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From: Erin Bennett, Director
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Subject: Proposed Title 43 Texas Administrative Code Sections 217.22, 217.27, 217.32, 217.38, 217.41, 217.55, and 217.58-217.64 (RCD Rule Review #2020-007)

I. Preface

The Texas Department of Motor Vehicles (“department”) proposed rules to implement new authority to issue and regulate digital license plates following the passage of legislation in 2019.¹ The department submitted proposed amended 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, and 217.55 and proposed new 43 TAC §§217.58-217.64 to the Regulatory Compliance Division (“division”) for review on April 17, 2020. The division invited public comments on the proposed rules for a 30-day period ending May 20, 2020, and received input from one stakeholder regarding the regulation, testing, and capabilities of digital license plates in Texas and other states. The department supplemented its submission to the division on June 1, 2020, with changes to proposed §§217.58 and 217.59 that clarify the vehicles eligible for digital license plates and modify the reflectivity testing required for digital license plates. Consequently, the division analyzed these amended versions of the proposed rules.

II. Analysis

Chapter 504, Subchapter B-1, Texas Transportation Code, directs the department to allow certain vehicles to be equipped with digital license plates as an alternative to metal license plates, and authorizes the department to establish appropriate regulations for digital license plates and providers. The proposed rules will enhance competition by allowing digital license plate

¹ 45 Tex. Reg. 2520 (2020) (to be codified at 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55, and 217.58- 217.64) (proposed April 17, 2020) (Tex. Dep’t Motor Vehicles); Acts of 2019, 86th Leg., R.S., ch. 594 (S.B. 604).

providers to offer products and services in Texas that are currently unavailable. However, the proposed rules do contain several provisions that affect competition within that new market.

A. Proposed amended 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, and 217.55 are consistent with applicable state policy.

Proposed §217.22 creates definitions for digital and metal license plates and certain technological and design features relating to license plates. Proposed §217.27 requires vehicle owners with digital license plates to maintain proof of their vehicle registration with their vehicle and display the vehicle registration expiration month and year on the digital license plate. This section also provides that all license plates must be visible, readable, and legible, consistent with Sections 504.155(b)(2) and 504.945. Amendments in proposed §§217.32, 217.38, 217.41, and 217.55 clarify that those rules pertain to metal license plates. These changes are necessary to accommodate and distinguish new regulations for digital license plates in accordance with Chapter 504. Thus, proposed §§217.22, 217.27, 217.32, 217.38, 217.41, and 217.55 are consistent with state policy.

B. Proposed new 43 TAC §217.58 is consistent with applicable state policy.

As amended, proposed §217.58(a) limits eligibility for digital license plates to vehicles owned or operated by governmental entities, commercial fleet vehicles, and, incorporating the exception in proposed §217.58(b)(2), any other vehicles that have not been registered as passenger vehicles.² This provision is consistent with Section 504.154(b) which only permits commercial fleet vehicles, governmental vehicles, and non-passenger vehicles to be equipped with digital license plates.

Proposed §217.58(b)(1) also preempts eligibility for digital license plates for vehicles that are not required to display rear metal license plates. This provision aligns with the definition of “digital license plate” in Section 504.151(1) and the department’s rulemaking directive with regard to digital license plates in Section 504.154(a), which clearly specify that a digital license plate must be placed on the rear of a vehicle “in lieu of a physical license plate.” Moreover, this provision promotes consistency in enforcing laws to display a rear license plate by precluding the same classes of vehicles from both displaying and not displaying rear license plates depending on whether they are registered with digital or metal license plates.³ Although proposed §217.58(b) further defines the vehicles eligible for digital license plates, both proposed §217.58(a), as amended, and §217.58(b) are consistent with state policy.

² Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (June 1, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Response to Second Request for Additional Information (May 14, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

³ Agency Response to First Request for Additional Information (May 6, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

Lastly, proposed §217.58(c) requires registration of a motor vehicle and verification thereof before the issuance of a digital license plate. That provision furthers Section 504.154(b), which limits the availability of digital license plates to vehicles registered under Chapter 502. Thus, as amended, proposed §217.58, in its entirety, is consistent with state policy.

C. Proposed new 43 TAC §§217.59 and 217.60 are consistent with applicable state policy.

Sections 504.005 and 504.155 provide the department with broad authority to control the specifications and design of digital license plates, including required reflectivity and legibility.⁴ Proposed §§217.59, as amended, and 217.60 set testing requirements and design standards to ensure digital license plates are legible, secure, and meet the needs of law enforcement comparable to metal license plates, consistent with Section 504.155 and in furtherance of Section 504.945. For example, legibility testing requirements in proposed §217.59(2) were developed in consultation with the Texas Department of Public Safety to ensure digital license plates can be read by law enforcement in a variety of weather and light conditions.⁵ Although testing requirements and design standards could increase the cost of digital license plate production or reduce the number of qualified digital license plate providers, proposed §217.59, as amended, and proposed §217.60 are consistent with state policy.

D. Proposed new 43 TAC §217.61 is consistent with applicable state policy.

Section 504.156(2) requires a digital license plate provider to make available digital versions of certain specialty license plate designs. Pursuant to Sections 504.002(a)(3) and 504.851(f) and (g), the department owns every license plate design and color combination, but as specialty license plates often display third party intellectual property, such as logos and copyrighted images, the department requires its specialty plate provider to enter into licensing agreements with standard contract terms to use those graphics.⁶ Similarly, proposed §217.61(a)(2) requires digital license plate providers to enter into licensing agreements with standard contract provisions to display third party intellectual property in fulfilling their duty under Section 504.156(2). Thus, proposed §217.61(a) is consistent with state policy.

⁴ Section 504.152, Texas Transportation Code, provides for the general applicability of laws for metal license plates to digital license plates.

⁵ Administrative Record for Proposed 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, 217.55, and 217.58-217.64 (RCD Rule Review #2020-007), *Digital License Plates Meeting Notes*, at 271 (Submitted April 23, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor).

⁶ Agency Response to Second Request for Additional Information (May 14, 2020), at 1.

Proposed §217.61(b) and (c) outline mandatory and optional digital license plate information and design specifications for digital license plate displays, consistent with the department's authority under Section 504.155, and require digital license plates to prominently indicate an expired vehicle registration status pursuant to Section 504.156(4). Proposed §217.61(d) requires consent to display optional digital license plate information, like advertisements or safety recall notices, and a method to change the owner's decision to display that information, pursuant to the department's authority to establish procedures in Section 504.155(d). Proposed §217.61(d) also creates a mechanism for digital license plate providers to offer additional services, consistent with Section 504.156(5), using GPS data tracked through the digital license plates. To do so, the rule requires the digital license plate provider to obtain consent for disclosures, provide notice of the situations in which the data will be disclosed, and establish a method to change the owner's decision, thereby preserving the privacy, autonomy, and safety of digital license plate owners and drivers.⁷ Thus, proposed §217.61, in its entirety, is consistent with state policy.

E. Proposed new 43 TAC §§217.62-217.64 are consistent with applicable state policy.

Proposed §217.62 prevents fraud and protects drivers and vehicle registration data by requiring digital license plate providers to be able to cease display of license plate information if a device is tampered with. The proposed rule also requires digital license plate providers to notify the department when services for digital license plates begin, end, or become compromised. Those security features are consistent with Section 504.155(b)(4), and are necessary to prevent the offenses listed in Sections 502.475 and 504.945. Proposed §217.63 imposes a \$95 fee on a person applying for a digital license plate and at the renewal of registration for a vehicle with a digital license plate, which creates a financial barrier to and may reduce the demand for digital license plates. However, the fee is tailored to cover the administrative costs of the digital license plate program over a 15-year period, reducing the impact to consumers and, thus, is consistent with 504.154(d)(2).⁸ Finally, proposed §217.64 requires digital license plate providers to ensure customer support is available during normal business hours, consistent with Sections 504.154(c) and 504.156(5), and provides guidance to drivers for the repair and replacement of digital license plates.

III. Determination

Based on the reasoning set forth above, the division has determined that proposed amended 43 TAC §§217.22, 217.27, 217.32, 217.38, 217.41, and 217.55 and proposed new 43 TAC

⁷ *Id.*

⁸ Administrative Record, *Vehicle Titles and Registration Advisory Committee Recommendations on Digital License Plate Rules — Discussion Notes*, at 161-162; *Transcript: December 19, 2019 Vehicle Titles and Registration Advisory Committee Meeting*, at 179-197; and *Transcript: April 2, 2020 Board Meeting*, at 316-317.

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§§217.58-217.64, with the changes submitted to division, are consistent with state policy. Accordingly, the rules are approved and may be finally adopted.