposal also corrects the related association name, which has changed since the statute was enacted. This change was included in Senate Bill 1182 (88R).

Sec. 504.513. FIREFIGHTERS. (a) The department shall issue specialty license plates for:

(1) volunteer firefighters certified by:

(A) the Texas Commission on Fire Protection; or

(B) the State ~~Firefighters'~~ ~~[Firemen's]~~ and Fire Marshals' Association of Texas; and

(2) fire protection personnel as that term is defined by Section 419.021, Government Code.

(c) There is no fee for issuance of the license plates.

- d. Transportation Code Section 504.516 is not clear that the Rental Trailer and the Travel Trailer license plates are issued with no plate fee. The other license plates in the subchapter are expressly stated to have no fee for issuance; amendment provides clarity and consistency. This change was included in Senate Bill 1182 (88R).

Sec. 504.516:

(c) There is no fee for issuance of the license plates.

11. Clarifications to the registration of farm trailers less than 4,000 pounds, and related vehicles

Farm trailers less than 4,000 lbs., farm tractors, and implements of husbandry have long been exempted from registration requirements. The statute that made the exemption explicit was inadvertently repealed several sessions ago. The amendment would make the long-standing exemption clear in statute. The TxDMV board recommended this amendment in a past legislative session. This change was included in Senate Bill 1182 (88R).

Sec. 502.147. CERTAIN FARM TRAILERS, FARM SEMITRAILERS, FARM TRACTORS, AND IMPLEMENTS OF HUSBANDRY. An owner is not required to register a farm trailer or farm semitrailer that has a gross weight of 4,000 pounds or less or a farm tractor or an implement of husbandry, if the trailer, semitrailer, tractor, or implement is operated only temporarily on the highways.

Oversize/Overweight Permit Items

Previous Board Recommendations

12. Clarify fee references for certain oversize/overweight permits

- a. Oversize/overweight permits must be obtained by governmental entities, including the military, for moving oversize/overweight equipment or loads. The vehicle moving the load must have either state or federal exempt license plates and the governmental entity does not currently pay permit fees. The proposed statute clarifies that the department can waive the permit fee and surety bond requirements

in such cases by rule.

Section 623.009. SURETY REQUIREMENTS AND PERMIT FEES FOR GOVERNMENTAL AGENCIES. The department by rule may waive fees and surety requirements, including requirements for a bond or letter of credit, for permits issued by the department to governmental agencies. The department by rule may also waive any surety requirements for governmental agencies under Sections 622.134 and 623.163.

- b. The annual envelope permit described by Section 623.071, Transportation Code can be issued to either a vehicle or a company. The highway maintenance fee in Section 623.077 is not charged to either permit under current operations. The proposed amendment clarifies that the fee does not apply to either annual envelope permit.

Section 623.077: (a) An applicant for a permit under this subchapter, other than a permit under Section 623.071(c)(3) or (d), must also pay a highway maintenance fee in an amount determined according to the following table: ...

To: Texas Department of Motor Vehicles Board
From: Brad Payne, Director of Purchasing
Agenda Item: 15
Subject: Pending Texas Permitting & Routing Optimization System (TxPROS) Procurement

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Texas Government Code § 2261.255 requires that the procurement director or contract management office of the department submit information to the board on the solicitation process for any contract that has a value exceeding \$5 million. This agenda item will provide the board with information about the pending procurement for the Texas Permitting & Routing Optimization System (TxPROS), which has an estimated value that could exceed \$5 million.

FINANCIAL IMPACT

The Department's existing contract to maintain the TxPROS system was established September 1, 2016. The historical compensation for this contract is \$603,000 annually. Factoring in inflation and the proprietary nature of the new solicitation, the department estimates that the lifetime value of the new 8-year contract could exceed \$5 million.

BACKGROUND AND DISCUSSION

The department has a pending procurement to award a multi-year contract for the maintenance, enhancement, and hosting of TxPROS. The permitting of size and weight loads is a mission-critical responsibility of the department to protect and oversee the safety of the traveling public, highway infrastructure and the size and weight loads that are transported on public highways. More than 700,000 permits are issued annually, and this volume of work requires an automated system. TxPROS is the online portal that is used both by motor carriers and in-house by permit specialists in the Motor Carrier Division.

This contract is anticipated to have a lifetime value exceeding \$5 million. Therefore, the Director of Purchasing has reviewed the pending solicitation including all documents attached thereto and verified "that the solicitation and purchasing method and contractor selection process [therein] comply with state law and agency policy," as required by Texas Government Code § 2261.255. At this time, staff do not anticipate any potential issues arising during the procurement process or any contract that may result therefrom.

To: Texas Department of Motor Vehicles Board
From: William Diggs, Director, Motor Vehicle Crime Prevention Authority
Agenda Item: 16
Subject: Motor Vehicle Crime Prevention Authority (MVCPA) Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

To provide an overview of MVCPA activities and operations since January 1, 2024.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

William Diggs was hired as the division director of the MVCPA on December 15, 2023. The MVCPA is governed by a seven-member board, appointed by the governor. Miguel "Mike" Rodriguez, Police Chief of Laredo Police Department, serves as the Chair. The MVCPA program is administratively attached to the TXDMV.

MVCPA is made up of 15 FTEs. Currently, MVCPA is fully staffed with a very talented team as follows: MVCPA Director, Deputy Director (1), Law Enforcement Trainers (3), Grant Specialists (3), Auditors (4), Insurance Collections Specialist (1), Executive Assistant (1) and a Management Analyst (1).

Senate Bill 224 Strategy Update

MVCPA was provided additional funding by the 88th Texas Legislature with the passage of Senate Bill (SB) 224. SB 224 provided \$24.6 million in Fiscal Year (FY) 2024 and \$30.3 million in FY 2025. The additional funding is being used to support efforts in deterring catalytic converter theft throughout Texas. As of July 19, 2024, the following is a high-level overview of how the funding has been distributed:

SB 224 FY 2024 Highlights

- Law Enforcement Grants – 34 grantees - \$15.5 million
- Texas Department of Public Safety (DPS) - \$2.3 million
- Texas Department Licensing and Regulation (TDLR) - \$499,000
- TxDMV - \$1.3 million

SB 224 FY 2025 Highlights

- Law Enforcement Grants – 24 grantees, \$7.2 million
- DPS - \$1.7 million
- TDLR - Pending

- TxDMV- Pending

MVCPA was charged with the development and implementation of the Plan of Operation to coordinate activities with DPS, TDLR, and TxDMV. The SB 224 Plan of Operation became effective in January of 2024.

The Plan of Operation describes a strategy to protect the legitimate stream of commerce, ensure regulated persons are not inserting stolen catalytic converters into the stream of commerce, and to provide risk-based targeting and random auditing of the records of regulated entities.

SB 224 created enhanced criminal penalties related to criminal conduct involving catalytic converters and administrative penalties relating to regulatory provisions governing metal recycling entities (MRE).

An advisory committee formed by the MVCPA Board meets quarterly. The advisory committee consists of industry stakeholders, law enforcement officers, and state partner agencies. The advisory committee is chaired by MVCPA Board Member, Texas DPS Major Sharon Jones. The conversations are fluid and fruitful with all participants providing invaluable information. To date, a total of three advisory committee meetings have taken place in the cities of El Paso, Houston, and San Marcos.

Bi-monthly virtual meetings have been conducted with senior staff from the partner state agencies representing the DPS, TxDMV, and TDLR. These meetings focus on the development of risk-based factors, intelligence sharing, and insuring there are no unmet needs in support of partner agency SB224 activities.

Motor Vehicle Crime Prevention Strategy Update

MVCPA provides financial support to law enforcement agencies to combat motor vehicle theft and burglary through the creation of single and multi-jurisdictional taskforces. Funding is provided for investigators, analysts, equipment, vehicles, technology, prosecutor support, and educational activities.

The 88th Texas Legislature provided \$24.2 million in FY 2024 and \$24.9 million in FY 2025 for the Motor Vehicle Crime Prevention Strategy.

FY 2024 Highlights

Law Enforcement Grants – 25 grantees, \$22.2 million

FY 2025 Highlights

Law Enforcement Grants – 25 grantees, \$23.9 million

Pending Approval in October – 5 grantees, \$2.2 million



Texas Department
of Motor Vehicles