

Office of the Governor
Regulatory Compliance Division
Rule Submission Memorandum

To: Regulatory Compliance Division Director

From: Laura Moriaty
General Counsel, Texas Department of Motor Vehicles

Date: February 28, 2025

Subject: 43 TAC §215.163 New Proposed Rule

The Texas Department of Motor Vehicles (TxDMV or department) has proposed a new rule in 43 Texas Administrative Code (TAC) Chapter 215, as published in the February 28, 2025, issue of the *Texas Register*. The department requests Regulatory Compliance Division review of this new proposed rule.

The PDF version of the preamble and text of this new proposed rule as published in the Texas Register are attached to this memorandum.

To facilitate the Regulatory Compliance Division's review of the proposed rule, TxDMV provides answers to the following questions.

1. Briefly describe the proposed rule.

This proposed new rule addresses license holder responsibilities for license plate disposition and reporting when motor vehicles are sold by license holders in the following circumstances:

1. at wholesale motor vehicle auction,
2. at public auction, and
3. on consignment, including consignment of salvage and total loss vehicles.

2. What is the purpose of the proposed rule?

This rule implements House Bill 718, enacted during the 88th Legislature, Regular Session (2023) and proposes how wholesale motor vehicle auctions and dealers should handle license plates when a motor vehicle is sold at auction or on consignment.

In proposing this new rule, the department's goal is to minimize opportunities for license plate fraud related to auction and other consignment sales and to eliminate any unnecessary

operational or cost impacts to license holders. The effective date for this proposed rule would be on or shortly after July 1, 2025.

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

With few exceptions, HB 718 requires a previously assigned standard license plate to transfer with the vehicle when the vehicle is sold in a subsequent retail sale. *See*, Tex. Transp. Code §503.063, and 504.901, as amended by HB 718, effective July 1, 2025. Under the definitions in Texas Transportation Code §503.001 and the provisions of §503.037, a sale at wholesale auction is not a retail sale, so the plate-transfer requirements of Texas Transportation Code §504.901(a) do not apply. Therefore, the metal plates assigned to the vehicle are not required to be transferred with a vehicle after sale at a wholesale auction. On the other hand, when a vehicle is sold to a member of the public in a retail sale, including when the retail sale takes place in a public auction or through a consignment with a licensed dealer, Texas Transportation Code §504.901 does apply, and the metal plate assigned to the vehicle must transfer with the vehicle.

After TxDMV proposed rules related to HB 718 in June 2024, certain wholesale motor vehicle auction and dealer license holders raised questions about the disposition of license plates when motor vehicles are sold at auction or on consignment, as these license holders were concerned that the department was proposing operational changes that could substantially increase business costs.

As a result, language requiring secure license plate storage at a wholesale motor vehicle auction location was deleted from the HB 718 rule adoption in October 2024, and the department began drafting a new rule after engaging with these stakeholders to understand their various business models and processes.

The resulting proposed new §215.163 would require a selling dealer or a wholesale auction licensee to destroy plates for vehicles sent to a wholesale auction and to record the disposition of the plate in the department's license plate management system. The goals of the proposed rule are to avoid the cost to wholesale auction license holders of storing and reassigning plates, while still reducing the risk of license plate fraud. In the context of a retail sale, whether through auction or consignment, the proposed new rule would require dealers to ensure that the plate assigned to the vehicle transfers with the vehicle and is reassigned to the new retail purchaser, in accordance with Texas Transportation Code §504.901. Please see the attached rule preamble for a more detailed explanation.

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, in addition to the rulemaking authority provided in Section 34 of HB 718, the

department proposes new §215.163 under:

- Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and
- Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates.

- 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 proposed rule is within the scope, and reference the applicable state statute(s).

Yes, the proposed rules are within the scope of the department's authority to regulate the motor vehicle industry. The department proposes new §215.163 under:

- Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures;
- Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority;
- Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules; prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503;
- Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board;
- Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302;
- Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
- Transportation Code, §504.0011, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 504; and
- Transportation Code, §1002.001, which 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.

In drafting the proposed new rule, TxDMV reviewed statutory authority, and incorporated public comments and input from 1) individual dealers and wholesale motor vehicle auction license holders; 2) a trade group, the National Auto Auction Association (NAAA); and 3) the Motor Vehicle Industry Regulation Advisory Committee.

Proposed new §215.163 originated from stakeholder comments that the department received in response to an earlier proposed rule amendment to §215.140, which was published in the June 12, 2024 issue of the *Texas Register* and reviewed by the Regulatory Compliance Division in its October 10, 2024 determination letter. At the TxDMV board meeting on October 24, 2024, the TxDMV board voted to withdraw the proposed amendments to §215.140 relating to wholesale auctions in response to comments from stakeholders. The TxDMV board requested that staff engage with stakeholders to draft a new rule on the disposition of metal plates in the context of wholesale auctions.

In November 2024, the department provided an early draft of this proposed new rule to the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC). The department incorporated input from this committee into this new rule proposal, as well as comments from license holders that regularly hold or participate in motor vehicle auctions.

TxDmv's board considered the proposed rule revisions in an open meeting on February 8, 2024, during which stakeholders had the opportunity to comment. The TxDMV board voted to authorize the department to publish proposed new §215.163 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.

The proposed new rule is designed to prevent Texas license plates from being used fraudulently after a vehicle is sold at auction or on consignment, while minimizing the business and operational costs to licensees associated with the implementation of HB 718's elimination of paper temporary tags and directive that an assigned general issue license plate transfer with the vehicle if the vehicle is subsequently sold at retail to Texas buyer who does not have a specialty, personalized, or other qualifying license plate to transfer to the vehicle.

This new rule is designed to protect consumers, including law enforcement, from fraud and crimes perpetrated by bad actors using these Texas license plates to commit crimes and hide their identity. Based on 2023 numbers, NAAA estimates that at least 225,000 Texas registered vehicles are being sold each year to out-of-state dealers. Preventing these license plates from leaving the state and requiring the license plate or vehicle transfer database to be updated will help prevent fraud and enable law enforcement to quickly identify fraudulent license plates during a traffic

stop. The explanation section of the preamble contains additional information for each subsection of the new proposed rule.

7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

Less-restrictive alternatives would not provide the same level of protection for the public including law enforcement. The proposed rule sets minimum standards to protect public health and safety. Please see the explanation section of the preamble and the regulatory flexibility analysis in the attached rule proposal.

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

- 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 it sets minimum standards of business practice for licensees who hold a wholesale motor vehicle auction general distinguishing number (license). Dealers are not impacted by this new rule, as the same or similar requirements are already in place under the rules adopted by the Board in October 2024 and was reviewed by the Regulatory Compliance Division and found to be within the department's authority in the determination letter of October 10, 2024.

10. 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?

No, an Attorney General opinion is not pending nor has one been issued related to this proposed new rule to our knowledge.

11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?

No, the proposed new rule would not be effective until on or shortly after July 1, 2025, and does not relate to a matter on which there is pending litigation. The department's

enforcement division pursues administrative penalties against applicants and license holders on an on-going basis, and final orders issued by the board, or a board delegate may be appealed through the court system.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

A copy of the executive summary for the proposal that was submitted to the department's board is attached. The department will promptly forward any public comments received to you.

Note: In addition to this memorandum and its required attachments, the state agency must provide copies of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public regarding the proposed rule. A state agency is not required to submit any privileged or confidential information to the Regulatory Compliance Division.

(n) Forensic Analyst License Expiration and Reinstatement. A Forensic Analyst must comply with §651.209 of this subchapter (Forensic Analyst and Forensic Technician License Expiration and Reinstatement) of this subchapter.

(o) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a forensic analyst license under this section does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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

Filed with the Office of the Secretary of State on February 13, 2025.

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Texas Forensic Science Commission

Earliest possible date of adoption: March 30, 2025

For further information, please call: (512) 936-0661



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER D. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES

43 TAC §215.163

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes a new section to 43 Texas Administrative Code (TAC) Subchapter D, General Distinguishing Numbers and In-Transit Licenses, §215.163, concerning the disposition of license plates for motor vehicles sold at auction or on consignment. This proposed new section is necessary to implement the requirements of House Bill (HB) 718, enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of paper temporary tags when purchasing a motor vehicle and replaced these tags with categories of metal license plates, effective July 1, 2025. HB 718 requires the department to determine proposed new distribution methods, systems, and procedures, and safeguards to protect Texas citizens from license plate fraud. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law, and the department published proposed rules in the July 12, 2024, issue of the *Texas Register*, and published adopted rules in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8953). During the rulemaking process, license holders raised questions about disposition of license plates when motor vehicles are sold at auctions or on consignment based on concerns that the department may require operational changes that would increase business costs. In November 2024, the department provided an early draft of this proposed new rule to the Motor Vehicle Industry Regulation Advisory Committee (MVIAC). Committee members voted on formal motions and provided informal comments. The department incorporated input from this committee into this rule proposal, as well as comments from license holders that regularly hold or participate in motor vehicle auctions. In proposing this rule, the department seeks to minimize opportunities for license plate fraud related to auction and other consignment sales and to eliminate any unnecessary operational or cost impacts to license holders. The effective date for this proposed rule would be July 1, 2025.

EXPLANATION.

Proposed new §215.163 would address how a license holder must handle a license plate or set of license plates for motor vehicles sold at auction or on consignment. Proposed new §215.163 is necessary to clarify license plate disposition and the reporting responsibilities of a dealer and a wholesale motor vehicle auction general distinguishing number (GDN) holder when offering a motor vehicle for sale at a wholesale auction, and to clarify a dealer's responsibilities when offering a motor vehicle with an assigned license plate or set of license plates for sale at auction or on consignment at the dealer's licensed location consistent with the requirements of Transportation Code, §503.063 and §504.901 effective July 1, 2025. This proposed rule will also align license plate transfer requirements in the auction and consignment contexts with the amended rules regarding license plate transfers that the department adopted in October 2024 to implement HB 718; those amended rules will become effective July 1, 2025.

Proposed new §215.163(a) would address license plate disposition requirements for motor vehicles offered for sale at a wholesale motor vehicle auction, in which only dealers are

allowed to purchase a motor vehicle under Transportation Code, §503.037. The only exception allowed under Transportation Code, §503.037(d) is for the sale of a vehicle owned by a state or federal government entity, and such a motor vehicle typically has an exempt license plate which does not transfer with the motor vehicle. Proposed new §215.163(a)(1) would require a wholesale motor vehicle auction GDN holder that receives a motor vehicle on consignment from a person who is not a GDN holder to remove and mark any license plate with the vehicle as void; destroy, recycle, or return any license plate as required under adopted amended 43 TAC §215.158 (relating to General Requirements for Buyer's License Plates); and update the license plate database to notify the department of the auction sale. Proposed new §215.163(a)(2) would require a GDN dealer that consigns or delivers a motor vehicle from the GDN dealer's inventory for sale at a wholesale auction to remove and mark the vehicle's license plate or set of license plates as void; destroy, recycle, or return any license plate as required under adopted amended 43 TAC §215.158 (relating to General Requirements for Buyer's License Plates); and update the license plate database. Proposed new §215.163(a) is necessary to prevent Texas license plates from being distributed out-of-state or exported and used fraudulently. These proposed provisions are also consistent with Transportation Code, §503.063 and §504.901 as amended by HB 718, because a retail buyer may not purchase a motor vehicle at a wholesale motor vehicle auction with an assigned general issue license plate, so the cost and delay associated with securely maintaining and transferring an assigned license plate with the vehicle are unnecessary.

Proposed new §215.163(b) would define a dealer's license plate disposition responsibilities if a motor vehicle is sold at a public auction, at which members of the public can bid on and purchase a motor vehicle. Proposed new §215.163(b) closely aligns with the more general rules the department has already adopted for license plate disposition in sales by a dealer to a member of the public, requiring general issue license plates to be removed, securely stored, and reassigned to the buyer except in certain circumstances where destruction of the plates is necessary to reduce the opportunity for fraud. If a dealer offers a motor vehicle from the dealer's inventory or a vehicle consigned to the dealer for sale at a public auction, the dealer is required to maintain any license plate assigned to the vehicle in a secure storage area as required in adopted amended 43 TAC §215.150(f) (relating to Dealer Authorization to Issue License Plates) until the motor vehicle is sold. If the purchaser is a Texas retail buyer, the dealer must securely transfer the license plates to the purchaser and update the license plate database unless the buyer has a specialty personalized or other qualifying license plate to transfer, consistent with adopted amended 43 TAC §215.151 (relating to License Plate General Use Requirements). If the purchaser at the public auction is a dealer, export buyer, or out-of-state buyer, the selling dealer must mark any license plate previously assigned to the vehicle as void; destroy, recycle, or return the license plate as required in adopted amended 43 TAC §215.158 (relating to General Requirements for Buyer's License Plates); and update the license plate database. Additionally, if the purchaser at an auction is an out-of-state buyer, the dealer may only issue a buyer's temporary license plate if the buyer requires this license plate to transport the vehicle to another state in accordance with Transportation Code, §503.063, as amended by HB 718, and with adopted amended 43 TAC §215.150(c) (relating to Dealer Authorization to Issue License Plates). Proposed new §215.163(b) is necessary to clarify license plate disposition for different types of sales that can occur at a public auction and

to minimize potential fraud or misuse of license plates that may occur, consistent with the requirements of Transportation Code, §503.063 and §504.901, as amended by HB 718, and of adopted amended 43 TAC §§215.150, 215.151, and 215.158.

Proposed new §215.163(c) would implement dealer requirements for other types of consignment sales which occur at a dealer's licensed location and not at auction. Proposed new §215.163(c) is necessary to address license plate disposition for other types of consignment sales and to minimize potential fraud or misuse of license plates, consistent with the requirements of Transportation Code, §503.063 and §504.901, as amended by HB 718, and the requirements of the department's adopted amended rules implementing HB 718. Proposed new §215.163(c)(1) would require a dealer to remove and securely store any license plate during the period of consignment at the licensed location, to align with adopted amended 43 TAC §215.150(f) (relating to Dealer Authorization to Issue License Plates). Proposed new §215.163(c)(1) would further clarify that a dealer may use its dealer's temporary license plate to demonstrate the consigned vehicle to a potential purchaser, in accordance with adopted amended 43 TAC §215.138 (relating to Use of Dealer's License Plates). Proposed new §215.163(c)(2) would align the requirements for dealer consignment sales with the general license plate disposition requirements in the department's adopted amended rules implementing HB 718. Proposed new §215.163(c)(2) would require a dealer, upon the sale of a consigned motor vehicle, to provide any assigned license plate to a Texas retail buyer that purchases the vehicle unless the buyer has a specialty personalized or other qualifying license plate to transfer and to update the license plate database, consistent with adopted amended 43 TAC §215.151 (relating to License Plate General Use Requirements). If the vehicle is sold to an out-of-state buyer, for export, or to a Texas dealer, a dealer must mark any license plate as void; destroy, recycle, or return the license plate, as required in adopted amended 43 TAC §215.158 (relating to General Requirements for Buyer's License Plates); and update the license plate database, as required by adopted amended 43 TAC §215.151 (relating to License Plate General Use Requirements). Proposed new §215.163(c)(3) is necessary to clarify license plate disposition requirements for independent motor vehicle dealers whose business includes the sale of salvage vehicles or total loss vehicles as defined by the applicable insurance contract, and who may receive consignments from non-GDN holders such as insurance or finance companies. In these situations, an independent motor vehicle dealer must remove and mark any license plate as void; destroy, recycle, or return the license plate as required in adopted amended §215.158 (relating to General Requirements for Buyer's License Plates); and update the license plate database, as required by adopted amended 43 TAC §215.151 (relating to License Plate General Use Requirements). Under Occupations Code, §2302.009, an independent motor vehicle dealer that acts as a salvage vehicle dealer or displays a motor vehicle as an agent of an insurance company must comply with Occupations Code, Chapter 2302, including the requirement to immediately remove any unexpired license plate. Requiring an independent motor vehicle dealer to void, destroy, recycle, or return the license plate as required in adopted amended §215.158 (relating to General Requirements for Buyer's License Plates) is necessary to reduce the risk of fraud or misuse of the plates, since salvage or total loss vehicles may not be driven on Texas roads. Proposed new §215.163(c) is necessary to minimize potential fraud or misuse of these license plates and is

consistent with the requirements of Occupations Code, Chapter 2302, and Transportation Code, §503.063 and §504.901.

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 new section will be in effect, there will be no fiscal impact on state or local governments as a result of the enforcement or administration of the proposal. Annette Quintero, Director of the Vehicle Titles and Registration (VTR) Division has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Quintero has also determined that, for each year of the first five years the proposed new section is in effect, the public will benefit because of the reduction of Texas license plates leaving Texas, which will reduce the opportunity for bad actors to use these license plates to commit license plate fraud and related crimes. The department prioritized the public benefits associated with reducing fraud and related crime and improving public health and safety, while carefully considering potential costs to license holders consistent with board and department responsibilities.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include limiting the criminal activity of bad actors who may obtain Texas license plates and sell or provide these license plates 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 which are hazardous to Texas motorists and the environment.

Anticipated Costs To Comply With The Proposal. Ms. Quintero anticipates that while dealer GDN holders will not incur additional costs to comply with the proposed rule, wholesale motor vehicle auction GDN holders may incur costs to comply with the proposed rule. For dealers, proposed new §215.163 has the same requirements that are already in place under other previously adopted rules or existing statutes and will not impose any new cost requirements.

However, this proposal may require wholesale motor vehicle auction GDN holders to make an operational change or incur a cost. The department can estimate certain associated costs. Proposed new §215.163 would require a wholesale motor vehicle auction GDN holder to permanently mark the front of a buyer's license plate with the word "void" or a large "X." Department research suggests that the cost of a permanent marker is \$1.35 per marker. Proposed new §215.163 would also require a wholesale motor vehicle auction GDN holder to destroy a void buyer's license plate, recycle a void plate with a registered metal recycler, or return the void plate to the department, or to a county tax assessor-collector. Aviation tin snips may be used to destroy a void license plate. Department research suggests that the cost of tin snips, which can cut metal, is approximately \$18.50. A motor vehicle auction GDN holder may choose to recycle void license plates. Department research suggests that the cost of doing so through a metal recycler will vary by locality and the availability of local recycling facilities, with some regions benefitting from free curbside-pickup recycling programs and others requiring license holders to expend transportation costs to take the plates to a recycling facility. Department research also suggests that scrap aluminum, such as voided license plates, is currently worth about \$.72 per pound when sold to a metal recycler. Lastly, a motor vehicle auction GDN holder may

return a void buyer's license plate to the department, including one of the regional service centers, or a county tax assessor-collector office, or mail a void plate to the department. Department research suggests that a typical average cost to mail a plate is \$9.75. The proposed rule provides a motor vehicle auction GDN holder with multiple options for responsible disposal of void license plates and each license holder may choose which option is least expensive or most convenient based on the license holder's operation. Ms. Quintero has reviewed the department research regarding the cost of marking and the options for destroying, recycling, or returning void license plates and has determined that these costs are reasonable and necessary to reduce the potential for fraudulent plate use and to protect the public, including law enforcement personnel. Indeed, it is possible that many wholesale motor vehicle auction GDN holders will incur no costs as a result of the proposed rule: the wholesale motor vehicle auction GDN holders who commented or provided informal feedback on the draft rule stated that they already have existing systems in place to collect and dispose of license plates and to report vehicle transfers using the currently available web-based tools.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that this proposal may have an adverse economic effect or disproportionate economic impact on small or micro-businesses. The department has determined that the proposed rule will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a GDN under Transportation Code, §503.024.

The cost analysis in the Public Benefit and Cost Note section of this proposal determined that the proposed new rule may result in additional costs for existing license holders. Based on data from the Comptroller and the Texas Workforce Commission, the department estimates that most license holders are small or micro-businesses. The department has tried to minimize costs to both wholesale motor vehicle auction and dealer GDN holders. The proposed new requirements are designed to set minimum standards that will prevent license plate fraud, protect public health and safety, and allow these license holders to operate without incurring significant ongoing or unreasonable costs. These requirements do not include requirements that will cause a license holder to incur unnecessary or burdensome costs, such as employing additional persons.

Under Government Code, §2006.002, the department must perform a regulatory flexibility analysis. The department considered the alternatives of not adopting a rule, exempting small and micro-business license holders from the rule, and adopting a limited version of this rule for small and micro-business applicants and license holders. The department rejected all three options. The department reviewed licensing records, including records for license holders who have been denied access to the temporary tag system, and determined that small and micro-business license holders are largely the bad actors who have historically perpetrated fraud. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of the proposed rule for small or micro-business GDN dealers. Also, Government Code, §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses and micro-businesses if the alternatives would not be protective of the health and safety of the state.

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, no government program would be created or eliminated. Implementation of the proposed new section would not require the creation of new employee positions or the elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new section would create a new regulation by creating new §215.163 to set out the requirements for plate disposition in the context of motor vehicle sales through auctions and consignments, and would limit an existing regulation by allowing dealers selling vehicles from their inventory at wholesale auction to void and destroy license plates rather than removing, securely storing, and transferring a previously assigned license plate when a motor vehicle is sold to an in-state buyer. The proposed new section would not expand or repeal an existing regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's applicability and will not negatively affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. (CDT or CST, as applicable) on March 31, 2025. 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.

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department proposes new §215.163 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, to ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which gives the board authority

to adopt rules as necessary to administer and enforce Chapter 2302; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §504.0011 which allows the board to adopt rules to implement and administer Transportation Code, Chapter 504; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The proposed new section would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503, 504, and 1002.

§215.163. License Plate Disposition for Motor Vehicles Sold at Auction or on Consignment.

(a) Wholesale Motor Vehicle Auctions.

(1) A wholesale motor vehicle auction GDN holder that receives a consignment and delivery of a motor vehicle from a person who is not a GDN holder for the purpose of sale at auction shall:

(A) remove and mark any license plate as void;

(B) destroy, recycle, or return any license plate as required in §215.158 of this title (relating to General Requirements for Buyer's License Plates); and

(C) update the license plate database.

(2) A GDN dealer that consigns or delivers a motor vehicle from the GDN dealer's inventory for sale at a wholesale motor vehicle auction shall:

(A) remove and mark any license plate as void;

(B) destroy, recycle, or return any license plate as required in §215.158 of this title; and

(C) update the license plate database.

(b) Public Auctions.

(1) A dealer shall remove and securely store any assigned license plate, as required under §215.150(f) of this title (relating to Dealer Authorization to Issue License Plates), before offering a consigned motor vehicle for sale at a public auction.

(2) If the purchaser at a public auction is a Texas retail buyer, the dealer shall securely transfer the license plates to the purchaser and update the license plate database unless the buyer has a specialty, personalized, or other qualifying license plate to transfer consistent with §215.151 of this title (relating to License Plate General Use Requirements).

(3) If the purchaser at the public auction is a dealer, export buyer, or out-of-state buyer, the selling dealer shall:

(A) mark any license plate previously issued to the vehicle as void;

(B) destroy, recycle, or return the license plate as required in §215.158 of this title; and

(C) update the license plate database.

(4) Notwithstanding §215.150(c) of this title, if the purchaser at a public auction is an out-of-state buyer, the dealer shall issue a buyer's temporary license plate only if the buyer requires this license plate to transport the vehicle to another state in which the vehicle will be titled and registered in accordance with the laws of that state.

(c) Other Consignment Sales.

(1) A dealer shall remove and securely store any license plates during the period of consignment at the dealer's licensed location, as required under §215.150(f) of this title, when offering for sale a consigned motor vehicle owned by a person who is not a GDN holder. The dealer to which the vehicle is consigned may use its dealer's temporary license plate to demonstrate the consigned motor vehicle to a potential purchaser.

(2) Upon the sale of a consigned motor vehicle owned by a person who is not a GDN holder, the dealer shall:

(A) provide any issued license plate to a Texas retail buyer that purchases the vehicle unless the buyer has a specialty, personalized, or other qualifying license plate to transfer consistent with §215.151 of this title and update the license plate database; or

(B) if the vehicle is sold to an out-of-state buyer, for export, or to a Texas dealer:

(i) mark any license plate previously issued to the vehicle as void;

(ii) destroy, recycle, or return the license plate as required in §215.158 of this title; and

(iii) update the license plate database.

(3) An independent motor vehicle dealer who receives consignment and delivery of a salvage vehicle or total loss vehicle (as defined by the applicable insurance contract) for sale from a person who is not a GDN holder shall:

(A) remove and mark any license plate previously issued to the vehicle as void;

(B) destroy, recycle, or return the license plate as required in §215.158 of this title; and

(C) update the license plate 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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For further information, please call: (512) 465-4160

