



GOVERNOR GREG ABBOTT

To: Charles Bacarisse, Chair
Daniel Avitia, Executive Director
Laura Moriaty, General Counsel
Texas Department of Motor Vehicles

From: Caleb Gunnels, Counsel
Regulatory Compliance Division, Office of the Governor

Date: March 28, 2024

Subject: Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001)

I. Syllabus

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73.¹ The proposed amendments under Chapter 215 generally update licensure, advertising, business requirements, and disciplinary procedures for licenses issued under Chapter 2301, Texas Occupations Code, including franchised dealers, manufacturers, distributors, converters, lessors and lease facilitators, and holders of a General Distinguishing Number (“GDN”) under Chapter 503, Texas Transportation Code.² And, the proposed amendments under Chapter 221 generally update the same topics for salvage vehicle dealers under Chapter 2302, Texas Occupations Code, including licensed salvage vehicle dealers and holders of a specific type of GDN under Chapter 503, Transportation Code.³ The Department submitted the proposed rules to the Regulatory Compliance Division (“division”) for

¹ 48 Tex. Reg. 8202 (2023) (to be codified at 43 TAC §§215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, and 215.178) (proposed Dec. 29, 2023) (Tex. Dep’t Motor Vehicles); 48 Tex. Reg. 8278 (2023) (to be codified at 43 TAC §§221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73) (proposed Dec. 29, 2023) (Tex. Dep’t Motor Vehicles); Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 1 and 9 (on file with the Regulatory Compliance Division of the Office of the Governor).

² Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 2.

³ *Id.* at 10.

review on January 5, 2024. The division invited public comments on the proposed rules for a 30-day period ending on February 9, 2024, and received no comments.

Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and thus, the proposed amended rules are approved by the division and may be finally adopted and implemented.

II. Analysis

In preparation for changes to Chapter 503, Transportation Code, made by House Bill 718 during the 88th Regular Legislative Session, which eliminates department-issued temporary tags and requires the department to provide dealers with license plates to be issued to buyers at the time of a vehicle sale, the department has proposed rulemaking to update application and licensing requirements across the industry.⁴ The department notes that the rules in Chapter 215 have not been reviewed since 2015, and the rules in Chapter 221 have not been reviewed since 2017.⁵ Since the department's last review of the rules, it has modernized application and licensing processes, including implementing an electronic licensing system.⁶

Leading up to rulemaking, the department received and reviewed industry rulemaking requests, incorporated feedback from two advisory committee meetings, including the Motor Vehicle Industry Regulation Advisory Committee on September 19, 2023 and the Customer Service and Protection Advisory Committee on September 19, 2023, and hosted an open meeting where the department received stakeholder comments.⁷ While a number of the proposed amended rules will be affected by the changes imposed by House Bill 718, which must be implemented by December 1, 2024, the department generally intends to streamline and modernize its rules in preparation for a future rule package intended to align with the aforementioned statutory changes.⁸

Given that conditions for licensure, including requirements for renewal and limitations on eligibility, can create barriers to ongoing market participation and may increase the cost of compliance for licensees accordingly, the proposed amended rules may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code.

A. The requirements for license applications, renewals, and amendments in proposed amended §§215.83 and 215.102 are consistent with state policy.

Section 2301.151, Occupations Code, broadly grants the department exclusive jurisdiction to regulate the distribution, sale, or lease of motor vehicles, including the original jurisdiction to

⁴ *Id.* at 1, 2, 9, and 10.

⁵ *Id.* at 2 and 10.

⁶ *Id.* at 4 and 11.

⁷ *Id.* at 6 and 13.

⁸ *Id.* at 1 and 9.

determine its own jurisdiction, and to take any action, designated or implied, that is necessary or convenient to the exercise of the power and jurisdiction granted. Additionally, Section 2301.152, in part, tasks the department with establishing the qualifications of license holders, ensuring that the distribution, sale, and lease of motor vehicles is conducted as required by statute and department rules, preventing fraud, unfair practices, and other abuses, and enforcing and administering Chapter 503, Transportation Code. Section 2301.155 reiterates that the department shall adopt rules as necessary and convenient to administer the Chapter and to govern practice and procedure before it.

Proposed amended §215.83(a) clarifies that an application for a new license, amendment, or license renewal must be filed electronically in the department-designated licensing system. The proposed amended rule also removes acceptance of paper checks as a method of payment. To account for implementation of the department's electronic licensing system, proposed amended §215.83(d) removes the requirement for licensees to mail license renewal applications to the department. Chapter 2301, Subchapter F generally details conditions for licensure and promulgates the authority for the department to prescribe the form in which applications are filed, while also granting the department authority to collect fees. Implementation of the electronic licensing system should reduce costs for applicants and licensees, as well as aid the department in efficiently administering and monitoring licensure programs.

Proposed amended and re-lettered §215.83(i) is intended to implement Senate Bill 422, 88th Regular Legislative Session, which, in part, updates licensure requirements for military service members or military spouses.⁹ Among other minor changes, the proposed amended rule adds the phrase "military service member," requires proof of an applicant "being stationed [in]," as opposed to residing in Texas, and sets the deadline for the department to issue such a license within 30 days of receiving information from the applicant, as is consistent with recent changes to Chapter 55, Texas Occupations Code. Additional changes in proposed amended §215.83 generally make minor clarifications, including removing or consolidating language to avoid redundancy, removing archaic references, updating statutory citations, and updating language for clarity and ease of reading.¹⁰

Proposed new §215.102 generally consolidates and updates license application requirements for franchised dealers, manufacturers, distributors, and converter licenses.¹¹ Proposed new §215.102(a) follows statute by requiring licensure before an individual can engage in certain activities or business pursuant to Section 2301.251, Occupations Code. Expanding on proposed amended §215.83, proposed new §215.102(b)-(d) instruct applicants on how to register under the department's electronic licensing system.

Proposed new §215.102(e)(1) describes the information required to be submitted in an application, denoting any differences by license type. Proposed new §215.102(e)(2) describes the

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.* at 3.

documents that must be attached to an application, denoting any differences by license type. Proposed new §215.102(g) instructs manufacturers and distributors how to amend an existing license to include a new line make. The proposed variations between licensure type are intended to implement statutory requirements, address consumer fraud or public safety considerations resulting from each license holder's operation and business model, including distribution methods and the introduction of new products manufactured or offered for sale.¹² The department also notes that the proposed information and documentation submission requirements incorporate best practice recommendations from the American Association of Motor Vehicle Administrators ("AAMVA").¹³ While Sections 2301.257 and 2301.258-2301.260, Occupations Code, specify certain information that must be disclosed by an applicant for each license type, Section 2301.257(a)(2), grants the department broad authority to determine the dealer license application information necessary to determine the applicant's qualifications to adequately serve the public. Section 2301.258, similarly allows the department to determine which application information is pertinent to safeguard the public interest and welfare regarding manufacturers, distributors, or converters. Next, proposed new §215.102(e)(3) reasonably requires license and plate fees to be submitted to the department, and generally defers to any fees prescribed by law.

Proposed new §215.102(f) generally prohibits license applicants from using business names or assumed names that could be confused with a government entity, or that could be deceptive or misleading to the public. Section 2301.152(a)(5), Occupations Code, tasks the department with preventing fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles. Proposed new §215.102(f) is a rational prohibition and a valid exercise of the department's authority to protect the public from deception or confusion.

Each of the proposed provisions will better facilitate the department's administration of the licensure process, protect the public against fraud and abuse, and provide reasonable clarifications and guidance to applicants and license holders in navigating the department's application process. For the aforementioned reasons, proposed amended §215.83 and proposed new §215.102 are a reasonable exercise of the department's statutory authority and are consistent with state policy.

B. The requirements for service-only facilities in proposed amended §215.103 and the repeal of motor home show limitations and restrictions under §215.112 are consistent with state policy.

Proposed amended §215.103(a) clarifies that franchised dealer service-only facilities may perform warranty repair services, removes regulation of non-warranty repair, makes clear that such facilities may not engage in new motor vehicle sales, and removes the requirement that warranty repair services be performed only at licensed dealer locations. And, proposed amendments to §215.103(b) and (d) would make minor changes for consistency and to better

¹² 48 Tex. Reg. 8204 (2023) (preamble to proposed §215.120) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

¹³ *Id.*; Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 6.

align with statute.¹⁴ The amended rule was largely prompted by stakeholder inquiries advocating for franchised dealer mobile repair services, where repair trucks are sent from a licensee location to conduct repairs at customer locations.¹⁵ Under the current rule, such a practice is prohibited.

Section 2301.002(16)(B), Occupations Code, defines a franchised dealer as a person who, among other requirements, is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established place of business under a franchise in effect with a manufacturer or distributor.

Section 2301.251(a)(2) requires licensure to perform or offer to perform repair services on a motor vehicle under a franchise and a manufacturer's warranty, regardless of whether the person sells or offers to sell motor vehicles at the same location. Section 2301.264(a)(2)(G) sets the license fee for each location separate from the dealership at which the dealer does not offer motor vehicles for sale but performs warranty service work on vehicles the dealer is franchised and licensed to sell. The department intends to reduce the impact of the rule on market competition, noting that as long as the licensee is engaged in a licensed activity under 2301.002(16)(B) at an established and permanent place of business, the dealer can send out repair trucks from that location to conduct actual repairs.¹⁶ Ultimately, proposed amended §215.103 grants more flexibility to franchise dealers to perform warranty repair services and opens up additional options for consumers seeking repair services. This is a valid exercise of the department's statutory authority and is consistent with state policy.

The department also proposes to repeal §215.112, pertaining to motor home show limitations and restrictions. Prior to 2019, Section 2301.358(b), Occupations Code, tasked the department with granting approval of motor home shows or exhibitions, among others. However, subsequent to the Texas Sunset Advisory Commission recommending that department approvals for such shows were an "unnecessary layer of regulation," the legislature passed Senate Bill 604 during the 86th Regular Legislative Session to repeal such language.¹⁷ As the department notes, it now lacks the statutory authority to approve the aforementioned shows and exhibitions on which current §215.112 is premised.¹⁸ Removal of such restrictions is consistent with the current statutory authority afforded to the department and grants additional flexibility to market participants. As such, the proposed repeal of §215.112 is a valid exercise of the department's authority and is consistent with state policy.

¹⁴ 48 Tex. Reg. 8205 (2023) (preamble to proposed §215.120) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

¹⁵ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3.

¹⁶ *Id.*

¹⁷ *Id.*; Sunset Advisory Commission Staff Report with Final Results: Texas Department of Motor Vehicles, Issue 1 (2019), available at <https://www.sunset.texas.gov/public/uploads/files/reports/DMV%20Staff%20Report%20with%20Final%20Results.pdf>.

¹⁸ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3.

C. The requirements for applications and usage of license plates under proposed new §215.120 are consistent with state policy.

Proposed new §215.120 generally outlines the requirements for manufacturers, distributors, and converters using license plates issued by the department. Proposed new §215.120(a) requires completion of an application to receive manufacturer or converter standard license plates for use on new unregistered vehicles of the same type assembled or modified in accordance with Sections 503.0618 and 503.064, Transportation Code, both of which reference the department's authority to accept applications for such license plates. As necessary for the department to prescribe and consider applications for additional license plates, the department in proposed new §215.120(h) lists reasonable criteria the department will review when making its determination. Next, pursuant to Section 503.064(b), proposed new §215.120(b) specifies that a manufacturer's standard license plate may not be used on a commercial vehicle to carry a load for which the manufacturer or other person receives compensation. Proposed new §215.120(c) specifies that license plates shall be attached to the rear of the vehicle and in accordance with other department rules. Plate placement generally follows Section 503.069(a), which grants the department broad authority to establish rules pertaining to the display of license plates.

Under its authority to issue license plates, the department adds reasonable record-keeping requirements in proposed new §215.120(d), which specify the individual the plate was issued to, the make and VIN of the vehicle to which the plate was attached, and the actual plate number itself. Likewise, proposed new §215.120(g) requires such records be at least available for electronic submittal upon department request. The department also instructs licensees how to report, record, return, or dispose of plates that have been lost, damaged, or stolen under proposed new §215.120(e) and (f). And, proposed new §215.120(i) requires license holders to return department-issued plates within 10 days of a license revocation, cancellation, or closure, pursuant to Section 503.038(c), Transportation Code. The department notes that since 2019, licensees have returned over 10,150 industry plates after license closure, which has significantly reduced the potential for fraudulent plate use.¹⁹ The department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b), Occupations Code. As such, the department also has the authority to inspect the books and records of license holders under Section 2301.153(b). These requirements are reasonable measures to deter fraud, protect the public from misuse, and will aid the department in administering and monitoring the issuance of license plates. Therefore, proposed new §215.120 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

¹⁹ 48 Tex. Reg. 8212 (2023) (preamble to proposed §215.120) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

D. The GDN application requirements for Dealers and Wholesale Motor Vehicle Auctions in proposed amended §215.133 are consistent with state policy.

Current §215.133 generally specifies the requirements for new, renewal, and amended dealer GDN applications. In 2023, the division approved department amendments to §§215.133 and 215.140, which required additional information on GDN applications, including fingerprinting requirements for applicants under §211.6, and updated permanent business premises requirements before such a license would be granted.²⁰ At that time, the department noted that identity fraud and business-premises fraud were the two major categories of fraud that occur in GDN licensing, and were the impetus for proposing changes to §§215.133 and 215.140.²¹ Now, the department intends to clarify that wholesale motor vehicle auctions also fall within the scope of proposed amended §215.133 and make additional minor clarifications to the application requirements.

Proposed amended §215.133(a) adds individuals who engage in business as a wholesale motor vehicle auction to department licensure requirements. The rule generally follows Section 503.022, Transportation Code, which states that a person may not engage in the business of conducting a wholesale motor vehicle auction without a GDN for each location from which the person conducts business. Proposed amended §215.133(c), which lays out the information required to be submitted on a department-prescribed new, renewal, or amended GDN application, and currently applies to GDN dealers, adds multiple references to wholesale motor vehicle auctions throughout the rule to further clarify its application to such applicants. The proposed amended rule also adds that, in addition to the application fees currently required to be paid by dealers, and now wholesale motor vehicle auctions, applicants must also pay any outstanding civil penalties owed to the department under a final order. Section 503.030(a)(1), Transportation Code, grants the department broad authority to specify the information that must be included on an application for an original or renewal wholesale motor vehicle auction GDN. Section 2301.801, Occupations Code, generally authorizes the department to impose civil penalties for violations of statute or department regulations. Also of note, proposed amended §215.133(c)(2)(E)-(G) reasonably exercises the department's authority to ensure wholesale motor vehicle auction GDN applicants have complied with the established permanent place of business requirements pursuant to Sections 503.030(a)(2) and 503.032, Transportation Code. Proposed §215.133(c)(2)(A) generally follows Section 503.033, which requires GDN dealer and wholesale motor vehicle auction applicants to submit proof of a properly executed surety bond. And, proposed amended §215.133(c)(3) ensures that GDN applicants pay required fees pursuant to Section 503.007(a) and (b). The other requirements in proposed amended §215.133 detail submission of certain contact information and identification of relevant individuals, business information, and criminal history information.

²⁰ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012) (Dec. 5, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

²¹ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012), at 2.

As previously stated, the division previously approved such application requirements for GDN dealer applications.²² The division analyzed the position of trust created by issuing such licenses, including licensee access to confidential consumer information, the conveyance, titling, and registration of private property, and the possession of monies belonging to or owed to private individuals, creditors, and government entities.²³ The division also agreed with the department that the applicant information sought by the department under §215.133(c) would better enable the department to fulfill its statutory obligations through vetting applicants and ensuring the deterrence of fraud through license misuse, such as theft, money laundering, and assaultive or sexual crimes.²⁴ Consolidating such licensure requirements for both GDN dealers and wholesale motor vehicle auctions is practical and ensures consistency and clarity for those individuals seeking licensure. Ultimately, following the division's analysis in its determination letter issued to the department on December 5, 2022, and the above analysis, proposed §215.133(c) is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Next, proposed amended §215.133(d) clarifies that the current rule's fingerprinting requirements apply to both applicants for a dealer or wholesale motor vehicle auction GDN. The division has approved similar provisions in two previous letters issued to the department.²⁵ Following the analyses in both, and noting that the department has the authority to access an applicant's criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation pursuant to Sections 411.122(d)(24) and 411.12511, Government Code, proposed amended §215.133(d) is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Lastly, proposed new §215.133(j) clarifies that a person holding an independent motor vehicle GDN and performing salvage activities must apply for a National Motor Vehicle Title Information System ("NMVTIS") Identification Number and provide that number to the department in the GDN application. The department notes that provision of an NMVTIS number will enable the department to verify whether the applicant meets federal regulation requirements and is qualified to perform salvage activities.²⁶ NMVTIS is a U.S. Department of Justice program that has participation from all 50 States, and was designed to protect consumers from fraud and unsafe vehicles, to keep stolen vehicles from being resold, and to assist States and law enforcement in deterring and preventing title fraud and other crimes.²⁷ Under 49 U.S.C.A. § 30501, junk and salvage yards are defined, in part, as individuals or entities engaged in the business of acquiring or owning junk or salvage automobiles for resale in their entirety or as spare parts or for rebuilding or restoration, respectively. 49 U.S.C.A. § 30504(a) requires junk or

²² *Id.*

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ *Id.*; Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-03) (June 24, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

²⁶ 48 Tex. Reg. 8206 (2023) (preamble to proposed §215.133) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

²⁷ U.S. Department of Justice Office of Justice Programs, *National Motor Vehicle Title Information System*, https://vehiclehistory.bja.ojp.gov/nmvtis_states (last visited Mar. 1, 2024); 49 U.S.C.A. § 30502.

salvage yard operators to report certain individual and motor vehicle information to NMVTIS each month. Section 503.029(a)(2), Transportation Code, grants the department broad authority to determine the information required in an original or renewal GDN application, which applies to independent motor vehicle dealers. Provision of such information to the department, which is already required by federal law, will both better assist the department in administering the issuance of such licenses and will safeguard the public from fraud and abuse.

The remaining provisions in proposed amended §215.133 are minor and enhance clarity, reduce redundancies, update citations, and re-letter sections as necessary. For the aforementioned reasons, proposed amended §215.133 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

E. The requirements for drive-a-way operator in-transit licenses in proposed new §215.134 are consistent with state policy.

Proposed new §215.134 generally lays out the licensing requirements to hold a drive-a-way operator in-transit license. The department intends to also include requirements, similar to other department-issued licenses, to protect the public by reducing fraud and abuse, such as fingerprinting for all applicants.²⁸ Proposed new §215.134(a) reasonably follows Section 503.023, Transportation Code, by requiring licensure for individuals engaging in business as a drive-a-way operator. Proposed new §215.134(b) requires applicants to complete an application on a department-prescribed form, to submit the form through the department's designated electronic system, and to pay any required fees. Proposed new §215.134(c) requires license holders renewing or amending a license to verify current information and to pay any prescribed fees. Similar to proposed new §215.102(d), proposed new §215.134(d) generally instructs applicants how to register in the department's designated licensing system, including providing certain contact and personally identifying registrant information. And, similar to proposed new §215.102(e), proposed new §215.134(e) describes the information required to be submitted in an application, such as personally identifiable information and contact information of each individual afforded access to the benefits of licensure, business operation information, the documents that must be attached to an application, and any required fees. Of note, pursuant to Sections 411.122 and 411.12511, Government Code, the department requires submission of criminal history information for each individual listed on the application in order to reduce consumer fraud and in consideration of public safety implications.²⁹ The information required by the department reasonably aids in its assessment of applicants and is largely consistent with that required in other applications for department licensure.

Section 503.031, Transportation Code, requires drive-a-way operator in-transit license applicants to submit an application to the department, grants the department broad authority to determine what information must be included in the application, and to pay a registration fee pursuant to Section 503.007(c). As to requirements to amend a current license, the department reasonably

²⁸ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3.

²⁹ 48 Tex. Reg. 8207 (2023) (preamble to proposed §215.134) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

intends that such information submitted in an original application remains current throughout the duration of licensure. And, Section 503.035, grants the department additional authority to require an application and fee for the renewal of such licenses.

Next, similar to proposed amended §215.133(d), proposed new §215.134(f) requires applicants for licensure to comply with department fingerprinting requirements. As noted, the division has approved similar department rules.³⁰ Following the analyses of its prior determinations, and noting the department's authority to access criminal history information under Chapter 411, Government Code, proposed new §215.134(f) is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Lastly, similar to proposed new §215.102(f), proposed new §215.134(g) is intended to protect the public by requiring in-transit license holders to not use a business name or assumed name that would be confusing, deceptive, or misleading to prevent consumer fraud and abuse.³¹ Again, Section 2301.152(a)(5), Occupations Code, tasks the department with preventing fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles. Given the department's broad statutory authority, that the requirements for drive-a-way operator in-transit license applicants are generally consistent with that of other applications for licensure, and that such requirements will both aid the department in assessing the qualifications of applicants and serve to better protect the public from fraud and abuse, proposed new §215.134 is a reasonable exercise of the department's authority and is consistent with state policy.

F. The requirements related to the use and allocation of dealer's license plates in proposed amended §§215.138 and 215.139 are consistent with state policy.

Current §§215.138 and 215.139 detail the requirements for dealers' usage of department-issued license plates and the considerations of the department when assessing the allocation of license plates to dealers. Proposed amendments to §§215.138 and 215.139 generally remove references to "metal" license plates or add "standard" to describe dealer plates more accurately and consistently.³² Other proposed amendments delete redundant or unnecessary language, update citations, combine provisions for consistency or ease of reading, and re-letter sections accordingly.³³ Such changes are reasonable and do little to change the meaning or impact of the rules.

³⁰ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012); Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-03).

³¹ 48 Tex. Reg. 8207 (2023) (preamble to proposed §215.134) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

³² 48 Tex. Reg. 8207 (2023) (preamble to proposed §§215.138 and 215.139) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

³³ *Id.*

Of note, proposed amended §215.138(a) updates a citation to require attachment of department-issued dealer's license plates to the rear of a vehicle in accordance with department rules. This requirement reasonably follows Section 503.069(a), Transportation Code, which grants the department broad authority to establish rules pertaining to the display of license plates. Similar to proposed new §215.120(d)-(g) and (i), proposed amended §215.138(h) and (j) and proposed new §215.138(k) and (l) update reasonable record-keeping requirements, which currently require recording the individual the plate was issued to, the make and VIN of the vehicle to which the plate was attached, and the actual plate number itself. Likewise, the proposed rules require such records be at least available for electronic submittal upon department request, and instruct licensees how to report, record, return, or dispose of plates that have been lost, damaged, or stolen. The proposed rules also require license holders to return department-issued plates within 10 days of a license revocation, cancellation, or closure, pursuant to 503.038(c), Transportation Code. The department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b), Occupations Code. As such, the department also has the authority to inspect the books and records of license holders under Section 2301.153(b). Such requirements are reasonable measures to deter fraud, protect the public from misuse, and will aid the department in administering and monitoring the issuance of dealer license plates. As such, proposed amended §215.138 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Lastly, proposed amended §215.139(f)(1) corrects the number of additional plates that a dealer selling 50 to 99 vehicles during the previous 12 months is eligible to request and adds a missing category for a dealer selling 100 to 200 vehicles during the previous 12 months. The department notes that the proposed amendments are necessary to correct an inadvertent error when the graphic within the rule was last published.³⁴ It should be noted that this requirement, in some form, has been effective since February of 2010. Likewise, current §215.139(g) allows dealers to request a waiver of the plate limitations if such a waiver would be essential for the continuation of the business. Sections 503.061 and 503.066, Transportation Code, require dealers to file an application with the department for license plates and grant the department broad latitude to determine the information it will assess in the application to issue such plates. And, Section 2301.152, Occupations Code, offers extensive authority to the department to establish the qualifications of license holders and prevent fraud and other abuses in connection with the distribution and sale of motor vehicles. In order to administer and monitor the issuance of such plates, and to deter fraud or misuse by not issuing excessive numbers of plates, while noting the flexibility offered to applicants to request a waiver of plate allocations, the department reasonably exercises its statutory authority. For the aforementioned reasons, proposed amended §§215.138 and 215.139 are consistent with state policy.

³⁴ *Id.*

G. The established and permanent place of business premises requirements in proposed amended §215.140 are consistent with state policy.

After conducting numerous investigations, which revealed that noncompliance with business premises requirements contributed significantly to the commission of criminal activity, the department proposed, and the division approved, amendments to §215.140 in 2022, to reduce fraud, improve public health and safety, and to aid applicants in understanding safe premises requirements.³⁵ Now, just as the department seeks to distinguish the GDN application requirements for dealers and wholesale motor vehicle auctions in proposed amended §215.133, it does the same for permanent place of business premises requirements in proposed amended §215.140.

To begin, Section 503.032, Transportation Code, requires an applicant for a dealer GDN or wholesale motor vehicle auction GDN to demonstrate an established and permanent place of business for the location for which the license is sought. The premises must be maintained during the duration of the license because Sections 503.029(a)(3) and (4) and 503.030(a)(2) and (3), Transportation Code, require both original and renewal GDN applicants to demonstrate compliance with the business premises requirements under Section 503.032 as well as all other applicable state laws and municipal ordinances. Further, Sections 503.034(a)(2) and 503.038(a)(7), Transportation Code, authorize the department to cancel a GDN if the license holder fails to maintain the qualifications for a GDN, which includes business premises compliance under statute.

Proposed amended §215.140(a)(11)(C) prohibits public access and sales activity at storage lots, requires a posted sign of the GDN license holder's information outside of a lot, and requires such lots to be included on a new application or an amended application for a GDN. While a storage lot is not required for licensure, under the broad authority granted by Sections 503.029(a)(2) and 503.030(a)(1), Transportation Code, the department may specify the information that must be included on an application for an original or renewal GDN. As the division noted in a previous determination letter issued to the department, hidden storage lots have frequently been used by bad actors to facilitate a broad swathe of criminal activities, including VIN switching or cloning to hinder department investigations and to impede law enforcement activities.³⁶ The division determined then, and the same is true today, that such requirements are intended to protect public safety while curbing the misuse of GDN licenses and to ensure that business is conducted on the premises identified in the application for the department's evaluation.³⁷ Thus, proposed amended §215.140(11)(C) is a reasonable exercise of the department's authority, and is consistent with state policy.

³⁵ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012), at 5-6.

³⁶ *Id.* at 5.

³⁷ *Id.* at 8.

Proposed new §215.140(b) generally lays out similar business premises requirements specific to wholesale motor vehicle auction GDN holders. Proposed new §215.140(b)(1) and (2) require wholesale motor vehicle auction GDN holders to host periodic auctions and require an owner or employee to be available during such auctions. The rules allow such individuals to be unavailable during posted business hours under special circumstances or emergencies, so long as a separate sign is posted indicating when normal operations will resume. The rules also state that a caller must be able to speak to a natural person or leave a message during business hours. Section 503.032(c)(1) and (2), Transportation Code, generally requires an applicant to remain regularly and actively engaged in business and requires an applicant or bona fide employee to be at the licensed location and available to the public or the department during reasonable and lawful hours. Because the proposed requirements generally follow statute, they are consistent with state policy.

Proposed new §215.140(b)(3) generally clarifies department criteria for determining whether an exterior business sign is conspicuous, permanent, and permanently mounted, which is required for wholesale motor vehicle auction GDN holders. Section 503.032(a)(2)(B), Transportation Code, requires an applicant to demonstrate an established and permanent place of business and to maintain, on the location, a conspicuous sign with letters at least six inches high showing the name of the applicant's business. The proposed amendments specify that a sign is conspicuous if it is easily visible to the public within 100 feet of the main entrance to the office, and that it is considered permanent if it is made of durable, weather-resistant material and permanently mounted to an exterior building wall or dedicated sign pole. Given that a conspicuous sign is already required by Section 503.032(a)(2)(B), Transportation Code, the department reasonably proposes clarifying sign specifications that ensure signs are visible to the public. And, in 2022, the department sought to ease any burden on other applicants by allowing the use of a temporary sign if a permanent sign had been ordered with an intent to install it upon delivery.³⁸ The department has afforded the same flexibility here. Because proposed new §215.140(b)(3) makes practical clarifications regarding sign visibility and is intended to better protect the public, it is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Proposed new §215.140(b)(4) and (5) establishes requirements for a wholesale motor vehicle auction GDN applicant's office space at the licensed location. Specifically, proposed new §215.140(b)(4)(C) and (E) require that the office be open for in-person visits from the public, and proposed new §215.140(b)(5) requires the office to have general office equipment and furnishings, including a working phone and internet. Given that Section 503.032(a)(2)(A) and (c)(2)(B), Transportation Code, require applicants to operate from a permanent furnished office that is open to both the public and the department during reasonable and lawful business hours, the department's requirement for an applicant's office to have basic furnishings and be open for in-person visits is a reasonable exercise of statute. Proposed new §215.140(b)(4)(D) prohibits an applicant's office from being located in a restaurant, gas station, or convenience store, unless the office has a separate entrance that does not require a customer to pass through the non-licensed

³⁸ *Id.* at 6.

business. When this requirement was adopted with regard to dealers in 2022, the department relied on law enforcement's experience that such locations are utilized more frequently in the commission of fraud and crime, including trafficking drugs, guns, and people.³⁹ While Section 503.032(a)(2)(A), Transportation Code, already grants the department broad authority to determine the specifications of such an applicant's required office space, the department has granted flexibility for an applicant to operate from a shared business location, so long as the applicant's office is separate from the other business space. Because proposed new §215.140(b)(4)(D) will aid the department in evaluating an applicant's established and permanent business location, will enhance public health and safety, and generally follows statute, it is a reasonable exercise of the department's authority, and is thus, consistent with state policy. The remaining provisions of proposed new §215.140(b)(4) reasonably follow statute by requiring an applicant's location to have a physical address recognized by the U.S. Postal Service, have an assigned emergency services property address, and not be based in a readily movable trailer or other vehicle. For the aforementioned reasons, proposed new §215.140(b)(4) and (5) are a reasonable exercise of the department's statutory authority and are consistent with state policy.

Proposed new §215.140(b)(6) updates requirements for wholesale motor vehicle auction display areas and storage lots. The rule requires that display areas and storage lots must be separate, display areas may not be used for customer parking, employee parking, general storage, and must not be part of a parking area for fuel or recharging stations nor interfere with access to or from gasoline pumps, fuels tanks, charging stations, or fire prevention equipment. Section 503.032(a)(3) and (c)(1), Transportation Code, require applicants to demonstrate an established and permanent place of business that has sufficient space on the location to display at least five vehicles of the type specified in the application and to remain regularly and actively engaged in buying, selling, leasing, or exchanging vehicles at the location specified in the application. As the division has previously noted regarding a similar provision for GDN dealers, ensuring that license holders engage in business at a licensed location, rather than one that was neither identified nor evaluated by the department during the application process, is a reasonable exercise of the department's statutory authority.⁴⁰ The division also determined, and the same is true today, that the department's requirement that display area vehicles not commingle with other vehicles which are not for sale at the display area makes practical sense, so as not to confuse or mislead the public, nor interfere with department evaluations or law enforcement investigations.⁴¹ Also, the requirement that display areas not interfere with activity at refueling or recharging stations is purposed to protect the public from danger as they approach and leave the display area. The department has previously highlighted such dangers, which the division

³⁹ 47 Tex. Reg. 7259 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't Motor Vehicles).

⁴⁰ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012), at 7-8.

⁴¹ *Id.* at 8.

reasserts here.⁴² The proposed rule is a reasonable and practical exercise of the department's statutory authority.

Proposed new §215.140(b)(7) requires wholesale motor vehicle auction applicants that lease property for the purpose of engaging in business to follow general lease requirements. In the proposed rule, applicants who are lessees, are required to maintain the lease through the duration of the GDN, identify the property owner, lessor contact information, and physical address of the location on the lease, and if subletting from someone other than the lessor, provide a notarized statement from the property owner confirming that the license holder may engage in business at the leased location. Ultimately, Section 503.032, Transportation Code, allows applicants to operate under a written lease term of not less than the term of the GDN and the applicant must intend to remain regularly and actively engaged in the business specified in the application throughout the duration of the GDN. As discussed, the department has broad authority to determine and assess the information included in an application. Such authority reasonably includes assessing an applicant's ability and authority to operate under a lease at an established and permanent place of business. As such, proposed new §215.140(b)(7) is a reasonable exercise of the department's statutory authority and is consistent with state policy.

H. The requirements for drive-a-way operator in-transit license plates in proposed new §215.143 are consistent with state policy.

Proposed new §215.143 details the requirements for drive-a-way operators' usage of department-issued drive-a-way in-transit license plates. Such requirements are generally consistent with those found in proposed new §215.120 pertaining to manufacturers, distributors, and converters, and proposed amended §§215.138 and 215.139 pertaining to dealers. Specifically, proposed new §215.143(a) specifies that a drive-a-way operator may apply for an in-transit standard license plate on the department's electronic licensing system when applying for a new or renewal license. Section 503.023, Transportation Code, prohibits an individual engaging in business as a drive-a-way operator without a drive-a-way in-transit license, and Section 503.031 grants the department broad authority to determine the information contained in a required application. Upon payment of required fees under Section 503.007(c), and after department review of an application, the department will issue a drive-a-way in-transit license and in-transit license plates pursuant to Section 503.034. In proposed new §215.143(b), the department reasonably follows its authority under Section 503.069(b), by requiring the display of in-transit license plates at the rear of each transported motor vehicle from the vehicle's point of origin to its point of destination in Texas and in accordance with §217.27.

Next, similar to proposed new §215.120(d)-(g) and (i), proposed §215.138(h) and (j), and proposed new §215.138(k) and (l), proposed new §215.143(c)-(f) and (h), update reasonable record-keeping requirements, which require recording the license plate number, the year and make of the vehicle the plate is attached to, the VIN of the vehicle, and the name of the person in

⁴² *Id.*; 47 Tex. Reg. 7260 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't Motor Vehicles).

control of the vehicle. Likewise, the proposed rules require such records be at least available for electronic submittal upon department request, and instruct licensees how to report, record, return, or dispose of plates that have been lost, damaged, or stolen. The proposed rules require license holders to return department-issued plates within 10 days of a license revocation, cancellation, or closure. Such requirements are consistent with that of other license holders, and establish reasonable record retention requirements intended to aid the department in administering its duties to issue license plates and to deter fraud and abuse.⁴³ As previously stated, the department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b), Occupations Code. And, the department also has the authority to inspect the books and records of license holders under Section 2301.153(b). Such requirements are consistent with state policy.

Similar to proposed amended §215.139(f), proposed new §215.143(g) allows drive-a-way operators to apply for additional license plates and lists out general factors the department will consider in approving such a request. The department will review the number of vehicles currently being transported to a location in Texas, the highest number of vehicles transported in the prior 12 months, the size and type of business, and the operator's record of tracking and reporting missing or damaged plates to the department. Sections 503.031 and 503.035, Transportation Code, generally grant the department broad authority to determine the information required to be submitted in an application before issuing a drive-a-way in-transit license and in-transit license plates. And, Section 2301.152, Occupations Code, offers extensive authority to the department to establish the qualifications of license holders and to prevent fraud and other abuses in connection with the distribution and sale of motor vehicles. In order to administer and monitor the issuance of such plates, and to deter fraud or misuse by not issuing excessive numbers of plates, the department reasonably exercises its statutory authority. For the aforementioned reasons, proposed new §215.143 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

I. The requirements pertaining to the duty to identify motor vehicles offered for sale as rebuilt in proposed amended §215.160 are consistent with state policy.

Current §215.160 generally requires dealers to provide a written disclosure, which must be signed by a purchaser, for each vehicle that it displays or offers for retail sale, of which the dealer knows has been a salvage motor vehicle as defined under Section 501.091(15), Transportation Code, and with a regular title subsequently issued under Section 501.100. Proposed amended §215.160 makes minor changes, such as requiring the aforementioned disclosure to contain a separate signature from the purchaser, reordering language to improve clarity, and updating a referenced section title.⁴⁴ Of note, proposed amended §215.160(b) increases the font size of the signed acknowledgement from the purchaser from 11-point font to 14-point font, which indicates that the purchaser is aware that the purchased vehicle was

⁴³ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3.

⁴⁴ 48 Tex. Reg. 8209 (2023) (preamble to proposed §§215.138 and 215.139) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle. Ultimately, the amendments do little to change the application of current §215.160 and are intended to protect consumers from confusion and to prevent consumer harm.⁴⁵ Section 2301.152(a)(5), Occupations Code, in part, tasks the department with preventing fraud, unfair practices, and other abuses in connection with the distribution and sale of motor vehicles. Ensuring that consumers are advised and aware of the condition and status of the item being purchased is a rational exercise of the department's statutory authority. Therefore, proposed amended §215.160 is consistent with state policy.

J. The application requirements for vehicle lessors and vehicle lease facilitators in proposed amended §215.174 is consistent with state policy.

Proposed amended §215.174 updates license application requirements for vehicle lessors and vehicle lease facilitators. The amendments generally mirror those required of other licensees and are intended to modernize language, implement requirements necessary to utilize the department's electronic licensing system, improve readability, and deter fraud and abuse.⁴⁶ Proposed amended §215.174(a)-(c) generally require applicants seeking a new license, renewal license, or amended license to file an application with the department, pay any required fees, and instructs applicants how to register under the electronic licensing system. Section 2301.251, Occupations Code, in part, requires vehicle lessors and vehicle lease facilitators to hold a license before engaging in business. Section 2301.253, prohibits individuals acting as a vehicle lease facilitator or engaging in certain activities without a department-issued license. Sections 2301.261 and 2301.262, allow the department to prescribe the application form for vehicle lessors and vehicle lease facilitators, and to determine the information that must be included in the applications for licensure. As noted by the division regarding proposed amended §215.83, implementation of the department's electronic licensing system may reduce costs for applicants and licensees, as well as aid the department in efficiently administering and monitoring licensure programs.

Proposed new §215.174(d), similar to proposed new §215.134(e), describes the information required to be submitted in an application for licensure, such as personally identifiable information and contact information of each individual afforded access to the benefits of licensure, business operation information, criminal history information, and military status information. And, proposed new §215.174(e) and (f) detail supporting documentation that applicants for a vehicle lessor or vehicle lease facilitator license must submit with an application. Again, Section 2301.152, Occupations Code, in part, tasks the department with establishing the qualifications of license holders, ensuring that the distribution, sale, and lease of motor vehicles is conducted as required by the statute and department rules, and preventing fraud, unfair practices, and other abuses. And, Sections 2301.261(a)(3) and 2301.262(a), grant the department broad authority to determine the information required to be submitted in an application for licensure. Pursuant to Sections 411.122 and 411.12511, Government Code, the department also

⁴⁵ 48 Tex. Reg. 8210 (2023) (preamble to proposed §215.160) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁴⁶ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 4.

has authority to require submission of criminal history information to reduce consumer fraud and in consideration of public safety implications. The information required by the department reasonably aids in its assessment of applicants and is largely consistent with that required in other applications for department licensure.

Proposed new §215.174(g), similar to proposed new §§215.102(f) and 215.134(g), prohibits license applicants from using a business name or assumed name that could be confused with a government entity, or that could be deceptive or misleading to the public. This is a reasonable exercise of the department's authority to prevent fraud, unfair practices, of other abuses under Section 2301.152(a)(5), Occupations Code.

Lastly, proposed new §215.174(h) requires license holders to update the list of vehicle lessors or vehicle lease facilitators with whom the licensee does business with and submit such updates within 10 days to the department. Section 2301.552, Occupations Code, in part, allows vehicle lessors to appoint vehicle lease facilitators so long as such an appointment complies with department rules. And, Section 2301.555(a)(5) prohibits vehicle lease facilitators from engaging in business without having an appointment from a vehicle lessor. The department has broad authority to establish the rules pertaining to such appointments, and requiring licensees to update information that was submitted to the department in an initial application for licensure, if such information has changed, is a practical exercise to ensure compliance with licensure requirements. For the aforementioned reasons, proposed amended §215.174 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

K. The established and permanent place of business premises requirements in proposed amended §215.177 are consistent with state policy.

Current §215.177, which has been effective, in some form, since 2010, requires vehicle lessors and vehicle lease facilitators to meet certain business premises requirements, and is generally consistent with the requirements for retail dealers. When initially proposed, the department intended to mirror GDN rules, so that the requirements for these types of licenses would be parallel, and to ensure that lessor and lease facilitators maintained a legitimate, permanent office structure that follows all local zoning ordinances, and that is genuinely open to the public.⁴⁷ Proposed amendments to §215.177 do little to impact the current rule, but clarify that callers must be able to at least leave a message by phone during regular business hours, that a licensed establishment have a permanent roof, chairs, and internet, be available to the public, and not be a virtual office or be provided by a subscription for office space or office services. Similar to proposed new §215.140(b)(3), proposed amended §215.177(a)(2) updates current business sign requirements to ensure its visibility to the public and that it be made of durable, weather-resistant material. And, similar to proposed new §215.140(b)(7), proposed amended §215.177(a)(3) requires a licensee, if subletting from someone other than the lessor, to provide a notarized statement from the property owner confirming that the license holder may engage in business at

⁴⁷ 34 Tex. Reg. 8245 (2009) (preamble to proposed §215.177) (Nov. 20, 2009) (Tex. Dep't Motor Vehicles).

the leased location. Lastly, the department proposes to delete requirements in current §215.177(b) for out-of-state vehicle lessors who do not deal directly with the public, and has noted that such requirements are unnecessary.⁴⁸ The division has already noted the benefits of safe premises requirements and the dangers posed to the public through the commission of criminal activity in its approval of GDN premises requirements in current §215.140 and now proposed amended §215.140.⁴⁹ Here, the department maintains that such requirements are necessary to deter fraud and protect consumers.⁵⁰

Section 2301.151, Occupations Code, in part, grants the department exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by Chapter 2301, and to take any action necessary or convenient to the exercise of the power and jurisdiction granted to the department. Section 2301.152, specifically tasks the department with, in part, establishing the qualifications of license holders, ensuring that the lease of motor vehicles is conducted according to department rules, and preventing fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles. Ultimately, the amendments to §215.177 ensure consistency with premises requirements for other licensure types and better aid the department in evaluating the qualifications of applicants and license holders, which serve to prevent fraud and protect the public. As such, proposed amended §215.177 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

L. The records required for vehicle lessors and vehicle lease facilitators in proposed amended §215.178 are consistent with state policy.

Current §215.178 generally requires vehicle lessors and vehicle lease facilitators to maintain a complete record of all vehicle purchases, sales, or lease transactions and details what information must be recorded pertaining to each transaction. Of note, proposed new §215.178(c) creates vehicle lessor record-keeping requirements for leased vehicles that are later sold. The remaining amendments allow licensees to submit records electronically to the department, or generally delete outdated requirements, remove redundant language, and make minor edits for clarity. As noted, the department has broad authority to regulate the distribution, sale, or lease of motor vehicles and to prevent fraud under Sections 2301.151 and 2301.152, Occupations Code. Section 2301.153(a)(5) and (b), grant the department the authority to order the production of any tangible property, including papers, records, or other documents, and to inspect the books and records of a license holder. The amendments to the general record-keeping requirements in proposed amended §215.178 are ultimately a reasonable exercise of the department's authority in performing and administering its duties under Chapter 2301, Occupations Code. As such, proposed amended §215.178 is consistent with state policy.

⁴⁸ 48 Tex. Reg. 8211 (2023) (preamble to proposed §215.177) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁴⁹ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012).

⁵⁰ 48 Tex. Reg. 8211 (2023) (preamble to proposed §215.177) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

M. The amendments to the licensure requirement in proposed amended §221.11 are consistent with state policy.

Current §221.11 generally requires an individual to either hold a salvage vehicle dealer license under Chapter 2302, Occupations Code, or an independent motor vehicle dealer's GDN under Chapter 503, Transportation Code, in order to act as a salvage vehicle dealer or rebuilder or to store or display a motor vehicle as an agent or escrow agent of an insurance company. The current rule also specifies exemptions to the aforementioned licensure requirement. Proposed amended §221.11(b) makes a minor amendment to clarify that a motor vehicle may be either titled or registered to operate on public highways. And proposed amended §221.11(c) substitutes a statutory reference in lieu of language which lists out the exemptions for licensure. The department notes that such changes are intended for clarity, to remove language that is duplicative of statute, and to ensure consistency with any future statutory changes.⁵¹ Ultimately, the proposed amendments are minor and do little to change the effect of the current rule. As such, proposed amended §221.11 is a reasonable exercise of the department's statutory authority under Chapter 2302, Occupations Code, and Chapter 503, Transportation Code, and is consistent with state policy.

N. The amendment to the license terms and fees in proposed amended §221.13 is consistent with state policy.

Proposed new §221.13(c) establishes a salvage vehicle dealer license amendment fee at \$25. Section 2302.052, Occupations Code, grants the department the authority to set application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302, and requires that such fees are reasonable and necessary to implement the department's duties. The department points to Section 2301.264(e), Occupation Code, which sets the fee for an amendment to a license issued under Chapter 2301, at \$25.⁵² The department also asserts that adopting the same fee allowed by statute for other license holders is reasonable because department resources required to process a license amendment are similar across all license types.⁵³ Making such fees consistent across the industry makes practical sense and is a reasonable exercise of the department's statutory authority. Therefore, proposed amended §221.13 is consistent with state policy.

O. The license application requirements for salvage vehicle dealers in proposed amended §§221.14-221.16 are consistent with state policy.

Proposed amended §§221.14-221.16 generally lay out the license application requirements, including information and documentation that must be submitted by salvage vehicle dealer applicants for department review during the application process. Specifically, proposed amended §221.14 is largely consistent with department application requirements for other types of

⁵¹ 48 Tex. Reg. 8279 (2023) (preamble to proposed §221.11) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁵² *Id.*

⁵³ *Id.*

licensure. Of note, proposed amended §221.14(b) requires applicants for a new license, license amendment, or license renewal to file an application, prepared by an individual authorized to complete an application for licensure, and pay the required fee. Proposed new §221.14(c) instructs applicants to pay any required fees electronically through the department's electronic licensing system. Section 2302.103, Occupations Code, requires applicants to submit an application to the department accompanied with an application fee. And, Section 2302.052, authorizes the department to set application fees, license fees, renewal fees, and other fees as required to implement the Chapter.

Proposed new §221.14(d) notifies new and renewal applicants and license holders applying for a new business location that the department may require a site visit to determine if an applicant's business location meets department qualifications. Section 2302.104(a)(3), Occupations Code, requires applicants to list information about each location where business will be conducted, and Section 2302.203, requires license holders to register new locations with the department. Likewise, Section 2302.105 tasks the department with investigating an applicant's qualifications, which reasonably includes confirming the existence of a physical location where an applicant intends to engage in business. And, Section 2302.0015, in part, specifies that the department has authority to enter a licensed business premises for inspection.

Proposed new §221.14(e) requires applicants to comply with department fingerprinting requirements. Consistent with applications for other types of licensure, the department notes that this is a one-time requirement for individuals that maintain an active license, and will aid the department in reducing application fraud.⁵⁴ Again, similar to proposed amended §215.133(d) and proposed new §215.134(f), the division applies its analyses regarding similar department rules and notes the department's authority to access criminal history information under Chapter 411, Government Code.⁵⁵ Lastly, proposed new §221.14(f) clarifies that the department will not share the status or quality of an application to persons other than the applicant, unless a written request is filed Chapter 552, Government Code. Such a clarification better protects applicant information, and reasonably follows statute. For the aforementioned reasons, proposed amended §221.14 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Next, proposed amended §221.15 updates the information that must be submitted in an application for a new salvage vehicle dealer license. Similar to the requirements for applicants seeking other types of licensure, proposed new §221.15(a) instructs applicants how to register for the department's electronic licensing system. And, proposed new §221.15(b) updates the information that must be included in an application for licensure, which generally follows the application requirements under Section 2302.104, Occupations Code. The department is also granted broad authority to determine any other information required to be included in an

⁵⁴ 48 Tex. Reg. 8280 (2023) (preamble to proposed §221.14) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁵⁵ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012); Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-03).

application for licensure under Section 2302.104(a)(8), and the department reasonably exercises such authority by requiring the submission of personal information of individuals who may have access to the benefits of licensure or who may act in a representative capacity of an applicant or license holder. Also of note, pursuant to Section 2302.106, proposed new §221.15(b)(2)(A) prohibits applicants from using a business name or assumed name that may be confused with that of a governmental entity or that is otherwise deceptive or misleading. And, similar to proposed new §215.133(j), proposed new §221.15(b)(2)(G) requires an applicant to provide a NMVTIS Identification Number to the department. Again, provision of an NMVTIS number will enable the department to verify whether the applicant meets federal regulatory requirements and is qualified to perform salvage activities. Lastly, proposed new §221.15(c) requires license holders seeking to renew or amend a license to verify current license information and provide any relevant information to the department. Such a requirement is practical and follows the department's authority to investigate and assess an applicant's qualifications pursuant to Section 2302.105(a), Occupations Code. For the aforementioned reasons, proposed amended §221.15 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

Proposed amended §221.16 updates the documents and images that must be attached and submitted with an application for a salvage vehicle dealer license. The required documents follow that required of applicants for other types of licensure, and ultimately confirm the information listed in an application, such as business information filed with the Secretary of State, a form of identification for each individual listed on an application, business premises photos, a Texas Use and Sales Tax Permit, and a Franchise Tax Account Status issued by the Comptroller's Office. The department notes that submission of such documents will aid the department in investigating the qualifications of an applicant pursuant to Section 2302.105, Occupations Code.⁵⁶ Pursuant to the department's authority under Sections 2302.104(a)(8) and 2302.105, Occupations Code, proposed amended §221.16 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

P. The business location requirements for salvage vehicle dealers in proposed amended §§221.41 and 221.43-221.45 are consistent with state policy.

Proposed amended §221.41 updates business location requirements for salvage vehicle dealers utilizing a leased premises to engage in business. Many of the proposed amendments to §221.41 are minor and are intended to simplify the language to add clarity without changing the substance of the rule.⁵⁷ However, proposed amended §221.41(1) adds new requirements that apply to a salvage dealer that leases or subleases property for a business location. The amended provision, consistent with leased premises requirements for other types of licensure, requires a lease agreement to include signatures of the property owner as a lessor and the dealer as a lessee, or if operating under a sublease, to include a notarized statement from the property owner confirming certain contact information and a statement confirming that the dealer is authorized to sublease the location and may operate as a salvage vehicle dealer from the location. Again,

⁵⁶ 48 Tex. Reg. 8280 (2023) (preamble to proposed §221.16) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁵⁷ 48 Tex. Reg. 8281 (2023) (preamble to proposed §221.41) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

Section 2302.104, Occupations Code, in part, requires license applicants to submit information about the location the applicant intends to conduct business and grants the department authority to determine additional information that must be submitted to the department. Section 2302.105, allows the department to investigate an applicant's qualifications, which includes information pertaining to the location that an applicant or license holder intends to operate. And, Section 2302.0015, in part, authorizes the department to enter and inspect a license holder's records or documents. The department notes that proposed amended §221.41 is necessary to prevent fraud, protect consumers, and to protect public health and safety.⁵⁸ Likewise, the department believes such changes protect applicants, as the department has received applications from dealers with a signed sublease who are unable to operate their business, because such operations have not been authorized by a property owner.⁵⁹ It reasonably follows that if a leased or subleased location is not authorized for business use, then an applicant cannot conduct business at the location submitted in an application to the department under Section 2302.104, Occupations Code. As such, an applicant would not be qualified for licensure. Therefore, proposed amended §221.41 is a reasonable exercise of the department's statutory authority to investigate the qualifications of an applicant for licensure and is consistent with state policy.

Next, proposed amended §221.43 updates business hour requirements for salvage vehicle dealers and salvage pool operators. Proposed amended §221.43(a) would require salvage vehicle dealers who sell to retail customers to be open at least four days per week for at least four consecutive hours per day, and would prohibit an office from being open solely by appointment. This provision also requires the same for salvage pool operators selling only to a wholesale dealer, but requires such locations to be open for two days per week and for two consecutive hours per day. Section 2302.0015, in part, requires a person to allow the department or law enforcement to enter and conduct an inspection during normal business hours. While statute does not define the minimum reasonable business hours required of a licensee, the department intends to mirror those required for other types of licensure, such as the business hours required for GDN dealers in proposed amended §215.140(1)(A) and for wholesale GDN dealers in proposed amended §215.140(2).⁶⁰ The department asserts that the proposed minimum hours are necessary to deter and prevent fraud in the application process, prevent consumer harm, and ensure the department and law enforcement have access to a licensee's business location for inspection purposes.⁶¹ Ensuring industry-wide consistency is rational, and reasonably allows the department to exercise its authority to inspect under Section 2302.0015, Occupations Code, and to investigate an applicant's qualifications under Section 2302.105. Likewise, Section 2302.051, authorizes the department to adopt rules as necessary to administer its statutory duties and to take any other action necessary to enforce its duties. As such, proposed amended §221.43 is consistent with state policy.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 48 Tex. Reg. 8281 (2023) (preamble to proposed §221.43) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁶¹ *Id.*

Proposed amended §221.44 clarifies business sign requirements for salvage vehicle dealers, which have been in effect since 2015, and does little to alter the impact of the current rule. And, the proposed amendments are generally consistent with the business sign requirements for other types of licensure. Specifically, the department clarifies that a sign is considered permanent if it is made of durable, weather-resistant material, and should be permanently mounted or installed somewhere on the business premises. Under proposed new §221.44(c), the department offers new flexibility for license holders to utilize a temporary sign or banner, if the license holder has ordered a permanent business sign and certifies that it will be installed upon delivery. Lastly, proposed new §221.44(d) instructs licensees that they are responsible for ensuring that a business sign complies with municipal ordinances or lease requirements. Ultimately, Section 2302.051, Occupations Code, grants the department broad authority to adopt rules as necessary to administer and enforce its duties. Proposed amended §221.44 offers additional clarity to existing business sign requirements without altering the substance of the current rule, ensures consistency among other types of licensure, and offers additional flexibility for license holders. As such, proposed amended §221.44 is consistent with state policy.

Lastly, proposed amended §221.45 clarifies business office requirements for salvage vehicle dealers. Similar to proposed amended §221.44, many of the proposed amendments are intended to offer clarity to licensees and to ensure consistency with requirements for other types of licensure.⁶² The proposed amendments clarify that a licensee's business location must have a permanent roof, be in a physical location open to the public, have an address recognized by the U.S. Postal Service and have an assigned emergency services property address, and have internet access. As discussed in proposed amended §§221.41 and 221.43, licensees are required to operate at a business location registered with the department, and such a location must be accessible during regular business hours. Likewise, the proposed amendments are intended to ensure that the public and the department can readily locate the premises and are intended to establish the minimum standards necessary to protect public health and safety.⁶³ As previously stated, Section 2302.051, Occupations Code, grants the department broad authority to adopt rules as necessary to administer and enforce its statutory duties, including assessing and investigating the qualifications of applicants pursuant to Section 2302.105. Section 2302.104(a)(3) requires applicants, as part of the application process, to submit business location information to the department. Pursuant to its duty to investigate applicant qualifications, the department proposes reasonable business premises requirements that both ensure a license holder is actually able to engage in business and that the public is adequately protected. For the aforementioned reasons, proposed amended §221.45 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

⁶² 48 Tex. Reg. 8281 (2023) (preamble to proposed §221.45) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁶³ 48 Tex. Reg. 8282 (2023) (preamble to proposed §221.45) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

Q. The requirements pertaining to the duty to identify salvage motor vehicles and non-repairable motor vehicles offered for sale in proposed amended §221.51 are consistent with state policy.

Current §221.51 generally requires consumer notifications that identify salvage motor vehicles and non-repairable motor vehicles offered for sale and requires purchasers to acknowledge that a vehicle is a salvage motor vehicle or a non-repairable motor vehicle at the time of sale. Proposed amended §221.51(c) and (d) alter the current rule, which generally requires salvage vehicle dealers to give the public and purchasers notice that a non-repairable motor vehicle for sale may not be operated on a public highway, by removing a phrase from the notice that such vehicles may not be operated on a public highway in other states. As the department does not have the authority to regulate out-of-state highways, the proposed removal of such language is consistent with the department's statutory authority. Proposed amended §221.51(f) grants additional flexibility by allowing salvage vehicle dealers to post a single, permanent sign, as opposed to the current requirement to place a sign on each vehicle offered for sale, that notifies the public of the condition or title of the vehicles offered for sale. Lastly, proposed amended §221.51(h) clarifies that §221.51 does not apply to a vehicle that is displayed or offered for sale by a salvage vehicle dealer who operates solely as a salvage pool operator and only sells vehicles at wholesale. Proposed amended §221.51(h) removes a reference to a department-recognized salvage pool license endorsement, because such endorsements were eliminated by Senate Bill 604 during the 86th Regular Legislative Session. Ultimately, proposed amended §221.51 better aligns with statute, and offers additional clarity and flexibility for license holders. The department has authority to adopt rules, subject to certain conditions, prohibiting false, misleading, or deceptive practices under Section 2302.053, Occupations Code. Likewise, clarifying existing notice requirements pertaining to the condition or title of vehicles offered for sale better informs and protects the public, and is a reasonable exercise of the department's statutory authority under Section 2302.051. Therefore, proposed amended §221.51 is consistent with state policy.

R. The criteria for site visits in proposed amended §221.54 are consistent with state policy.

Proposed amended §221.54 introduces two factors the department will consider when determining whether to conduct a site visit of an active salvage dealer's business location. Under proposed §221.54(4) and (5), the department proposes to consider whether a business location fails to meet premises or operating requirements, or whether license holder records require further investigation by the department. Again, Section 2302.0015, Occupations Code, in part, grants the department the authority to enter the premises of a business regulated by the department for the purpose of enforcing or administering Chapter 2302, or Chapters 501 or 502, Transportation Code. The proposed amendments to §221.54 offer clarity to licensees regarding department practice, and are ultimately a reasonable exercise of the department's statutory authority. As such, proposed amended §221.54 is consistent with state policy.

S. The record keeping requirements for salvage vehicle dealers in proposed amended §221.73 are consistent with state policy.

Proposed amended §221.73 updates the record-keeping requirements for salvage vehicle dealer purchases and sales of motor vehicles. Many amendments are intended to improve clarity, remove redundant language, or to add references to other rules.⁶⁴ Of note, proposed amended §221.73(a) expands the list of records that the department notes may be applicable to particular sales or purchases, and which are intended to aid the department in monitoring license holders' compliance with existing laws and rules.⁶⁵ As noted, while the department has the authority to inspect documents and records maintained by license holders under Section 2302.0015, Occupations Code, it makes practical sense for the department to establish best practices pertaining to record-keeping, and the department reasonably does so under its authority pursuant to Section 2302.051. As such, proposed amended §221.73 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

III. Determination

Based on the above analysis, the proposed rules are approved by the division and may proceed to final adoption and implementation.

⁶⁴ 48 Tex. Reg. 8282 (2023) (preamble to proposed §221.73) (Dec. 29, 2023) (Tex. Dep't Motor Vehicles).

⁶⁵ *Id.*