



**Office of the Governor
Regulatory Compliance Division
Rule Submission Memorandum**

To: Erin Bennett, Regulatory Compliance Division Director

From: Tracey Beaver, General Counsel

Date: November 15, 2021

Subject: 43 TAC §§215.150, 215.151, 215.153, 215.154, and 215.155 and new 43 TAC §215.505

The Texas Department of Motor Vehicles has proposed a rulemaking for amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155 and new 43 TAC §215.505, in the November 12, 2021 issue of the *Texas Register*. The proposed rule affects market competition and is, thus, submitted to the Regulatory Compliance Division for review. The proposed rule, as it appeared in the Texas Register in its entirety, is attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas Department of Motor Vehicles provides answers to the following questions.

1. Briefly describe the proposed rule.

The proposed rule amends §§215.150, 215.151, 215.153, 215.154, and 215.155 under amended Transportation Code §503.0626 and §503.0631 to direct the department to manage the temporary tag database and amended Transportation Code §503.067 that prohibits the display and issuance of unauthorized temporary tags.

In addition, the proposed rule amends §215.155 to conform with Transportation Code §503.063 concerning requirements related to the issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection.

Finally, proposed new §215.505 concerning the process for the department to deny a dealer's or converter's access to the temporary tag database as authorized in amended Transportation Code §503.0626 and §503.0631 and new §503.0632(f).

2. What is the purpose of the proposed rule?

The primary purpose of the proposal is to implement under House Bill 3927, 87th Legislature, Regular Session (2021), concerning the

- management of temporary tag database and prohibitions on the display and issuance of unauthorized temporary tags;
- issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection. and
- process for the department to deny a dealer's or converter's access to the temporary tag database.

The department has also proposed amendments to 43 TAC §215.152 and 215.158 concerning the maximum number of temporary tags that a dealer or converter may issue under HB 3927 in this issue of the *Texas Register*.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The impetus was the enactment of HB3927 enacted in the 87th Legislature, Regular Session (2021), and changes to Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f).

4. Describe the legal authority for the proposed rule.

a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Yes. Transportation Code §§503.062, 503.0625, 503.0626, 503.063, 503.0631, 503.0632(f), and 503.067, as amended by HB 3927,

- Transportation Code §503.062 states how a dealer may use and display a dealer's temporary tag;

Transportation Code §503.0625 states how a converter may use and display a converter's temporary tag.

- Transportation Code §503.0626 and §501.0631 authorizes the department to manage the temporary tag databases.

- Transportation Code §503.063 addresses how a buyer's temporary tag may be used.

- Transportation Code §503.0632(f) authorizes the department to deny a dealer or converter access to the temporary tag database and establish an appeal process.

- Transportation Code §503.067 prohibits the unauthorized display of a temporary tag or the issuance of a temporary tag except by a dealer.

b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the rule is within the scope, and reference the applicable state statute(s).

Yes. Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

The Texas Department of Motor Vehicles reviewed legislation, met twice with the Motor Vehicle Industry Regulatory Advisory Committee, and drafted the proposed rule. The board of the Texas Department of Motor Vehicles considered the proposed rule in an open meeting, requested comments from stakeholders at the open meeting, and authorized the department to publish the proposed rule for public comment in the Texas Register.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm. If applicable, attach any documentation or records of the harm.

The proposed rule is to implement HB 3927, Transportation Code §§503.0626, 503.063, 503.0631, 503.0632(f), and 503.067, under HB 3927. including:

- management of the temporary tag database and prohibitions on the display and issuance of unauthorized temporary tags;
- issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection;
- process for the department to deny a dealer's or converter's access to the temporary tag database.

The intent is to eliminate the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement; or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment.

7. Summarize any less restrictive alternatives that the state agency identified for addressing the same harm, including a comparison of the proposed rule to the alternatives, and provide a justification for not pursuing a less restrictive alternative.

A less restrictive alternative was not identified. The proposal is based on the statutory requirements in Transportation Code §§503.0626, 503.063, 503.0631, 503.0632(f), and 503.067.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

The proposal:

- establishes requirements for dealers and converters related to managing access to the temporary tag database, including not allowing access by unauthorized persons;
- conforms to statute by including converters within the temporary tag display requirements;
- removes printed samples of temporary tags from the rule;

- informs the reader of the location in statute of the permitted uses for dealer's tags, and clarifies when a courtesy car may be used with dealer's tags;

- conforms to amendments in HB 3927 concerning certain types of vehicles that may display a buyer's temporary tag without an exception;

- establishes the process for department to deny dealers or converters access to the temporary tag database if the dealer or converter "fraudulently obtained temporary tags from the temporary tag database;"

- It creates a barrier to market participation in the state.
- It results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.
- It both creates a barrier to market participation in the state and results in higher prices or reduced competition for a product or service provided by or to a license holder in the state.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

The proposal affects market competition to the extent that:

- House Bill 3927 and Transportation Code §503.0626. and §503.0631 to direct the department to manage the temporary tag database and amended Transportation Code §503.067 prohibits the display and issuance of unauthorized temporary tags;

- Establishing requirements on dealers and converters to manage access to the temporary tag database may cause some persons not to enter the market or increase costs based on complying with the requirements to use the database.

10. Did the state agency self-determine that the proposed rule affects market competition or did the Regulatory Compliance Division identify the proposed rule as possibly affecting market competition?

The Texas Department of Motor Vehicles identified the proposed rule as affecting market competition.

11. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

The proposed rule does not relate to a question that is the subject of an opinion request pending before the Office of the Attorney General or to an opinion previously issued by the Office of the Attorney General.

12. Does the proposed rule relate to a matter on which there is pending litigation?

The department has administrative license revocation actions pending against dealers that have issued excessive numbers of temporary tags. The department does not have any matters pending that arise from the changes in law made by HB 3927.

13. Is there anything else that you would like the Regulatory Compliance Division to know about the proposed rule?

Regulatory Compliance Division

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A copy of the executive summary for the proposal that was submitted to the board of the Texas Department of Motor Vehicles is attached.

Sincerely,

Tracey Beaver
General Counsel
Texas Department of Motor Vehicles

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Proposed new §215.505 addresses the process for denial of access to the temporary tag database.

In addition, HB 3927 amended Transportation Code §503.0626 and §503.0631 to direct the department to manage the temporary tag database and amended Transportation Code §503.067 to prohibit the display and issuance of unauthorized temporary tags. Proposed amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155 address managing the database and limiting the ability of unauthorized users to obtain and display temporary tags.

Finally, HB 3927 amended Transportation Code §503.063 concerning requirements related to the issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection, which is addressed in §215.155.

The department met twice with the Motor Vehicle Industry Regulatory Advisory Committee in considering this proposal. The department appreciates the committee member's serious consideration of the issues presented by HB 3927 and the member's comments.

The following paragraphs address the amendments and new section in this proposal.

The amendments to §215.150(a) conform to the amendment requirement in Transportation Code §503.067 that temporary tags must be for an authorized purpose. The amendments to §215.150(b) reference that a dealer's or converter's ability to obtain temporary tags is limited by new Transportation Code §503.0632(a-e) concerning maximum tag limits and §503.0632(f) concerning denial of access to the temporary tag database.

New §215.150(d) establishes requirements to manage access to the temporary tag database. The requirements are consistent with Transportation Code §503.0626 and §503.0631 which, as amended, require the department to manage a secure database and support preventing unauthorized access to the database necessary to implement §503.067.

The amendment to §215.151 adds converters to the procedure for displaying a temporary tag as required by Transportation Code §503.0625.

The amendments to §215.153 are necessary to prevent unauthorized access to temporary tags necessary to implement §503.067. The amendments remove the sample copies of temporary tags from display, because the department is concerned that unauthorized persons may be able to use computer software to manipulate the sample to create a high-quality tag, or at least a better-quality copy of a temporary tag than could be obtained by photography or scanning. Further, having the tags online limit the department's ability to change the design even if requested by law enforcement. As such, the department proposes not to display the design. Law enforcement would be informed of the design and any design changes, and dealers and converters using the database will print the current design for their customers and own needs.

The amendments to §215.154 clarify the use of dealer's tags and support preventing unauthorized access to the database necessary to implement §503.067. The amendment to §215.154(d)(1) adds that designation and informs the reader that Transportation Code §503.062 states the authorized uses of a dealer temporary tag. This avoids the potential incorrect inference that a dealer's tag could be used for any purpose not prohibited in redesignated §215.154(d)(2). The amendments to redesignated

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §§215.150, 215.151, and 215.153 - 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database. The amendments and new section are necessary to implement amended Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f) concerning denial of access to the temporary tag database, management of the temporary tag database, requirements related to the issuance of certain temporary tags without an inspection, and prohibits the display and issuance of unauthorized temporary tags under House Bill (HB) 3927, 87th Legislature, Regular Session (2021). The department has also proposed amendments to 43 TAC §215.152 and §215.158 concerning maximum temporary tag limits in this issue of the *Texas Register*.

EXPLANATION. House Bill 3927 amended Transportation Code §503.0626 and §503.0631 and adds §503.0632 to provide the department with tools to limit the fraudulent misuse of the temporary tag database. The tools include the authority to deny access to the temporary tag database without having to first revoke the dealer's or converter's license and to establish the maximum number of temporary tags that a dealer or converter may issue.

215.154(d)(2)(D) clarify that a dealer's tag cannot be issued for an off-highway vehicle, which are now defined in Transportation Code §551A.001, because off-highway vehicles are not eligible for registration under Transportation Code §502.140. Section 551A.001 defines an off-highway vehicle as an "all-terrain vehicle or recreational off-highway vehicle," a "sand rail," or a "utility vehicle." The amendments to §215.154(e)(3) update the limitation on use of courtesy cars to the current allowed use.

The amendment to §215.155 cites Transportation Code §503.063(i) and (j), which were added by HB 3927 to specifically authorize issuance of buyer's temporary tags to certain vehicles sold out of state or at auction without an inspection. The amendment to §215.155(f) is a nonsubstantive correction. The citation refers to "dealer's tags," which are discussed in §215.154 and not §215.153.

New §215.505 establishes the process for denial of access to the temporary tag database under new Transportation Code §503.0632(f), as added by HB 3927. New §215.505(a) describes the conduct that constitutes "fraudulently obtained temporary tags from the temporary tag database," and its grounds under §503.0632(f), for denial of access to the temporary tag database. New §215.505(b) establishes that the department will deny access to the database 10 days after it sends notice to the dealer or converter that the department has determined the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. The dealer or converter may negotiate with the department during this period. New §215.505(c) provides that the notices will be sent to the dealer's or converter's last known address on the department's records.

New §215.505(d) establishes the appeal process under Subchapter O, Chapter 2301, Occupations Code as required by new §503.0632(f) and HB 3927. The appeal process requires the dealer to submit a request for hearing with the department within 26 days from the date the initial notice is sent to the dealer or converter. Further, as proposed, requesting a hearing will not stay the denial of access.

New §215.505(e) provides that the department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access. The subsection is to clarify that the denial of access process based on the department's determination that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database is separate from any administrative action the department may bring against the dealer or converter, even though they may be based on the same facts. New §215.505(f) provides that the denial determination will become final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and new section are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. There will be no additional costs to the department and the proposed amendments will have no significant impact on revenue collections.

Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employ-

ment or the local economy as a result of the proposal, because the overall number of motor vehicle sales will not be affected.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the proposed rules are in effect the public benefits include establishing rules to implement HB 3927 and limiting the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement; or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment.

Ms. Thompson anticipates that the proposed requirements in proposed amendments to §215.150(d) establishing dealer and converter duties to monitor temporary tag usage, manage account access, and take timely and appropriate actions to maintain system security will have a cost, but further anticipates that most license holders are operating in a businesslike manner and as such any additional cost will be minimal.

The requirements are to manage secure access to the temporary tag database as the license holder would secure any other valuable business asset. The requirements are as follows:

- (1) monitoring temporary tag usage;
- (2) managing account access; and
- (3) taking timely and appropriate actions to maintain system security, including:
 - (1) establishing and following reasonable password policies, including preventing the sharing of passwords;
 - (2) limiting authorized users to owners and bona fide employees with a business need to access the database;
 - (3) removing users who no longer have a legitimate business need to access the system;
 - (4) securing printed tags and destroying expired tags; and
 - (5) securing equipment used to access the temporary tag database and print temporary tags.

While implementing the requirements will differ depending on factors such as the number of people the license holder employs, the license holder's sales volume, and the license holder's general organization and business model, the license holder is not required to purchase any special equipment, employ additional persons, or prepare additional reports. Given the vast differences in the approximately 22,000 license holders this proposal will affect, a calculation of costs is impossible. Some may choose to place the requirement on existing management. Others may hire personnel and create systems to monitor multiple licensees across multiple locations. Either of these or other methods are a business decision of the license holder and beyond the scope of the department to determine.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the Public Benefit and Cost Note section of this proposal has determined that proposed §215.150(d) may result in additional costs for license holders. The department estimates that more than half of the 22,000 affected license holders are small or micro-businesses.

The department has tried to minimize cost to license holders. The requirements in §215.150(d) are designed to be flexible and without a requirement that a license holder incur costs from the

purchase of special equipment, employment of additional persons, or preparation of additional reports. In addition, the proposal does not limit or affect a license holder's ability to sell motor vehicles.

The department has considered not adopting §215.150(d), exempting small and micro-business license holders from §215.150(d), and adopting a limited version of §215.150(d) for small and micro-business license holders. The department rejects all three options. It has been small and micro-business license holders that have misused the temporary tag database and issued the tens of thousands of illegal tags. Further, the requirements of §215.150(d) are minimal. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed §215.150 for a small or micro-business license holder.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation establishing dealer and converter duties to monitor temporary tag usage, manage account access, and take timely and appropriate actions to maintain system security; and establishes the creation of a notice and appeal process following a department determination and action denying access to the temporary tag database;
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150, 215.151, 215.153 - 215.155

STATUTORY AUTHORITY. The department proposes amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag for authorized purposes only.

(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until:

(1) the department denies access to the temporary tag database under Transportation Code §503.0632(f) and §215.505 of this title (relating to Denial of Dealer or Converter Access to Temporary Tag System);

(2) the license holder issues the maximum number of temporary tags authorized under Transportation Code §503.0632(a)-(d); or

(3) the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

(d) A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

§215.151. *Temporary Tags, General Use Requirements, and Prohibitions.*

(a) A dealer or converter shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

(b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being operated.

(c) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.

(d) A motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

§215.153. *Specifications for All Temporary Tags.*

(a) Information printed or completed on a temporary tag must be in black ink on a white background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle, the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four inches high and at least seven inches wide.

(b) A temporary tag must be:

(1) composed of plastic or other durable, weather-resistant material; or

(2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

(c) A temporary tag may only be issued and printed from the department's temporary tag database as described in §215.152 of this title (relating to Obtaining Numbers for Issuance of Temporary Tags) and §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags). [must comply with the specifications of the applicable temporary tag identified by the following appendices:]

[(1) Appendix A-1 - Dealer's Temporary Tag - Assigned to Specific Vehicle;]

[Figure: 43 TAC §215.153(e)(1)]

[(2) Appendix A-2 - Dealer's Temporary Tag - Assigned to Agent;]

[Figure: 43 TAC §215.153(e)(2)]

[(3) Appendix B-1 - Buyer's Temporary Tag;]

[Figure: 43 TAC §215.153(e)(3)]

[(4) Appendix B-2 - Preprinted Internet-down Temporary Tag; and]

[Figure: 43 TAC §215.153(e)(4)]

[(5) Appendix C-1 - Converter's Temporary Tag.]

[Figure: 43 TAC §215.153(e)(5)]

§215.154. *Dealer's Temporary Tags.*

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062; and

(2) may not be displayed on:

(A) [(1)] a laden commercial vehicle being operated or moved on the public streets or highways;

(B) [(2)] on the dealer's service or work vehicles;

(C) [(3)] a golf cart as defined under Transportation Code Chapter 551; or

(D) [(4)] an [all-terrain vehicle; recreational] off-highway vehicle [; or a utility vehicle] as defined under Transportation Code Chapter 551A.

(e) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting other vehicles;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car with no signs on the vehicle;

(4) a rental or lease vehicle; and

(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.

(h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

- (1) the vehicle-specific number from the temporary tag database;
- (2) the year and make of the vehicle;
- (3) the VIN of the vehicle;
- (4) the month, day, and year of the temporary tag's expiration; and
- (5) the name of the dealer.

(l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

- (1) the specific number from the temporary tag database;
- (2) the month, day, and year of the temporary tag's expiration; and
- (3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle from the seller's inventory that can be legally operated on the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

- (1) an inspection is not required under Transportation Code §503.063(i) or (j); or
- (2) the vehicle is exempt from inspection under Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

- (1) dealer's temporary tag; or
- (2) metal dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

- (1) the date on which the vehicle is registered; or
- (2) the 60th day after the date of purchase.

(e) The dealer, or federal, state, or local governmental agency, must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

- (1) the vehicle-specific number obtained from the temporary tag database;
- (2) the year and make of the vehicle;
- (3) the VIN of the vehicle;
- (4) the month, day, and year of the expiration of the buyer's temporary tag; and
- (5) the name of the dealer or federal, state, or local governmental agency.

(f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the ve-

hicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. A federal, state, or local governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456, or is a vehicle described in §215.154(d)(2)(C) or (D) [~~§215.153(d)(3) or (4)~~] of this chapter (relating to Dealer's Temporary Tags). The fee shall be remitted by a dealer to the county in conjunction with the title transfer, and, if collected, by a federal, state, or local governmental agency, to the county, for deposit to the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold by a dealer to an out-of-state resident, in which case:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

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

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SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

STATUTORY AUTHORITY. The department proposes amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

Occupations Code §2301.705 provides that notice of a hearing involving a license holder must be given in accordance with Chapter 2301 and board rules.

Transportation Code §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503.

Transportation Code §503.0626(d) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0626.

Transportation Code §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and 503.067.

§215.505. Denial of Dealer or Converter Access to Temporary Tag System.

(a) In this section, "fraudulently obtained temporary tags from the temporary tag database" means a dealer or converter account user misusing the temporary tag database authorized under Transportation Code §503.0626 or §503.06321 to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement); and

(3) access to the temporary tag database for a fictitious user or person using a false identity.

(b) The department shall deny a dealer or converter access to the temporary tag database 10 calendar days from the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department within the 10-day period by demonstrating corrective actions taken or that the department's determination was incorrect. If a resolution is not agreed to prior to the end of the 10-day period, the department will deny access to the temporary tag database.

(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in the department's records.

(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under this section. The department must receive a written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the 10-day period or denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating corrective actions taken or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §215.500 concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

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

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