

INITIAL STATEMENT OF REASONS
Title 13, Division 1, Chapter 1
ARTICLE 3.0 ELECTRONIC LIEN AND TITLE PROGRAM

The Department of Motor Vehicles (department) proposes to adopt sections 153.00 through 153.22 in Article 3.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, relating to Vehicle Registration and Titling.

Assembly Bill 1515 (Chapter 540, Statutes of 2009) enacted Vehicle Code section 4450.5 requiring the department to develop an Electronic Lien and Titling Program in consultation with lien holders and other stakeholders. This will require that all lien holders' title information be held in an electronic format.

Per the requirements of AB 1515, the department conducted an evaluation of the effectiveness of the current ELT program and offered four alternatives for implementation. Alternative 1 required mandatory ELT participation for large financial institutions only while utilizing the current ELT program. Alternative 2 required all financial institutions licensed in California to participate in a mandatory ELT program. Alternative 3 required a competitive bid process to choose a sole ELT service provider for California who would serve as the first point of contact for the ELT program and interface with the existing DMV ELT program. Alternative 4 retained the current ELT program on a voluntary basis and would not implement the statute because it would not produce significant savings.

The department chose to implement the program through their second alternative, which will require updates to the existing ELT system along with new regulations and an improved contract management process. This option will require all financial institutions to participate in the ELT program. Based on this alternative, the changes will achieve a savings of approximately \$1.7 million annually over a five year period. These savings will be achieved through less processing, secure paper, printing, and mailing costs to the department. ELT participation will grow which will eliminate two thirds of new vehicle titles annually. The current ELT system could be utilized with a few upgrades so minimal new training would be required for department employees.

This action provides information to mandatory and voluntary participants regarding the application process and eligibility requirements for the Electronic Lien and Title (ELT) Program. Each participant must provide proof of connectivity with a software/service provider in order for approval as a participant.

This action provides information to participants and ELT Service Providers regarding their responsibilities and security requirements.

This action also provides information to participants and ELT Service Providers regarding causes for refusal of eligibility in the ELT Program, authority of the department to investigate and review records, information regarding participant changes, and information regarding cancellation or termination from the program.

This action was sponsored by the lien and titling industry and will benefit business (lienholders) and the department. Benefits to lienholders include reduction in work effort, lower cost, no storage requirements, and improved customer service by avoiding lost titles. Electronic records would replace large banks and catalogs of paper titles, which would increase work and space efficiency. The average cost of tracking, handling and storing a title can range from \$8 to \$12. The ELT program, as provided in these regulations, can bring the retention costs down to \$2 per title.

The department will see a savings in several different areas. Currently, Lien Releases from lienholders average 178,844 annual transactions. If the lienholder is in the ELT program, the customer will no longer surrender the title to the department to remove the lienholder. The department anticipates an estimated annual savings of \$657,045 in the Registration Operations Division. The anticipated savings are a result of reduced processing time, as well as reduced printing, postage and paper costs.

There are approximately 1.2 million new vehicles sold in California every year. An estimated two-thirds of those vehicles are financed. Under the requirements of AB 1515, titles will not be issued for ELT lienholders. The anticipated savings from reduced printing, postage, and secure paper costs is estimated to be \$538,536 annually.

Non-ELT lienholders traditionally release paper titles directly to customers without first being removed from the title. Often times, customers subsequently lose the title before appearing at the department to have the lienholder removed. With participation in the ELT program, lienholders will instead notify the department electronically, thereby eliminating approximately 5,653 duplicate title applications annually. This streamlined process is anticipated to save the department \$24,423 in field office processing times.

Additional savings are expected to come with enhancing the department's automation system to allow a technician to enter an ELT ID number rather than entering the lienholders name and address, a processing change that is anticipated to save the department \$557,330 annually.

Economic Impact Analysis

Purpose

Assembly Bill 1515 (Chapter 540, Statutes of 2009), a bill sponsored by the Electronic Titling industry, enacted Vehicle Code section 4450.5 requiring the department to develop an Electronic Lien and Titling Program in consultation with lien holders and other stakeholders. This will require that all lien holders' title information be held in an electronic format.

Per the requirements of AB 1515, the department conducted an evaluation of the effectiveness of the current ELT program and offered three alternatives for implementation. The department chose to implement the program through their second alternative, which will require updates to the existing ELT system along with new regulations and an improved contract management process. This option will require all financial institutions to participate in the ELT program. Based on this alternative, the changes will achieve a savings of

approximately \$1.7 million annually over a five year period. These savings will be achieved through less processing, secure paper, printing, and mailing costs to the department. The current ELT system design can be utilized, eliminating the need for providers to invest in costly new equipment. In fact, current ELT service providers will see no changes to their current processes.

This option will also reduce lienholders' costs associated with the handling of paper titles. Benefits to lienholders will be realized through reduction in work effort, lower costs, no storage requirements, and better customer service by avoiding lost paper titles.

Creation or Elimination of Jobs Within the State of California

This regulation will neither create nor eliminate jobs within the State of California, however, existing jobs will see improved efficiencies and be able to perform those jobs with more accuracy.

Creation or Elimination of Existing Business Within the State of California

This regulation will neither create nor eliminate businesses within the State of California. The proposal allows business to move towards a different form of title management. Lienholders will be able to replace the large banks of paper titles with electronic records. Businesses that would function in the program may do so using the resources and technology already at their disposal, negating the need to procure computers and other large equipment. The average cost for tracking, handling and storing a title can range from \$8 to \$12 per paper title. Using ELT, that cost is greatly reduced to only \$2 per title.

Expansion of Business Currently Doing Business Within the State of California

This regulation will neither expand nor contract businesses currently doing business within the State of California.

Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety and the State's Environment

This regulation has no benefits to the Health and Welfare of California residents, worker safety, or the State's environment.

§153.00. Definition.

This section is adopted for clarity by providing specific definitions of terms used in the Electronic Lien and Titling (ELT) Program, as well as the following proposed regulations.

§153.02. Participation.

This section is adopted to specify who may voluntarily participate and who is mandatorily required to participate in this program. This program requires certain lenders such as financial institutions to participate and allows others to voluntarily participate in the program.

Subsection (a) is adopted to specify that the ELT Program is mandatory for certain financial institutions and voluntary for others. This provision is necessary to ensure affected entities are aware whether their participation is mandatory or voluntary.

Subsection (b) is adopted to specify that participants must either sign up with an ELT Service Provider or they must be an ELT Service Provider. This requirement is necessary to ensure that the ELT is department approved by submitting to application requirements provided in these regulations and agreed to safety and security requirements.

Subsection (c) is adopted to notify participants that they may become an ELT Service Provider once specific forms have been filed with and approved by the department.

ELECTRONIC LIEN AND TITLE (ELT) PROGRAM FINANCIAL INSTITUTION/LENDER APPLICATION, REG 671 (NEW 11/2011)

This form was created in 11/2011.

In the top left corner is the official department logo which is used to identify the document as an official departmental form. Next to the logo is the title of the document in the center, and in the top right is a box for the department to use, which provides space for the name, address, and ID number of the financial institution/lender. It also provides a space for the approval implementation date of the financial institution/lender application.

The form has been divided into several sections for clarity and ease of completion. There is a list of checkboxes to mark what the application is being submitted for.

There is a notice for the application and any attachments to be mailed to the ELT Administrator and the address is listed. It also includes a note to include a copy of the lender's federal or state charter or license with the documents.

Section 1—Type of Financial Institution/Lender, provides a list of the various types of Financial Institution/Lender's with boxes to check the appropriate type.

Section 2—Name of Financial Institution/Lender, provides spaces to list the legal and commonly known as names of the Financial Institution/Lender.

Section 3—Address Information, provides spaces for the physical and mailing addresses for the Financial Institution/Lender.

Section 4—ELT Service Provider (ESP) Authorization, provides spaces for the name and permit number of the ELT Service Provider (ESP), as well as the authorized signature and title of the person signing for the ESP and the date the document was signed.

The second page is titled California DMV ELT Program Financial Institution/Lender Terms and Conditions. It contains a statement that the department reserves the right to modify the listed terms and conditions, that the most current version of those terms and conditions can be found on the department's website, and that those terms and conditions should be reviewed annually.

Section A—General, provides general information to the Financial Institution/Lender's and they must agree to the listed requirements in order to enroll in the ELT Program.

Section B—Information Security Requirements, provides information security requirements. In addition to the listed security requirements, this section provides spaces to fill in the name of the Financial Institution/Lender as well as the printed name, title, and signature of the person authorized to sign for the Financial Institution/Lender, and the date the document was signed.

**ELECTRONIC LIEN AND TITLE (ELT) PROGRAM SERVICE PROVIDER
APPLICATION, REG 670 (NEW 11/2011)**

This form was created in 11/2011.

In the top left corner is the official department logo which is used to identify the document as an official departmental form. Next to the logo is the title of the document in the center, and in the top right is a box for the department to use which provides space for the name, address, and ID number of the ELT Service Provider. It also provides a space for the approval implementation date.

There is a notice for the application and any attachments to be mailed to the ELT Administrator and the address is listed. It also includes a note to include a copy of the ELT Service Provider's federal or state charter or license with the documents.

The form has been divided into several sections for clarity and ease of completion.

Section 1—ELT Service Provider, provides for the name, physical address, and mailing address of the ELT Service Provider. It also contains a question regarding services offered to financial institutions with yes and no check boxes, and if the answer is yes, a space to fill in how many years service has been provided to financial institutions. There is also a request asking for a list of the names, type of services, and contract times over the last three years provided for various financial institutions.

Section 2—Type of Ownership, provides check boxes for the type of ownership and state of registration of the business. Space is also provided for a license number and agency registration information.

Section 3—Owner/Corporation Name, provides space to fill in the owner or corporation name, phone number, and address if the information is different than the information previously provided.

Section 4—Business Contact, provides space for the name, email address, office phone, and address of the business contact for the service provider.

Section 5—Person Who Will Sign Agreement, provides space for the name and title of the person who will be the authorized designee to sign agreements for the service provider.

Section 6—Certification, provides for the certification where the applicant will certify or declare under penalty of perjury under the laws of the State of California that the information contained in the form is true and correct. This certification will ensure consistency with all departmental forms and is authorized under Code of Civil Procedure section 2015.5(b). This section provides space for the signature of the authorized agent along with the name of the firm, the date the document was signed, the printed name and title of the signor, and the phone and fax numbers of the person signing the document.

The second page of the document is titled ELT Service Provider Terms and Conditions. It contains a statement that the department reserves the right to modify the listed terms and conditions and that the most current version of those terms and conditions can be found on the department's website, and those terms and conditions should be reviewed annually.

Section A—General, provides general information to the ELT Service Provider that they must agree to in order to enroll in the ELT Program.

Section B—Information Security Requirements, provides information security requirements. In addition to the listed security requirements, this section provides spaces to fill in the name of the ELT Service Provider as well as the printed name, title, and signature of the person authorized to sign for the ELT Service Provider, and the date the document was signed.

§153.04. Authority.

Subsection (a) is adopted to inform ELT applicants that there are requirements listed in Section 153.06 of this Article which provide eligibility to be included as a participant in the ELT program. When the requirements have been received by the department and are complete, the department will issue an ELT number and name configuration for a participant or a permit for a service provider.

Subsection (a)(1) is adopted to inform participants that once all required materials have been received by the department and are complete, they will be issued an ELT number and name configuration to use on all electronic transactions. This provision is necessary to ensure that the ELT is aware that it can not operate until the ELT number is received by the department.

Subsection (a)(2) is adopted to inform service providers that once all required materials have been received by the department and are complete, they will be issued a permit to operate. This provision is necessary to ensure that, in addition to an ELT number, receipt of a permit is an indication that an ELT may begin operation.

ELECTRONIC LIEN AND TITLE SERVICE PROVIDER PERMIT, REG 672
(NEW 11/2011)

The top left corner of the form contains the official department logo which is used to identify the permit as an official departmental document. The top right corner has space for listing the ELT Service Provider (ESP) Permit Number.

The title of the form is centered near the top of the document. Below the title is a notice stating that the permit is valid only for the ELT Service Provider named on the permit. The permit allows the service provider to process the ELT applications as provided by the regulations of this Article.

Below the notice is space to list the identifying information such as the firm or business name, address, city, state, and zip code of the permit holder.

There are also spaces to list the printed ELT Administrator name, the printed permittee name, and the signature for both parties with the date the permit was signed.

This permit is adopted with the regulations for this Article, but for security purposes, the permit will not be available to the general public for viewing.

§153.06. Application.

This section is adopted to inform all ELT participants and service providers of the requirement to submit an application for possible acceptance and participation in the program. Mandatory and voluntary participants shall complete a different application than the ELT Service Providers. Applications must be submitted to the department for approval and must contain written proof of connectivity with a department approved software/ service provider or approval by the department for in-house connectivity in order to be eligible.

Subsection (a) is adopted to list the forms and requirements necessary to be submitted to the ELT Program Administrator in order to be eligible for the program.

Subsection (a)(1) is adopted to inform participants that they must complete, sign, and submit a form REG 671 application to the ELT Program Administrator to determine eligibility in the

program. The provisions of the form REG 671 were adopted in section 153.02(c) of this Article.

Subsection (a)(1)(A) is adopted to inform current participants under contract that they may continue with their contract until it expires. Upon expiration or termination of the contract, the participant must complete a new application and must meet all other current requirements in order to participate in the ELT Program.

Subsection (a)(2) is adopted to inform service providers that they must complete, sign, and submit a form REG 670 application to the ELT Program Administrator to determine eligibility in the program. The provisions of the form REG 670 were adopted in section 153.02(c) of this Article.

Subsection (a)(3) is adopted to inform participants that written evidence of connectivity with a department approved software/service provider or approval by the department for in-house connectivity is required. A list of approved software/service providers is accessible to the public at <http://www.dmv.ca.gov/vr/eltp.htm>

Subsection (b) is adopted to explain that the department will review a submitted package within 30 calendar days of receipt. This provision will let the applicant know the deadline for a department determination and provide the department with a check marker to ensure the ELT program is running efficiently.

Subsection (b)(1) is adopted to inform applicants that written notification will be sent to the applicant when the application package is deemed complete. This provision is necessary to inform the applicant the means by which the department will use to deliver its response.

Subsection (b)(1)(A) is adopted to inform mandatory or voluntary participants that upon determination of eligibility in the program, they will be sent an ELT number and name configuration which will give them the authority to operate. Subsection (b)(1)(B) is adopted to inform service providers that upon determination of eligibility in the program they will be sent a form REG 672 permit which will give them the authority to operate. These provisions will inform the applicants of the three items they will receive as an authorization to conduct business in the program.

Subsection (b)(2) is adopted to inform applicants that written notification will be sent to the applicant specifying what portion of the application requirements need completion before eligibility can be determined. This provision is necessary to ensure the applicant is aware of the specific information that is needed to complete the approval process, thereby decreasing the impact of a delay in business.

Subsection (c) is adopted to inform participants that there is no fee to participate in the ELT Program unless the participant fails to convert electronic titles to paper titles upon ceasing business or unless a participant chooses to convert existing paper titles to electronic titles. This provision is necessary to ensure the participant is aware that, unlike many departmental programs, no fee is necessary.

§153.08. ELT Participant Responsibilities and Security Requirements.

Subsection (a) is adopted to inform participants that they are responsible for auditing and reconciling transactions processed by their software/service provider. This provision clearly states to the participant that regular auditing measures are to be undertaken by the participant. The department will conduct audits as necessary but it is not the sole responsibility of the department to audit the business.

Subsection (b) is adopted to inform participants of the requirement to sign and submit the Information Security and Disclosure Statement Firm, form EXEC 201X (Rev. 3/2003). This form was adopted in Article 3.6 §225.35, OAL File No. 2006-0106-06S. This document is required by numerous departmental programs when an entity has access to departmental records. It is a means by which the department can ensure safety and security measures are met.

Subsection (c) is adopted to inform participants of the security requirements that are expected to be met including forms that must be filled out, the requirement to allow the department to conduct audits to ensure compliance with information security, security awareness training that needs to be developed and implemented, organizational policies that need to be developed and implemented, and State and Federal Statutes that participants need to be aware of.

Participants also need to be aware that any suspected or actual breach involving confidential information must be immediately reported to the Department of Motor Vehicles (DMV) ELT Administrator. Participants must also agree to additional security terms and conditions. Immediate notification of a possible breach will allow the department to take immediate action to ensure the integrity of its records and information.

Subsection (c)(1) is adopted to require that all employees having access to confidential information read, date, and sign an Information Disclosure Statement for Employees form. Like the form EXEC 201X, this form is common to many departmental programs where participant personnel have access to confidential department information.

**INFORMATION SECURITY AND DISCLOSURE STATEMENT PUBLIC/
PRIVATE PARTERSHIPS EMPLOYEE, EXEC 200X, (REV. 3/2003)**

This form was revised in 3/2003.

In the top right corner a box provides space to list the employer and employee names. In the center at the top of the form is the official department logo which identifies the form as an official departmental form.

Below the department logo is the title of the form.

A statement informs the employee that the California Department of Motor Vehicles (CADMV) collects confidential and personal information and that the employee is

responsible for accessing and handling that information in the same manner that the CADMV would. The statement lists various State and Federal laws and regulations relating to the protection of the confidential information.

Item 1 informs the employee that they may access this confidential information only when necessary to do their job and the information is not for personal use.

Item 2 informs the employee that they may not disclose personal CADMV information to any person or entity.

Item 3 informs the employee that they may not deliberately perform unauthorized actions in the CADMV documents or computer files.

Item 4 informs the employee that they must create and use a secure password and they must not reveal that password to anyone. Passwords must be changed if there is any threat of unauthorized access.

Item 5 informs the employee that they must take reasonable precautions to protect terminals, equipment, and systems from unauthorized access.

Item 6 informs the employee that they must take reasonable precautions to protect CADMV data from unauthorized access.

Item 7 informs the employee that they must take reasonable precautions to protect physical documents from unauthorized access or theft.

Item 8 informs the employee of specific federal laws regarding unauthorized use of any personal data and the possible damages that could be awarded by a court.

A statement at the bottom of the form ensures that the employee has read and understands the above listed security policies and that they have received a copy of the same policies. The employee agrees to comply with the policies.

A space is given for the employee to sign and date the form.

Subsection (c)(1)(A) is adopted to inform participants that form EXEC 200X shall be completed and signed by each employee prior to the employee having access to confidential information, and shall be completed and signed at least once per year thereafter. This provision will ensure all employees of the participant have continual awareness of departmental security requirements.

Subsection (c)(1)(B) is adopted to inform participants that form EXEC 200X shall be retained by the participant for the term of the program and for three additional years following termination from the program. This provision will ensure a participant is maintaining these documents for a specified time. If a department audit is performed, this will be a point of review during the audit.

Subsection (c)(2) is adopted to inform participants of the need to allow the department to conduct audits as deemed necessary to establish the participant's compliance with information security even if participation in the program is terminated, revoked, or cancelled. This provision will make a participant aware that the department will conduct an audit. The department takes the safety and security of its records very serious and expects participants and its employees to do the same.

Subsection (c)(3) is adopted to inform participants of the need to develop and implement an employee security awareness training and education program. This provision is also common to several department programs. The department expects ongoing training to reinforce the importance of secure records and confidential information.

Subsection (c)(4) is adopted to inform participants of the need to develop and implement organizational policies to ensure the physical and logical security of confidential information. This provision is necessary to ensure participants put into place security measures. The department recognizes the uniqueness of each business and, therefore, allows the business to put together a security program that will be of most use to that business.

Subsection (c)(4)(A) is adopted to inform participants of the need for organizational policies to address overall facility and worksite security standards and requirements. This provision is designed to address a participant's security measures on a business-wide basis.

Subsection (c)(4)(B) is adopted to inform participants of the need for organizational policies to address the standards and requirements for the placement of workstations within the worksite to ensure that only authorized individuals can access or view confidential data. This provision is designed to address the individual and his or her access to confidential information.

Subsection (c)(4)(C) is adopted to inform participants of the need for organizational policies to address the procedures and practices for the secure handling and storage of ELT Program confidential information regardless of the retention medium, and the procedures must include appropriate methods of data destruction specific to the type of retention media used. This provision is designed to address security handling all forms of media storage.

Subsection (c)(4)(D) is adopted to inform participants of the need for organizational policies to address the development and implementation of an ELT Program User ID and password policy. This policy should mandate that each user be assigned a User ID and that each user select a unique and confidential password that meets department standards. This provision is designed to give a participant guidance in establishing effective passwords and policies to decrease the chance of confidential information being made available to unauthorized personnel.

Subsection (c)(5) is adopted to make participants aware of specific State and Federal statutes. The department complies with several state and federal statutes in its maintenance of confidential records and information and expects its program participants to do the same. In

this endeavor, the department determined it necessary to provide those provisions that are of exceptional importance. Among them:

- The California Public Records Act (Government Code section 6250 et. seq), as provided in subsection (c)(5)(A),
- The California Information Practices Act of 1977 (Civil Code sections 1798, et. seq.), as provided in subsection (c)(5)(B), and
- The California Security Breach Information Act (Civil Code section 1798.29 and 1798.82, et. seq.), as provided in subsection (c)(5)(C).

Subsection (c)(6) is adopted to inform participants of the need to immediately report any suspected or actual security breaches involving confidential information or department systems or networks to the Department of Motor Vehicles ELT Administrator. This information is necessary for the department to verify breached information and investigate the occurrence as quickly as possible to ensure information is not compromised.

Subsection (c)(7) is adopted to inform participants of the need to agree to certain security terms and conditions. Rather than create a cumbersome application process by prescribing several forms, the department has opted to incorporate security terms and conditions into regulations. These provisions are static to the program and, therefore, are a better fit in the regulations rather than providing them in a form, which is subject to change. The security terms and conditions are as follows:

- To inform financial institution/lenders of the need to comply with all information security requirements related to the ELT program, as provided in subsection (c)(7)(A). This subsection also allows the department to reserve the right to amend or enhance its requirements and the continuance of participant enrollment in the program is contingent upon participant compliance with the updated criteria. This provision will allow the department to maintain oversight of the program and make changes to security requirements as needed.
- To inform financial institution/lenders that they are responsible for safeguarding the information received and are responsible for restricting access, as provided in subsection (c)(7)(B). This provision is necessary to ensure institutions or lenders are aware that they are required to adhere to access requirements.

Subsection (d) is adopted to inform participants of the requirement that they agree to additional terms and conditions. As stated before, the department wants to avoid a burdensome application process by prescribing several forms so the department has opted to incorporate additional terms and conditions into regulations. These provisions are static to the program and, therefore, are a better fit in the regulations rather than providing them in a form which is subject to change. The terms and conditions also serve to protect the department from statements and harm that may be a result of other parties. The additional terms and conditions are as follows:

- To inform financial institution/lenders that they must defend, indemnify and hold harmless the department, as provided in subsection (d)(1).
- To inform financial institution/lender that they are required to reimburse the State of California for any loss or damage, as provided in subsection (d)(2).
- To inform participants of the reimbursement obligation for loss or damage to the State because of information obtained from the department or customers by false or misleading representations while performing the duties, functions, or obligations of a participant, as provided in subsection (d)(2)(A).
- To inform participants of the reimbursement obligation for loss or damage to the state because of information obtained from the department or customers for any purpose other than those specified in regulations, as provided in subsection (d)(2)(B).
- To inform participants of the reimbursement obligation for loss or damage to the State because of any other act resulting in any monetary loss suffered by the State or any subdivision arising out of or related to the duties, functions, and obligations of a participant, as specified in subsection (d)(2)(C).
- To inform participants of the need to consent to the Sacramento, California courts as the jurisdiction for the judicial review of the participant's rights relating to their enrollment in the ELT Program, as specified in subsection (d)(2)(D).

§153.10. ELT Service Provider Responsibilities and Security Requirements.

Subsection (a) is adopted to inform service providers of the need to abide by all provisions and requirements that are provided by the department. This provision is necessary to ensure that providers are not only adhering to ELT provisions but all those provided in Article 3.0 as they related to vehicle registration and titling.

Subsection (b) is adopted to inform service providers of the need to notify the department in writing of any ownership changes, mergers, or takeovers at least 90 calendar days prior to that change. Service providers also need to submit a new Electronic Lien and Title (ELT) Program Service Provider Application, form REG 670 (New 11/2011). This information is necessary to ensure the accuracy of departmental records.

Subsection (c) is adopted to inform service providers of the need to sign and submit the Information Security and Disclosure Statement Firm, form EXEC 201X (Rev. 3/2003). This document is required by numerous departmental programs when an entity has access to departmental records. It is a means by which the department can ensure safety and security measures are met.

Subsection (d) is adopted to inform service providers of the security requirements that are expected to be met including forms that must be filled out, the requirement to allow the department to conduct audits, security awareness training that needs to be developed and implemented, organizational policies that need to be developed and implemented, and State and Federal Statutes that service providers need to be aware of.

Service providers also need to be aware that any suspected or actual breach involving confidential information must be immediately reported to the Department of Motor Vehicles ELT Administrator. Service providers must agree to additional security terms and conditions. Immediate notification of a possible breach will allow the department to take immediate action to ensure the integrity of its records and information.

Subsection (d)(1) is adopted to inform service providers of the requirement that all employees having access to confidential information read, date, and sign an Information Security and Disclosure Statement Public/Private Partnerships Employee, form EXEC 200X (Rev. 3/2003). This provision will ensure all employees of the participant have continual awareness of departmental security requirements.

Subsection (d)(1)(A) is adopted to inform service providers that form EXEC 200X shall be completed and signed by each employee prior to the employee having access to confidential information, and shall be completed and signed at least once per year thereafter. This provision will ensure all employees of the participant have continual awareness of departmental security requirements.

Subsection (d)(1)(B) is adopted to inform service providers that form EXEC 200X shall be retained by the service provider for the term of the program and for three additional years following termination from the program. This provision will ensure a participant is maintaining these documents for a specified time. If a department audit is performed, this will be a point of review during the audit.

Subsection (d)(2) is adopted to inform service providers of the need to allow the department to conduct audits as necessary to establish the service provider's compliance with information security requirements even after the service provider's permit has been terminated, revoked, or cancelled. This provision will make a participant aware that the department will conduct an audit. The department takes the safety and security of its records very serious and expects participants and its employees to do the same.

Subsection (d)(3) is adopted to inform service providers of the need to notify the ELT Program Administrator within one business day of the termination of an employee for a cause related to honesty, integrity, good character, or reputation. This notice will be faxed to the ELT Program Administrator. This provision will give the department a chance, if necessary, to investigate transactions made by the employee in an attempt to ensure confidential records were not compromised.

Subsection (d)(4) is adopted to inform service providers of the need to develop and implement an employee security awareness training and education program. This provision is also

common to several department programs. The department expects ongoing training to reinforce the importance of secure records and confidential information.

Subsection (d)(5) is adopted to inform service providers of the requirement that they provide oversight for their procedures for protecting the confidentiality of records. As the department cannot provide oversight on a daily basis, the provider is required to do so.

Subsection (d)(6) is adopted to inform service providers of the need to develop and implement organizational policies to ensure the physical and logical security of confidential information. This provision is necessary to ensure participants put into place security measures. The department recognizes the uniqueness of each business and, therefore, allows the business to put together a security program that will be of most use to that business.

Subsection (d)(6)(A) is adopted to inform service providers of the need for organizational policies to address overall facility and worksite security standards and requirements. This provision is designed to address a participant's security measures on a business-wide basis.

Subsection (d)(6)(B) is adopted to inform service providers of the need for organizational policies to address the standards and requirements for the placement of workstations within the worksite to ensure that only authorized individuals can access or view confidential data. This provision is designed to address the individual and his or her access to confidential information.

Subsection (d)(6)(C) is adopted to inform service providers of the need for organizational policies to address the procedures and practices for the secure handling and storage of ELT Program confidential information regardless of the retention medium, and the procedures must include appropriate methods of data destruction specific to the type of retention media used.

Subsection (d)(6)(D) is adopted to inform service providers of the need for organizational policies to address the development and implementation of an ELT Program User ID and password policy. This policy should mandate that each user be assigned a User ID and that each user select a unique and confidential password that meets department standards. This provision is designed to give a participant guidance in establishing effective passwords and policies to decrease the chance of confidential information being made available to unauthorized personnel.

Subsection (d)(7) is adopted to inform service providers of the need for organizational policies to address the requirement that any breach in security must be reported within one business day of the incident discovery to the Department of Motor Vehicles ELT Program Administrator. This expedited report is necessary to ensure the department can take immediate action to ensure the integrity of its confidential records or take immediate action to mitigate an occurrence that compromised its records. The department has determined that the following information will allow it to take immediate action in resolving any possible breach:

- The reporting company's name, address, telephone number, and ELT service provider number, as specified in subsection (d)(7)(A),
- The software/service provider's name and phone number, as provided in subsection (d)(7)(B),
- The date, time, and location of the security breach incident, as specified in subsection (d)(7)(C),
- A narrative description of the security breach incident, as provided in subsection (d)(7)(C), and,
- The name and telephone number of any witness to the security breach incident, as provided in subsection (d)(7)(E).

Subsection (e) is adopted to inform service providers that they must ensure sensitive information is protected by instituting certain information protection measures. This provision is to ensure providers are taking appropriate steps to protect departmental information.

Subsection (e)(1) is adopted to make service providers aware of specific State and Federal Statutes which they must comply with. The department complies with several state and federal statutes in its maintenance of confidential records and information and expects its program participants to do the same. In this endeavor, the department determined it necessary to provide those provisions that are of exceptional importance. Among them:

- The California Information Practices Act of 1977 (Civil Code sections 1798, et seq.), as provided in subsection (e)(1)(A),
- The Public Records Act (Government Code section 6250 et.seq.), as provided in subsection (e)(1)(B),
- Provisions governing Confidential and Suppressed Records (Vehicle Code section 1808.21), as provided in subsection (e)(1)(C).
- Provisions governing the Protection of Confidentiality (Vehicle Code section 1808.47), as provided in subsection (e)(1)(D),
- The Electronic Collection of Personal Information and Permanent Privacy Policies (Government Code section 11015.5 and 11019.9), as specified in subsection (e)(1)(E),
- The California Security Breach Information Act (Civil Code sections 1798.29 and 1798.82 et. seq), as provided in subsection (e)(1)(F).

Subsection (e)(2) is adopted to ensure all information is treated as confidential or restricted by implementing the protections provided by Vehicle Code sections 1808.21, 1808.45, 1808.46, and 1808.47. This provision is intended to protect confidential department information and records.

Subsection (e)(3) is adopted to prohibit the use of information received from a customer or the department for any purpose other than purposes authorized by regulations. This provision is intended to protect confidential department information and records.

Subsection (f) is adopted to inform service providers of the need to agree to certain security terms and conditions. Rather than create a cumbersome application process by prescribing several forms, the department has opted to incorporate security terms and conditions into regulations. These provisions are static to the program and, therefore, are a better fit in the regulations rather than providing them in a form, which is subject to change. The security terms and conditions are as follows:

- To inform service providers of the need to comply with all of the information security requirements related to the ELT Program, as provided in subsection (f)(1), and
- To inform service providers that they shall be responsible for safeguarding the information received and shall restrict access to this information to their employees, agents, or parties with whom they have contracted, as provided in subsection (f)(2).

Subsection (g) is adopted to inform service providers of the requirement to agree to additional terms and conditions as listed. As stated before, the department wants to avoid a burdensome application process by prescribing several forms, the department has opted to incorporate additional terms and conditions into regulations. These provisions are static to the program and, therefore, are a better fit in the regulations rather than providing them in a form, which is subject to change. The terms and conditions also serve to protect the department from statements and harm that may be a result of other parties. The additional terms and conditions are as follows:

- To inform service providers of the requirement that they must defend, indemnify, and hold harmless, the department, as provided in subsection (g)(1),
- To inform service providers of the requirement that they reimburse the State of California (State) or any of its subdivisions for any loss or damage that the State suffers based on any act of the service provider, as provided in subsection (g)(2),
- To inform service providers of the reimbursement obligation for loss or damage to the State because of information obtained from the department or customers by false or misleading representations while performing the duties, functions, or obligations of a service provider, as provided in subsection (g)(2)(A),

- To inform service providers of the reimbursement obligation for loss or damage to the State because of information obtained from the department or customers for any purpose other than those specified in regulations or ELT agreements, as specified in subsection (g)(2)(B),
- To inform service providers of the reimbursement obligation for loss or damage to the State because of any other act resulting in any monetary loss suffered by the State or any subdivision arising out of or relating to the duties, functions, and obligations of a service provider, as provided in subsection (g)(2)(C), and
- To inform service providers of the need to consent to the Sacramento California courts as the jurisdiction for judicial review of the service provider's rights relating to the enrollment in the ELT Program, as specified in subsection (g)(2)(D).

§153.12. Cause for Refusal of Eligibility in ELT Program.

Subsection (a) is adopted to inform applicants that the failure of a company to demonstrate its honesty, integrity, good character, and reputation to the satisfaction of the department is good cause for the department to refuse to enter into an agreement with that applicant. It is the department's position that a demonstrated history of moral turpitude will be cause for refusal as the department will not enter into a partnership with an entity that may not adhere to its commitment to record security.

Subsection (b) is adopted to inform applicants that failure to comply with any listed regulation is good cause for the department to refuse to enter into an agreement with that applicant. The department developed these provisions as a means to operate the ELT program as efficiently as possible for both the department and its providers. At the same time, it is expected that providers will ensure the department's records are secure.

Subsection (c) is adopted to inform applicants that failure to comply with any provision of Division 3 of the Vehicle Code is good cause for the department to refuse to enter into an agreement with that applicant. Division 3 of the Vehicle Code provides statutes related to vehicle registration and titling. Any failure to adhere to these statutes could result in inaccurate department records.

Subsection (d) is adopted to inform applicants that failure to comply with any applicable law providing for the privacy of personal information is good cause for the department to refuse to enter into an agreement with that applicant.

Subsection (e) is adopted to inform applicants that failure to comply with any applicable law providing for the confidentiality of information is good cause for the department to refuse to enter into an agreement with that applicant.

Subsection (f) is adopted to inform applicants that any act or omission by the applicant or its agents which reasonably causes the department to determine that the applicant is not in

compliance with the rules and regulations relating to the ELT permit is good cause for the department to refuse to enter into an agreement with that applicant.

Subsection (g) is adopted to inform applicants that any act or omission by the applicant or its agents which reasonably causes the department to determine that the applicant cannot be trusted to perform the functions and duties relating to the ELT permit is good cause for the department to refuse to enter into an agreement with that applicant.

Subsection (h) is adopted to inform applicants that if the applicant or its agents have been convicted of a felony or committed an act or engaged in conduct involving moral turpitude that is substantially related to the function of an ELT participant, that is good cause for the department to refuse to enter into an agreement with that applicant.

Subsection (i) is adopted to inform applicants that if an applicant or its agents have permitted or engaged in fraudulent practices or acts with reference to clients, the public, or the department, that is good cause for the department to refuse to enter into an agreement with that applicant.

Subsections (d) through (i) are necessary to ensure the integrity of department records. As described earlier in this statement of reasons, the department takes the security of its records extremely serious. If a participant or provider does not hold their security to the same standards, the department will refuse to conduct business with that entity.

§153.14. Transaction Access.

Subsection (a) is adopted to inform service providers that vehicle titling transactions require access to the department's data through an online connectivity solution approved by the department. This provision is necessary to ensure a potential provider is aware of connection requirements prior to the application process.

Subsection (b) is adopted to inform service providers of the need to conduct electronic transactions under the ELT Program by following the processes prescribed by the department. This provision will ensure that all records are updated in a uniform and consistent manner.

Subsection (c) is adopted to inform service providers of the need to provide the department specific information regarding software, security features, and connectivity devices used by the service provider. This and other information requested by the department shall be provided in a format approved by the department, prior to the service provider completing connectivity. This provision will supply the department with information necessary to ensure its information systems are safe to connect with the provider.

§153.16. Participant Changes.

Subsection (a) is adopted to inform participants that changes shall be implemented on a quarterly schedule, which shall be the 30th day of March, June, September, and December. If the 30th day falls on a weekend or state holiday the changes shall be implemented the

following business day. This provision will ensure the ELT program is updated in a uniform and consistent manner.

Subsection (b) is adopted to inform participants of the need to complete and sign a new application prior to any change in legal structure, name, mailing address, or service provider. Subsection (b)(1) is adopted to inform participants that the department will process a software/service provider change request if the proposed software/service provider is currently authorized by the department to act as a provider. These provisions are necessary to ensure the department records related to providers and participants are accurate.

Subsection (c) is adopted to inform participants that vehicle records that contain information regarding financial institution/lenders that have changed their legal owner status shall be changed to the new legal owner once the service provider has been informed by the participant of the change, the identity of the new legal owner, and the license number of the new legal owner. This provision is necessary to ensure the accuracy of department records.

Subsection (d) is adopted to inform participants that an application must be submitted at least 90 calendar days prior to the implementation date and shall become effective on the next implementation date. This provision is necessary to ensure the department has sufficient time to update its records prior to the implementation date.

§153.18. Investigation and Review of Service Provider.

Subsection (a) is adopted to inform service providers that the department may examine, audit, and investigate the service provider's books and records using the authority and powers available under any provisions of law. This provision is necessary to ensure providers are aware that the department will take any measure available to ensure the provider is operating in a manner consistent with these regulations and maintaining department confidentiality.

Subsection (b) is adopted to inform service providers that the department will pursue any civil, criminal, or administrative remedies available in order to enforce the provisions of this Article. This provision is necessary to ensure providers are aware that the department will take any measure available to ensure the provider is operating in a manner consistent with these regulations and maintaining department confidentiality.

Subsection (c) is adopted to inform service providers that nothing in this section shall be construed to impair the department's authority under any other provision of law. This provision is necessary to ensure providers are aware that the department will take any measure available to ensure the provider is operating in a manner consistent with these regulations and maintaining department confidentiality.

Subsection (d) is adopted to inform service providers that the department may examine, audit, or investigate the prior three years of records or any agreement between a service provider and the department, even if the ELT permit has been terminated, cancelled, or revoked. This provision is necessary to ensure the provider is maintaining its records as required.

Subsection (e) is adopted to inform service providers that the examination, audit, or investigation may relate to any matter including procedures, operations, or finances relating to the service provider's activity. This provision is necessary to ensure providers are operating their business according to department requirements.

Subsection (f) is adopted to inform service providers that they shall make available to the department all records and reports relating to the activity of the service provider whether the records are in hard copy or electronic media. This provision allows the provider to be aware of the types of documentation that will be requested during a department audit.

Subsection (g) is adopted to inform service providers that failure to comply with provisions of this section is cause for immediate termination of a service provider's authorization to process transactions. This provision will ensure a provider is aware that if it is not complying with the provisions of these regulations, it risks being terminated from the program.

§153.20. Service Provider Cancellation or Termination.

Subsection (a) is adopted to inform service providers that they will be deemed to have voluntarily surrendered their permit if they cease processing transactions for six months or if they fail to respond to direct communication from the department. This oversight measure will allow the department to maintain accurate ELT records.

Subsection (b) is adopted to inform service providers that when the department determines that it is going to suspend or revoke the permit of a service provider, it will provide written notice of the intent, including the justification or rationale for the proposed action. This provision will allow the provider a time by which to measure his appeal. It will also allow the provider a means by which to respond to those issues which caused the suspension or revocation.

Subsection (b)(1) is adopted to inform service providers of the requirement to respond within 30 calendar days from the date of the written notice if the service provider wants to contest the proposed action prior to the action taking effect. This provision is necessary to ensure a provider is aware of the deadlines in place for him or her to contest the action.

Subsection (b)(1)(A) is adopted to inform service providers that in event of emergency, the department may take immediate action and provide a 30 calendar day notice for the opportunity to appeal the decision after the action is taken. This provision is designed to allow the department to take immediate action to protect its information.

Subsection (b)(2) is adopted to inform service providers that they may not transmit or receive information through the ELT interface if they have had their authority suspended, revoked, or if they have surrendered their permit. This provision will prohibit an unauthorized entity from interfacing with the department.

Subsection (c) is adopted to inform service providers of the need to convert electronic titles to paper titles prior to withdrawing from the ELT Program and service providers need to notify

the department in writing at least 90 calendar days prior to the withdrawal from the program. This provision will give the department sufficient time to update its records and allow a provider sufficient time to transfer titles.

Subsection (c)(1) is adopted to inform service providers that the department may charge a fee to the service provider for the cost of issuing the paper titles if the service provider does not convert the titles prior to withdrawing. This provision will allow the department to recoup the costs when it has to convert the titles on its own.

Subsection (c)(1)(A) is adopted to inform service providers that the department will bill the service provider for the cost of the title conversion. This provision will ensure the provider is aware of that the department will bill the provider in the event it has to convert titles.

Subsection (c)(1)(B) is adopted to inform service providers that the bill is to be paid within 30 calendar days from receipt. This provision is necessary to explain to a provider when payment is due.

Subsection (d) is adopted to inform service providers of specific items required when a service provider terminates from the program. These provisions are necessary to ensure a provider is aware that it has certain obligations to fulfill prior to terminating from the program. Those requirements will ensure the department has access to all records and will ensure that no unauthorized personnel have access to those records. These provisions will achieve these measures through the following methods:

To inform service providers that they are required to deliver all electronically stored data files to the department before terminating from the program, as provided in subsection (d)(1), and

To inform service providers that they are required to destroy or electronically erase all department information when and as directed by the department when terminating from the program, as provided in subsection (d)(2).

Subsection (e) is adopted to inform service providers of the need to retain records for three years after withdrawing or terminating from the program. The department requires the retention of records for three years, whether in or out of business. This will assist in the auditing process, if necessary.

§153.22. Participant Cancellation or Termination.

Subsection (a) is adopted to inform voluntary participants that applications are valid until the company withdraws or terminates from the program. It also informs participants of additional information required when the participant withdraws or is terminated from the program. This provision will ensure the participant is aware that it does not have to renew, as is required with most department programs.

Subsection (a)(1) is adopted to inform participants of specific items required when they withdraw from the program. These provisions will give the department sufficient time to update its records as well as give the participant sufficient time to convert electronic files to

paper titles. The department has determined that the following requirements will allow the process to be most efficient:

- Notify the department in writing at least 90 calendar days prior to going out of business, as provided in subsection (a)(1)(A), and
- Convert all electronic titles to paper titles before withdrawing from the program, as specified in subsection (a)(1)(B).

Subsection (a)(2) is adopted to inform voluntary participants that participation in the program can be terminated by the department upon the department giving a 30 day written notice with reasons to the participant. This provision is necessary for the department to quickly terminate a participant when that participant is not operating according to department requirements.

Subsection (a)(2)(A) is adopted to inform voluntary participants that the department will notify the participant and their service provider of their termination from the program. This provision is necessary for the participant to be aware that, because of their termination from the program, they will no longer be able to access information through the provider.

Subsection (a)(2)(B) is adopted to inform voluntary participants of the requirement that upon notice of termination from the program they need to work with their service provider to convert all existing electronic titles to paper titles. This provision is necessary for the participant to be aware of its requirements prior to ending business.

Subsection (a)(2)(C) is adopted to inform service providers that upon notification from the department of the upcoming termination of the voluntary participant, the service provider shall work with the voluntary participant to convert the existing electronic titles, and then shall not transmit any further information through the electronic interface from the voluntary participant to the department. Requiring the service provider to end transmission to the participant, will ensure that the participant is no longer able to access department records, other than the records necessary to convert existing electronic titles.

Subsection (b) is adopted to inform mandatory participants that they may only terminate from the program if they cease doing business in California. This provision is necessary to ensure the mandatory participants are not authorized to terminate from the program.

Subsection (b)(1) is adopted to inform mandatory participants of the need to notify the department in writing at least 90 calendar days prior to their withdrawal from the program and to convert all electronic titles to paper titles prior to withdrawing from the program. This provision is necessary to ensure the department has sufficient time to update its records and databases to reflect the closure.

Subsection (c) is adopted to inform participants of the continued obligation to comply with regulations regarding information security and audits. This provision will ensure the continual attention to department security with respect to its records and information.

Subsection (d) is adopted to inform participants of the need to retain records for three years after withdrawing or terminating from the program. This provision is necessary for tracking purposes. The department requires the maintenance of records for auditing purposes.

Alternatives Considered

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Determinations

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- The proposed regulatory action will not impose a mandate on local agencies or school districts or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses. This proposal implements an ELT program as required by AB 1515 requiring all financial institutions to participate in an ELT program.