On April 20, 2018, the Department of Motor Vehicles (department) published for comment its proposed adoption of Sections 153.00, 153.02, 153.04, 153.06, 153.08, 153.10, 153.12, 153.14, 153.16, 153.18, 153.20, 153.22, 153.24, 153.26 and 153.28, in Article 3.0, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to Electronic Lien and Titling Program. The comment period ended on June 4, 2018 with the department having received comments on the proposed regulatory adoptions. The proposed action was submitted to the Office of Administrative Law (OAL) for final review on July 2, 2018. Upon its review, the OAL determined that the proposed action failed to meet clarity and necessity standards in several forms referenced in the proposed regulations, in the initial statement of reasons and in the proposed regulatory text.

In response to OAL’s findings, the department has amended several forms, which will be discussed below, made clarifying changes to the proposed regulatory text and provided additional necessity to certain provisions that were not sufficiently explained in the initial statement of reasons.

- **Amendments to the Originally Proposed Regulatory Text**

  In its review, the OAL identified several sections that failed to meet the clarity standard. The department considered the OAL’s feedback and ultimately agreed that amendments should be made to ensure the proposed regulations are clear.

  § 153.00. Purpose

  Subsection (a) is removed for lack of necessity. This provision is not regulatory but rather informational. Due to the repeal of subsection (a), reference to subsection (b) is removed.

  § 153.02. Definitions

  The department is not proposing further amendments to Section 153.02.

  § 153.04. Requirements for a Service Provider Permit

  The department is not proposing further amendments to Section 153.04.
Addendum to the Initial Statement of Reasons

§153.06. Service Provider’s Permit Requirements

Subsection (a) is amended to remove the term ‘in full force and effect” and replace with “currently valid.” Amending the verbiage to a commonly used phrase will ensure the rule is clear.

Subsection (b) is amended to remove language related to the Secure File Transfer testing. Instead, subsection (b) now specifies that a service provider shall not send any data to the department prior to successful transmission of a test file that validates connectivity has been established. This amendment provides more clarity related to the process by which the connection is tested. During testing, the department and the service provider will exchange a “test” file, containing no confidential or personal identifying information. Once the file is securely transferred, the connectivity is validated, and the testing is complete. The transfer testing is necessary as it protects the integrity of the department’s database information data by encrypting and authenticating the server as well as the end user in the transfer. The department routinely validates connectivity in other programs where third parties can access the department’s records. At no time has the department been made aware that the process was an excessive, unnecessary, or inappropriate step to the application process.

§153.08. Service Provider’s Permit Application

Subsection (a) is amended to update the revision date of the Electronic Lien and Title Service Provider Application, form REG 670 from 1/2018 to 8/2018. It was determined that several portions of the REG 670 failed to meet the clarity standard and the adoption of the form in the initial statement of reasons failed to meet the necessity standard. The form has been revised to ensure compliance with these standards. The originally proposed and revised forms will be provided to the interested parties who submitted comment during the 45-day comment period and will be posted on the department’s website.

Electronic Lien and Title Service Provider Application, form REG 670

The REG 670 contains nine sections consisting of fillable fields and applicant acknowledgements.

The top portion of the REG 670 contains space for the applicant to indicate whether the form is being submitted as an enrollment application, a renewal, or to provide a change of existing information. This information was not provided on the originally proposed form and the department ultimately determined that requiring the applicant to indicate the type of transaction is necessary as it allows the department to process the requested transaction as efficiently as
Addendum to the Initial Statement of Reasons

possible. The top space of the form continues to instruct the applicant to include a copy of its business license.

Section 1 – Service Provider

Section 1 of the form is unchanged from the prior version and continues to solicit information related to the applicant’s business name, employer identification number, address, an indication of whether the applicant has ever offered services to lienholders and, if so, an indication of how many years. This information is necessary as it allows the department to begin the enrollment process for new applicants, and allows the department to have sufficient information to retrieve an existing file when processing a renewal or a change of information.

Section 2 – Type of Ownership

Section 2 requires the applicant to indicate whether they are sole owner, a partnership, a corporation, or a limited liability company, as well as an indication of the license number and the agency the applicant is registered with. This information is necessary when the department is enrolling a new applicant and is consistent with all departmental programs where a business is applying to the department for a permit or license. The department’s records retain information related to the type of ownership. The prior version of the REG 670 contained a field where the applicant was required to indicate whether their ownership is registered in California, however, upon review, it was determined that this field was of no value so the field was removed from the form.

Section 3 – Owner/Corporation Name

Section 3 is unchanged from the previous version of the form and continues to require an indication of an owner or corporation name, if there is a name that is different from the name provided in Section 1. This information is necessary to ensure the department’s records related to the applicant contains complete owner and/or corporation information are current and accurate.

Section 4 – Business Contact

Section 4 is unchanged from the previous version of the form and continues to require an indication of a name, address, email address, and telephone number of the business contact. This information is necessary to ensure the department can make contact if it has questions or concerns related to the application or for the duration of the permit.
Addendum to the Initial Statement of Reasons

Section 5 - Certification

Section 5 is unchanged from the previous version of the form and continues to require the applicant to sign under penalty of perjury that the information provided in the form is true and correct. This perjury statement is consistent with all departmental forms and serves an applicant’s certification that they have provided accurate information on the form.

The second page of the form contains the terms and conditions of participation in the electronic lien and title program. The previous version of the form provided a departmental website where an applicant can find more information, however, the department ultimately determined that the website reference should be removed in order to avoid possible confusion during the application process.

Section 6 - General

Section 6 is unchanged from the previous version of the form and continues to require the applicant to agree that, if the service provider terminates participation in the program, the provider shall notify the department in writing 30 days prior to the termination and convert existing electronic titles to paper titles prior to terminating enrollment.

Section 6 also requires the applicant to acknowledge that the department may terminate a Service Provider’s participation in the ELT program upon giving a 30 day written notice to the participant.

§153.10. Review of Application

Subsection (a) is amended to remove the word ‘insufficient’ and replace with ‘incomplete.’

Subsection (b) is amended to remove reference to an application being “sufficient” and, instead, cites the requirements of Section 153.04, as it relates to the requirements for a service provider permit, Section 153.06, as it relates to the permit requirements, and Section 153.08, as it relates to the application. Once the department verifies that all the provisions in these sections have been met, the department will determine the application to be sufficient to issue a permit.

§153.12. Term of Service Provider’s Permit.

No additional changes are proposed to Section 153.12
Addendum to the Initial Statement of Reasons

§ 153.14. Refusal, Suspension, Revocation of Service Provider’s Permit

It was determined that a clarity deficiency exists related to the word ‘refusal’ that is used in the section title as well as in subsection (a). Specifically, it was not clear whether refusing an application or renewal means the same thing as denying, and whether the department would be refusing to consider the application or refusing to approve the application. The department intends that the term ‘refusal’ means that, after the review of an application that has been determined to be complete as specified in Section 153.10(a), the department is refusing to issue a permit based on one of the circumstances identified in subsection (a)(1) – for a violation of the rules related to the ELT program, or in subsection (a)(2) – acts or omissions that the department determines create a risk to the public. If the department were to refuse to consider an application, it would be because the application process, as specified in Section 153.10 was incomplete, at which time the department would contact the applicant and instruct them how to complete the application process. The use of the word ‘refusal’ is also consistent among several departmental programs where the department accepts an application, reviews for completeness, notifies the applicant that the application is complete, and then conducts the review of the application. Other programs include the autonomous vehicles program (Title 13, Article 3.7, Section 227.40 – Refusal of an Autonomous Vehicle Testing Permit or Testing Permit Renewal), traffic violator schools (Title 13, Article 4.7, Section 345.86 – Refusal to Issue, Suspension, Revocation or Cancellation of a License), and information requester codes (Title 13, Article 5.0, Section 350.52 – Refusal, Suspension or Revocation of Requester Codes.) To ensure consistent use of terms throughout the department’s program, the department is not proposing any changes to Section 153.14(a).

However, the department is amending subsection (a)(1) to remove the phrase ‘this article’ and replace with ‘Sections 153.00 through 153.28.’ Article 3.0 contains rules related to the department’s Vehicle Registration and Titling Programs, most of which have no impact on a service provider’s permit. This amendment will make clear that a permit may be refused issuance, suspended or revoked based upon the provisions related solely to the ELT regulations codified in Sections 153.00 through 153.28 and not for those in other, unrelated sections of Article 3.0.

Subsection (a)(2) is amended to remove the phrase “the conduct by the service provider.” This phrase limits the fraudulent conduct to the service provider and fails to include conduct of the provider’s agents, employees, contractors, or designees. Removing that language will ensure the subsection is inclusive of all entities associated with the service provider.
Addendum to the Initial Statement of Reasons

§153.16. Demand for Hearing after Refusal or Non-Renewal

No additional changes are proposed to Section 153.16

§153.18. Reinstatement of Service Provider’s Permit

Section 156.18 contains a non-substantive amendment to remove the subsection (a). This section is only one paragraph so identifying it as a subsection is not necessary.

§153.20. Lienholder’s Permit

Section 153.20 is amended to remove the reference to subsection (a). This section is only one paragraph so identifying it as a subsection is not necessary. Section 153.20 is further amended to remove the term ‘in full force and effect” and replace with “valid.” Amending the verbiage to a commonly used phrase will ensure the rule is clear.

§153.22. Lienholder’s Permit Application

Subsection (a) is amended to update the revision date of the ELT Program Lienholder Application, form REG 671, from 1/2018 to 8/2018. Changes to the form were made in order to ensure clarity and establish necessity.

Electronic Lien and Titling (ELT) Program Lienholder Application, form REG 671

There are no additional changes proposed to the first page of the REG 671 as the main clarity and necessity issues were discovered on page 2 of the form and are largely consistent with the changes made to page 2 of the REG 670 adopted in Section 153.08 and include the following:

- The previous version of the form provided a departmental website where an applicant can find more information, however, the department ultimately determined that the website reference should be removed in order to avoid possible confusion during the application process.
- Section 7 (Applicant Agreement), item 1, continues to require a lienholder to comply with the ELT provisions of Title 13, but the agreement now identifies each applicable section specifically. This amendment eliminates the need for an applicant to review each section of the rules to determine which sections are applicable and, instead, identifies each of those sections separately.
- Section 7 (Applicant Agreement), item 2, continues to require a lienholder to notify the department of changes to their name, address, closure, or sale of business, at least 30 days prior to the change, however, the term
Addendum to the Initial Statement of Reasons

‘including but not limited to’ is removed for lack of necessity. All the changes the department must be notified of are listed in this section.

- Section 8 (Information Security Requirements) is amended to remove item 2, which specified that the lienholder agrees to be held responsible for any misuse of the information by its employees, agents, or parties to whom the information was entrusted because it was determined to be unclear.

§153.24. Review of Lienholder’s Application

Subsection (a) is amended to specify that the service provider will be notified in addition to the lienholder. This amendment is in response to comments received during the 45-day comment period. The department verified with the electronic lien and titling program that it is currently the practice to notify both entities, so the regulations is amended to accurately reflect the current process.

§153.26. Term of Lienholder’s Permit

Section 156.26 contains a non-substantive amendment to remove the subsection (a). This section is only one paragraph so identifying it as a subsection is not necessary.

§153.28. Lienholder Withdrawal from Electronic Lien and Titling Program and Conversion of Electronic Titles

Subsection (a) is amended to specify that a lienholder may withdraw from the ELT program under the circumstance provided in subsections (a)(1) or (a)(2). As originally proposed, subsection (a) required the lienholder to request withdrawal. The words ‘request to’ are removed to eliminate potential confusion. If the applicant meets the withdrawal qualifications and submits the form REG 674, identified in subsection (b), their withdrawal will be processed.

Subsection (a)(1) is amended to remove the words ‘mergers and acquisitions’ and is amended to provide clarity by explaining that a withdrawal can be made when a lienholder has been acquired by or merged with a permitted lienholder that is assuming all of the acquired or merging lienholder’s liens. The section is further amended to specify that either the acquired or merging lienholder can withdraw from the program. This provision is necessary as it provides greater detail related to the withdrawal process facilitated by lienholders.

Subsection (a)(2) contains a non-substantive amended to change the term ‘going out of business’ to ‘closure of business.’
Addendum to the Initial Statement of Reasons

Subsection (b) is amended to update the revision date of the ELT Program Withdrawal Request, form REG 674 from 1/2018 to 8/2018. The only change made to this form was the removal of the NOTE section in the middle of the originally proposed form, because it was found to be unclear.

Lastly, the authority note has been updated to include reference to Vehicle Code section 4451 as it relates to Certificates of Ownership.

- Addendum to the Initial Statement of Reasons

It was determined that the department failed to meet the necessity or clarity standards in several subsections discussed in the initial statement of reason and in portions of the forms proposed to be adopted in the originally proposed language. Changes are being made to the forms and additional necessity is provided in the relevant sections of the initial statement of reasons and in the forms.

§ 153.02. Definitions.

Subsection (a) is adopted to define ‘business documents’ as a lienholder’s license or charter by state or federal banking authorities to loan money for the purchase of a vehicle and proof of authority to conduct auto loan business in California or a service provider’s business license. Even though the term ‘business documents’ does not appear in the proposed regulations, the Electronic Lien and Titling Program Lienholder Application, form REG 671, references this subsection when requiring an applicant to submit their business documents as part of the application process. This definition is necessary as, when the applicant is completing the application, it provides information related to the documents the department requires as part of the application process.

Subsection (b) is adopted to define ‘electronic titles’ as the electronic data file created by the department and transmitted to a lienholder via their service provider in lieu of a certificate of ownership. The term ‘electronic titles’ is a commonly used term in the electronic lien and titling program and is commonly used throughout the department, by lienholders, and by service providers. However, the department determined it necessary to define in regulations for full transparency and to eliminate confusion.

Subsection (c) is adopted to define ‘lienholder’ as a legal owner as defined in Vehicle Code section 370. Similar to subsection (b) above, the term ‘lienholder’ is a commonly used term throughout the electronic lien and titling program, however, the department determined it necessary to include in the definitions to ensure the regulations are complete.
Addendum to the
Initial Statement of Reasons

§153.12. Term of Service Provider’s Permit

Subsection (a) is adopted to make clear that a service provider’s permit shall be valid for a period of five years from midnight of the last day of the month of issuance. Subsection (a) also specifies that the renewal of the permit for the ensuing term may be obtained by the service provider to whom the permit was issued upon application to and approval by the department. In its initial statement of reasons, the department indicated that, by having service providers renew their permits every five years, the department’s records can be reconciled and updated if there is any information that has changed related to the service provider’s business name, address, type of ownership, or contacts that was not updated previously. The department determined a term of five years is sufficient as it allows providers to conduct their business for several years, but also allows the department an opportunity to periodically update its records, through the renewal process, to ensure the provider continues to meet the permit requirements.

§153.16. Demand for Hearing after Refusal or Non-Renewal

Subsection (a) is adopted to make clear that, upon a refusal by the department to issue or renew a service provider’s permit, the service provider shall be entitled to demand in writing a hearing before the director or his or her representatives within 60 days after the notice of refusal. In its initial statement of reasons, the department indicated that subsection (a) is necessary to provide service provider’s or service provider applicants with the requirements in order to be granted a hearing.

In determining the time limit on requesting a hearing, the department reviewed processes used in other programs and while many other programs are held to more stringent time frames when requesting a hearing, the department ultimately determined that sixty days was sufficient time for the applicant or provider to receive the notice of refusal, consider their options, then submit a hearing request.

§153.18. Reinstatement of Service Provider’s Permit

Section 153.18 is adopted to make clear that, upon the suspension of a service provider’s permit, the service provider shall cease all transmissions until the department has verified that the service provider has taken appropriate action to correct the issues that caused the suspension and the department has lifted the suspension. This provision is necessary as the application process is designed in manner that the applicant must establish that they have process in place to ensure the integrity of the department’s records. If the permit is revoked, it is
because they failed to meet the requirements established in the electronic lien and titling program rules and failure to adhere to the rules places the department’s records at risk of being used or viewed for purposes other than the permit was issued. For that reason, once the permit is suspended, the permit holder is not authorized to transmit records until the deficiencies for which the suspension was imposed have been resolved.

§ 153.20. Lienholder’s Permit

Section 153.20 is adopted to make clear that a lienholder shall not file a security interest electronically without having applied to the department for a permit to participate in the electronic lien and titling program and without the department having issued a lienholder’s permit, and the permit being valid. This provision is necessary to ensure that the lienholder does not electronically transmit files without having first gone through the application process and having been issued a permit. Issuance of a permit is proof that the lienholder has met the requirements to ensure the electronic transmission is sent and received in a manner that will maintain the integrity of the department’s records or of any file that is transmitted.

§ 153.24. Review of Lienholder’s Application

Subsection (a) is adopted to make clear that the department will review an application for a lienholder’s permit and will notify the applicant within thirty days of whether the application is complete or incomplete. This provision is necessary to relay the department’s initial review process to the applicant. The department determined that thirty days is sufficient as this is the practice used in other department programs where an application is received by the department and reviewed for completeness. The department anticipates that, as with other programs, thirty days can be achieved at current staffing levels and with the volume of documents that are submitted with an application packet.