



Office of the Governor
Regulatory Compliance Division
Rule Submission Memorandum

To: Erin Bennett, Regulatory Compliance Division Director

From: Elizabeth Fore, General Counsel, Texas Department of Motor Vehicles

Date: October 28, 2022

Subject: 43 TAC §215.133 General Distinguishing Number
43 TAC §215.140 Established and Permanent Place of Business

The Texas Department of Motor Vehicles (department) has proposed amendments to 43 Texas Administrative Code §215.133 and §215.140 as published in the October 28, 2022 issue of the *Texas Register* (47 *TexReg.* 7256). The proposed amendments may affect market competition and are being submitted to the Regulatory Compliance Division for review. The PDF version of the preamble and text of the proposed amendments as published in the *Texas Register*, and the language of any amendments to the proposed rule that the department intends to adopt, are attached to this memorandum.

The department requests an expedited review of the proposed amendments based on the following circumstances: The department will be prepared to request that our board approve the adoption of this rule proposal at the December 8, 2022 board meeting.

At the February 10, 2022 board meeting, the board authorized the department to propose pre-licensing rule amendments and to bring the rule proposal back to the board for adoption as quickly as possible. The proposed amendments will reduce fraud and criminal activity and provide valuable clarification to current and future GDN dealer license holders.

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

1. Briefly describe the proposed rule.

The department proposes amending the pre-licensing requirements for General Distinguishing Number (GDN) dealers. These proposed amendments affect new and renewal dealer applicants

and include updates to application requirements and business premises requirements for a dealer to establish a permanent place of business as required by Transportation Code §503.032.

2. What is the purpose of the proposed rule?

The purpose of the proposed amendments is five-fold:

- 1) to deter and prevent fraud in the application process,
- 2) to set minimum business premises standards that will deter fraud and protect public health, safety, privacy, and other public welfare interests,
- 3) to conform these rules with legislative changes,
- 4) to clarify existing rule provisions affecting all GDN applicants and dealers, and
- 5) to update the rule language consistent with the department's current electronic application processing requirements.

Additionally, the department is proposing non-substantive amendments to standardize and modernize rule language.

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

The department simplified licensing rules in 43 Texas Administrative Code Chapter 215 in August 2012, and performed a rule review of this chapter in February 2017. See Appendices 1 to 3. Since that time fraudulent applications increased significantly, enabling a wide range of criminal behavior.

Bad actors have provided the department with false information and documents, such as fake identity documents, fictitious lease agreements, and fake photographs of the business premises to obtain a dealer GDN. These bad actors may operate virtually or out of an existing, unrelated business, such as a restaurant, gas station, or convenience store.

Even if a business location is properly established, bad actors frequently abandon the licensed business location once the dealer GDN is obtained or post a sign stating that the business is open by appointment only to hinder department investigations and impede law enforcement activities. Additionally, bad actors use hidden storage lots to facilitate criminal acts such as Vehicle Identification Number (VIN) switching or cloning¹, making it difficult for the department to hold them accountable. Bad actors have also used a dealer GDN to commit a broad range of crimes, including fraud, theft, and money laundering. Bad actor license holders use their GDN to print fraudulent temporary tags. These fraudulent temporary tags enable criminals to operate

¹ VIN switching or cloning is the practice of using a VIN from a vehicle that is legally registered to hide the identity of a stolen vehicle or a salvaged vehicle. According to the Motor Vehicle Crime Prevention Authority, this technique is used to generate higher sales prices and to disguise the true nature of the vehicle's title before an illegal sale. A stolen vehicle cannot be legally sold. Other vehicles, such as salvage vehicles damaged in floods or wrecks cannot be sold without a designator (brand) on the title that indicates they are a salvage vehicle. Motor Vehicle Crime Prevention Authority, Plan of Operation, page 8 (2020).

stolen vehicles and commit crimes such as human and drug trafficking. Criminals also use fraudulent temporary tags registered under fake names and addresses to hinder law enforcement's ability to trace vehicles.

Fraudulent temporary tags are also used to operate motor vehicles that violate environmental and safety regulations and to avoid paying registration fees which fund the construction and maintenance of the state's highway system, including county road and bridge projects.

The department adopted a new rule (43 TAC §211.6) requiring fingerprinting of GDN dealer applicants and holders, effective September 1, 2022. See Appendix 4. An amendment implementing the fingerprint rule as part of the department's application process is included in these rule amendments to prevent identity fraud and enhance the department's ability to obtain accurate criminal history records. In addition, the department is proposing to reinstate certain licensing requirements that were eliminated or modified in 2012 and adding new provisions to further prevent and deter fraud in the dealer GDN application process.

In proposing these amendments, the department reviewed and considered trends in citizen complaints about GDN dealers that the department received from January 2019 to April 2022, as well as best practice recommendations published by the American Association of Motor Vehicle Administrators (AAMVA). The department reviewed data and recommendations for both retail and wholesale dealers.

Applicants for a new dealer GDN, as well as existing dealer GDN holders, may inadvertently or purposefully fail to comply, or fail to continue complying, with all requirements for establishing a permanent business location required by Transportation Code §503.032 and the Texas Administrative Code §215.140. When the department is concerned whether a business location meets all statutory and rule requirements to have an established and permanent place of business or suspects fraud, the department assigns an investigator to visit the business location and evaluate compliance as part of the department's responsibility under Occupations Code §2301.256 and Transportation Code §§503.029, 503.034, and 503.038. Based on the department's review of thousands of applications and the results of hundreds of these investigations, the department identified public safety issues regarding business premises, and is now proposing to reinstate certain requirements that were eliminated in 2012 that directly affect public safety and welfare. These proposed amendments are consistent with the police power the legislature delegated to the department in Occupations Code §2301.001.

Occupations Code §2301.801(b)(1) authorizes the board to consider the harm or potential harm to the safety of the public when determining the amount of a civil penalty for a violation, which is further evidence of the department's authority to protect the safety of the public under Occupations Code Chapter 2301.

The department also identified rule clarifications that will aid GDN dealers and applicants in understanding premises requirements for an established and permanent place of business. These proposed amendments are responsive to the increasing number of GDN applicants and holders that are failing to comply with municipal occupancy and licensing requirements, resulting in their inability to establish or maintain a permanent place of business as required by

statute. The requirements under Transportation Code §503.029(a)(3) and (4) are continuing requirements if the department issues a dealer GDN because the department may cancel the dealer's GDN under Transportation Code §503.038(a)(7) if the dealer fails to maintain the qualifications for a GDN.

The proposed amendments also implement three statutory requirements:

1. House Bill 139, 87th Legislature, Regular Session (2021). The proposed amendment provides that a military service member, military spouse, or military veteran will receive appropriate credit for training, education, and professional experience when applying for a new GDN or renewing an existing GDN. *See Appendix 5.*
2. House Bill 3533, 87th Legislature, Regular Session (2021), amended Transportation Code §503.033 to require an increased surety bond of \$50,000 for certain independent GDN holders and the posting of a bond notice at the business location. *See Appendix 6.*
3. House Bill 1667, 86th Legislature, Regular Session (2019), added Occupations Code §2302.009 and amended §2302.101 to provide that a person holding an independent motor vehicle dealer GDN is exempt from the requirement that the person also hold a salvage vehicle dealer license to act as a salvage vehicle dealer or rebuilder. The proposed amendments retain the requirement to conspicuously mark salvage motor vehicles offered for sale, which is an important consumer protection. *See Appendix 7.*

Certain proposed amendments to §215.133 and §215.140 may result in additional costs for some GDN dealers. The department has tried to minimize costs to these GDN holders. The requirements in §215.133 and §215.140 are designed to be the minimum standards that will prevent fraud in the application process, prevent consumer abuse, and protect public health and safety. These requirements do not include requirements that will cause a GDN dealer to incur unnecessary or burdensome costs, such as employing additional staff.

These requirements are minimum standards. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of proposed amendments for any dealer GDN applicants or holders without sacrificing important public health, safety, and welfare protections.

Proposed amendments to §215.133 require GDN dealer applicants and holders to provide more information in the application. While some applicants may be required to spend more time completing an application or providing additional information, these costs will be offset by the reduced risk of dealer GDN applicants and holders incurring financial penalties due to noncompliance with property owner requirements and municipal ordinances which will benefit both GDN dealers and the public.

In proposed amendments to §215.140, wholesale motor vehicle dealers will be required to add certain text to their business sign. Department research suggests that the cost to add this additional text to an interior business sign will be approximately \$20, and the cost for an exterior sign will vary between \$165 to \$710, with an average expected cost of approximately

§250. While the actual cost will vary based on business owner style and design preferences, the department's civil penalty guidelines for selling a vehicle without the appropriate license type range from \$500 to \$2,000 per vehicle. Therefore, the signage cost will be offset by the reduced risk of these GDN holders incurring civil penalties and will benefit the public by preventing unlawful purchases. See Appendix 8 for the department's Motor Vehicle Dealers Disciplinary Matrix. Additionally, the sign cost is mitigated by setting the minimum letter size requirements at one-half the business name lettering size requirement, delaying the compliance effective date to September 1, 2023, and by allowing new and renewal applicants to use a temporary sign if a permanent sign has been ordered and the applicants agree to permanently install the sign promptly on delivery.

Proposed amendments to §215.140 include changes in office space, display area, and storage lot requirements to prevent consumer abuse and improve public health and safety. While most bona fide dealers already comply with these minimum requirements, a few dealers may have to modify their premises to comply. Department research suggests that the cost per square foot of space to comply with office space requirements varies from \$20 to \$30 depending on the market size; however, the exact cost will vary based on market and business owner preferences, the amount of space currently leased, local construction and material costs, and space availability.

These costs are necessary to prevent fraud and protect customers' person, property, and personal information. GDN dealer applicants and holders will have to disclose the physical address of a storage lot. While applicants for a new dealer GDN will not incur an additional fee, current dealer GDN holders will incur a \$25 fee required by Occupations Code §2301.264(e) to add or change the physical address of a storage lot. This cost is substantially outweighed by the public benefit derived from the department's more thorough fitness for licensure investigation, reduction in fraud, and enforcement of department statutes and rules.

Licenses issued by the department create positions of trust. Abuse of this trust provides license holders opportunities to engage in fraud, theft, money laundering, and related crimes. In addition, licensure provides persons who are predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct.

Holders of a GDN dealer license, as well as their representatives, provide services that involve access to confidential information, conveyance, titling, and registration of private property. Further, license holders and their representatives obtain possession of monies belonging to or owed to private individuals, creditors, and governmental entities.

Identity fraud and business premises fraud are the two major categories of fraud that occur in GDN dealer licensing. This rule proposal addresses both and is a crucial next step the department must take to prevent and deter fraud and protect the public.

In proposing these amendments, 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 GDN dealers consistent with board and department responsibilities in Occupations Code Chapter 2301, Subchapter D.

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).

Occupations Code §2301.257 specifically requires the department to prescribe an application form that includes the requirements of Transportation Code Chapter 503 and information the board determines by rule is necessary to determine the applicant's qualifications to adequately serve the public.

Transportation Code §503.029 requires the department to provide a written dealer license application that contains the information demonstrating that the applicant has complied with §503.032 and all state laws and municipal ordinances. Transportation Code §503.032 prescribes the requirements for an established and permanent place of business, and §503.027 requires that each dealer location comply with the Chapter 503 requirements and board rules relating to an established and permanent place of business.

Occupations Code §2301.257 also requires the department to prescribe a form for a dealer to notify the department of any material change in the dealer's license application.

Occupations Code §2301.256 requires the department to review and investigate new license applications. Transportation Code §503.034 requires the department to verify that the information on an application is true and authorizes the department to issue a dealer GDN only if the applicant complies with all Chapter 503 requirements.

The proposed amendments are also authorized by state statute under Occupations Code §2301.155; and Transportation Code §§503.002, 503.0631 (regarding the temporary tag database), and 1002.001.

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

The proposed amendments are within the scope of the department's general authority to regulate in a given industry. Occupations Code §2301.155 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.

Transportation Code §503.002 authorizes the board to adopt rules for the administration of Transportation Code Chapter 503.

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

The department must be able to verify the information contained in the applications to properly administer Transportation Code §503.034 and Occupations Code §53.021. The department must be able to verify the identity of the license holder and to obtain relevant criminal history record information on the license holder, as well as its representatives who are listed in the application, to properly administer Transportation Code §503.038 and Occupations Code §53.021 and §2301.651.

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

The department incorporated input from a broad range of department staff, including Motor Vehicle Division (MVD) licensing management, Enforcement, Motor Vehicle Crime Prevention Authority (MVCPA), Internal Audit, and executive management. MVD and Enforcement staff input was based on staff experience and a review of historical data from the department's eLICENSING electronic licensing system, which includes licensing application and enforcement activity. Internal Audit recommendations were based on a recently completed dealer licensing audit, and input from MVCPA and executive staff included feedback from meetings with law enforcement, as well as issues raised by law enforcement in the media.

Department staff also reviewed and incorporated recommended content from two publications by the American Association of Motor Vehicle Administrators (AAMVA): Deterrence and Detection of Fraud Best Practices Edition 2 (2022) and the Wholesale Vehicle Dealer Licensing Whitepaper (2019). See Appendices 9 and 10 for these two documents. Department staff also reviewed a study by the National Fire Protection Association regarding fires at service or gasoline stations (2020). See Appendix 11.

Pre-licensing requirements were on the agenda for the December 16, 2021, Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and discussed by this committee. See Appendix 12 for the eBook MVIRAC meeting agenda and related excerpts. The MVIRAC voted at its December 16, 2021, meeting to recommend that the department require a site visit to all new independent dealer locations prior to the department's licensing staff issuing a GDN. See Appendix 13 for related committee transcript excerpts.

The board of the Texas Department of Motor Vehicles (board), in an open meeting on February 10, 2022, voted unanimously to authorize the department to initiate rulemaking for pre-licensing and review of applicants for and holders of a franchised and independent GDN. The board also authorized the department to review its statutory authority and business processes for conducting pre-licensing review of applicants for and at renewal of a GDN, and authorized publication of proposed rules in the *Texas Register* for public comment. The board also instructed the department to bring the proposed rules and any public comments back to the board in a future board meeting so the board could consider the rules for adoption. See Appendices 14 and 15 for related board materials and board meeting transcript excerpts.

A subsequent MVIRAC meeting was held on March 9, 2022, to give committee members another chance to discuss and comment on the pre-licensing process changes. See Appendix 16

for related committee meeting material excerpts. The committee approved two motions; the first to request the department to identify a dollar amount that would cover the cost of the department or a third party to perform a pre-licensing site visit to use as input for a future statutory change or funding request. The second motion was to ask the department to estimate the timing impact of adding a site visit to the process timeline required to issue an independent motor vehicle dealer license. See Appendix 17 for related committee meeting transcript excerpts.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

See responses to questions #2 and #3 above.

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.

A less restrictive alternative does not exist. See responses to questions #2 and #3 above.

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

The proposal:

- 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 proposed amendments may impact market competition because the amendments may result in a higher cost to obtain or maintain a dealer GDN for the reasons stated in response to Question #3. Transportation Code §503.021 says a person may not engage in the business as a dealer without a dealer GDN in one of the categories described by Transportation Code §503.029(a)(6) for each location from which the person conducts business as a dealer. A “dealer” is defined in Transportation Code §503.001(4) as a person who regularly and actively buys, sells, or exchanges vehicles at an established and permanent location.

The effect of the amendments is consistent with state policy as established by the legislature in state statute. The legislature provided the department with the statutory authority for these

amendments as stated in response to question #4. The department must be able to verify the information in the application to determine whether to issue or deny the application for a dealer GDN under Transportation Code §503.034 and Occupations Code §53.021 and §2301.651. The department must be able to verify the identity of the license holder and any representatives listed in the application to obtain relevant criminal history records and investigate other fitness for licensure issues. Additionally, the department must be able to determine whether a GDN applicant has an established and permanent place of business as required by Transportation Code §503.032. In Occupations Code §2301.152 the legislature specifically delegated to the board the power and responsibility to establish license holder qualifications, prevent fraud and abuse, and enforce and administer Transportation Code Chapter 503.

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

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

The department does not have any evidence that the proposed amendments relate to a matter on which there is pending litigation or a final court order.

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

The attached numbered appendices are referenced in this memorandum and provide additional information regarding proposed amendments to §215.133 and §215.140:

1. Chapter 215 rule simplification amendments proposed on April 27, 2012
2. Chapter 215 rule simplification amendments adopted on August 2, 2012
3. Chapter 215 rule review adopted on February 13, 2017
4. Fingerprint rule (43 TAC §211.6) adoption (47 *TexReg* 4147), effective September 1, 2022
5. House Bill 139, 87th Legislature, Regular Session, 2021
6. House Bill 3533, 87th Legislature, Regular Session, 2021
7. House Bill 1667, 86th Legislature, Regular Session, 2019
8. TxDMV Enforcement Motor Vehicle Dealers Disciplinary Matrix
9. American Association of Motor Vehicle Administrators Wholesale Vehicle Dealer (AAMVA) Licensing Whitepaper, December 2019
10. AAMVA Deterrence and Detection of Fraud Best Practices, Edition 2 – March 2022
11. National Fire Protection Association Research Report – Service or Gas Station Fires, December 2020

12. Excerpts from the MVIRAC eBook for the December 16, 2021 meeting
13. Excerpts from the MVIRAC transcript for the December 16, 2021 meeting
14. Excerpts from the TxDMV Board eBook for the February 10, 2022 meeting
15. Excerpts from the TxDMV Board transcript for the February 10, 2022 meeting
16. Excerpts from the MVIRAC eBook for the March 9, 2022 meeting
17. Excerpts from the MVIRAC transcript for the March 9, 2022 meeting

(C) The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from a [the sick] leave pool.

(c) Sick Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick leave to the sick leave pool.

(2) An employee is eligible to use time contributed to the sick leave pool if the employee's sick leave has been exhausted because of:

(A) a catastrophic illness or injury; or

(B) a previous donation of time to the pool.

(3) An employee may withdraw time from the sick leave pool that the employee did not contribute only if the employee or an immediate family member suffers a catastrophic illness or injury.

(d) Family Leave Pool Provisions.

(1) The donating employee may donate one or more days of the employee's accrued sick or vacation leave to the sick leave pool.

(2) An employee is eligible to withdraw time from the family leave pool because of:

(A) the birth of a child;

(B) the placement of a foster child or adoption of a child under 18 years of age;

(C) the placement of any person 18 years of age or older requiring guardianship;

(D) a serious illness to an immediate family member or the employee, including a pandemic-related illness;

(E) an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or

(F) a previous donation of time to the pool.

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 October 12, 2022.

TRD-202204081

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: November 27, 2022

For further information, please call: (512) 490-7278



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.133, §215.140

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §215.133, General Distinguishing Number, and §215.140, Established and Permanent Place of Business, concerning licensing requirements for applicants for and holders of a dealer general distinguishing number (GDN) under Transportation Code Chapter 503. These proposed amendments are necessary to prevent and deter fraud in the application process, to implement recently adopted fingerprint requirements, to prevent consumer abuse, to improve public safety, and to clarify existing licensing requirements.

These proposed amendments also implement two statutory changes from the 87th Legislature, Regular Session, and one statutory change from the 86th Legislature, Regular Session. House Bill 139, 87th Legislature, Regular Session (2021), allows agencies to adopt rules ensuring a military service member, veteran, or military spouse receives appropriate credit in a licensed profession. House Bill 3533, 87th Legislature, Regular Session (2021), increases the minimum surety bond amount and requires posting of a bond notice. House Bill 1667, 86th Legislature, Regular Session (2019), allows independent motor vehicle GDN holders to perform salvage dealer activities without holding a salvage vehicle dealer license.

The department proposes amending the dealer assumed name requirements in §215.133 to mirror salvage dealer requirements for consistency and to further protect Texas citizens from fraud. The department also proposes nonsubstantive changes to §215.133 to modernize the language. In §215.133, the department added statutory references and deleted rule text to more closely conform the text with current statutes and avoid future statutory conflicts. Similarly, citations and rule text have been updated to reflect changes in the law or to delete duplicative rule provisions. For clarity and consistency, proposed amendments include standardizing the use of certain terms and retitle or reorganizing the rule text.

EXPLANATION.

On August 2, 2012, amendments to §215.133 and §215.140 streamlined and simplified the license application process, benefiting all applicants for and holders of a GDN. However, to obtain a dealer GDN, bad actors have recently provided false information, such as fake identity documents, fictitious lease agreements, and fake photographs of the business premises. These bad actors may operate virtually or out of an existing, unrelated business, such as a restaurant, gas station, or convenience store that does not meet the statutory requirements of an established and permanent business location under Transportation Code §503.032. Even if a business location is properly established, these bad actors frequently abandon the licensed business location once the dealer GDN is obtained or they post a sign stating that the business is open by appointment only to discourage customer visits, hinder department investigations, and impede law enforcement activities. Additionally, bad actors use hidden storage lots to facilitate criminal acts, making it difficult for the department to hold them accountable. Bad actors then use the dealer GDN to facilitate a broad range of crimes, including fraud, theft, and money laundering. Bad actor license holders also use their GDN to print fraudulent temporary tags, enabling criminals to operate stolen vehicles, and facilitate crimes such as human and drug trafficking. Criminals use fraudulent temporary tags registered under fake names and addresses to hinder law enforcement's ability to trace vehicles.

Fraudulent temporary tags are also used to operate motor vehicles that violate environmental and safety regulations, thus endangering the public. In addition, fraudulent temporary tags are used to avoid paying registration fees which fund the construction and maintenance of the state's highway system, including county road and bridge projects.

To prevent and deter fraud in the dealer GDN application process, the department adopted a new rule requiring fingerprinting of new applicants for and holders of a GDN under Transportation Code §503.029(a)(6). The fingerprint rule is §211.6, which became effective on September 1, 2022. The department is now proposing to amend existing dealer GDN rules to reinstate certain licensing requirements that were eliminated or modified in 2012 and adding new provisions to further prevent and deter fraud in the dealer GDN application process.

In proposing these amendments, the department also considered citizen complaints that the department received concerning GDN dealers, as well as best practice recommendations published by the American Association of Motor Vehicle Administrators (AAMVA).

Applicants for a new dealer GDN, as well as existing dealer GDN holders, may inadvertently or purposefully fail to comply, or fail to continue complying, with all requirements for establishing a permanent business location required by §215.140 and Transportation Code §503.032. When the department evaluates an application, and is concerned whether a business location meets all statutory and rule requirements to have an established and permanent place of business or suspects fraud, the department assigns an investigator to visit the business location and evaluate compliance as part of the department's responsibility under Occupations Code §2301.256 and Transportation Code §§ 503.029, 503.034, and 503.038. Based on the department's review of thousands of applications and the results of hundreds of these investigations, the department identified public safety issues regarding business premises, and is proposing to reinstate certain requirements that were eliminated in 2012 that directly affect public safety and welfare. These proposed amendments are consistent with the police power the legislature delegated to the department in Occupations Code §2301.001. The term "police power" isn't defined in §2301.001. Merriam-Webster Online Dictionary defines the term "police power" as follows: the inherent power of a government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited. "police power." *Merriam-Webster.com Dictionary*, 2022. <https://www.merriamwebster.com> (1 September 2022). Also, Occupations Code §2301.801(b)(1) authorizes the board to consider the harm or potential harm to the safety of the public when determining the amount of a civil penalty, which is further evidence of the department's authority to protect the safety of the public under Occupations Code Chapter 2301.

Additionally, the department identified premises requirements which could be clarified to enable GDN dealers and applicants to more easily determine if they comply with existing rules and demonstrate commitment to continued compliance. The department also identified rule clarifications that will aid GDN dealers and applicants in understanding premises requirements for an established and permanent place of business. This is important as with increasing frequency GDN applicants and holders are failing to comply with municipal occupancy and licensing requirements, resulting in their inability to establish or maintain a permanent place of business as required by

statute. Transportation Code §503.029(a)(3) and (4) require an applicant for an original or renewal dealer GDN to submit a written application that contains information that demonstrates the applicant meets the requirements prescribed by Transportation Code §503.032 and has complied with all applicable state laws and municipal ordinances. These requirements under Transportation Code §503.029(a)(3) and (4) are continuing requirements if the department issues a dealer GDN because the department may cancel the dealer's GDN under Transportation Code §503.038(a)(7) if the dealer fails to maintain the qualifications for a GDN.

The proposed amendments also implement House Bill 139, 87th Legislature, Regular Session (2021), which amended Occupations Code §55.004 to allow agencies to adopt rules ensuring that a military service member, military veteran, or military spouse receives appropriate credit for training, education, and professional experience in a licensed profession. Under Transportation Code §503.0296, certain independent GDN holders must complete web-based education unless they held a GDN for at least 10 years as of September 1, 2019. The proposed amendment provides that a military service member, military spouse, or military veteran will receive appropriate credit for training, education, and professional experience when applying for a new GDN or renewing an existing GDN.

House Bill 3533, 87th Legislature, Regular Session (2021), amended Transportation Code §503.033 to require an increased surety bond of \$50,000 for certain independent GDN holders and posting of a bond notice at the business location. The proposed amendments delete the reference to the former bond amount of \$25,000 and add a reference to the statutory provision, so any future statutory changes will not require rule amendments. The proposal also sets out the information that must be included in the bond notice that certain independent GDN holders are required to post near the GDN.

House Bill 1667, 86th Legislature, Regular Session (2019), added Occupations Code §2302.009 and amended §2302.101 to provide that a person holding an independent motor vehicle dealer GDN is exempt from the requirement that the person also hold a salvage vehicle dealer license to act as a salvage vehicle dealer or rebuilder. The proposed amendments eliminate a reference to a separate license requirement but retain the requirement for these GDN dealers to conspicuously mark salvage motor vehicles offered for sale.

Amended §215.133

Nonsubstantive changes are proposed to modernize the language in §215.133(b), (c), and (k) by deleting the words or phrases "the provisions of," "herein," "of this section," "Office of the," and "thereon" and substituting words or phrases with the same meaning if required. Current §215.133(k) is proposed to be renumbered as §215.133(j).

In §215.133(b), a proposed change adds a statutory reference to Transportation Code §503.024 and deletes duplicative statutory text in the rule language to conform the rule with the current statute and avoid future statutory conflicts.

Proposed changes in §215.133(c) include requirements for new, renewal, and amendment dealer GDN applications and specify that all applications, including attached documents and required fees, must be submitted electronically on a prescribed form in the department's designated licensing system. Fees, including the authority to prorate fees, are prescribed by statute in Transportation Code §§503.007, 503.008, and 503.011, and in Oc-

occupations Code §2301.264. Since 2017, when the department first implemented the current online licensing portal, eLICENSING, the department has published and updated step-by-step guides for applicants and license holders and will continue to make these resources available on the department's website. These proposed amendments are consistent with current dealer application requirements and clarify that a dealer renewing or amending a GDN must review current GDN information, update information that has changed, and provide related supporting information or documents for any change or new requirement. For clarity, the information required in a new dealer GDN application is grouped into three categories, depending on whether the information must be entered in the application form, attached as an electronic image to the application, or is a required fee.

Amendments in §215.133 (c)(1) subparagraphs (D), (E), (G) and (H) and in §215.133 (c)(2)(D) require an applicant or license holder to provide information and an identity document for an employee or other representative listed in the application. Occupations Code §2301.257 authorizes the department to prescribe the application form and require any information necessary to determine the applicant's qualifications to adequately serve the public. Occupations Code §2301.651(b) gives the board authority to deny an application for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity that would be cause for denying a license. Without this information the department could not carry out its statutory responsibility under Occupations Code Chapter 2301 or Transportation Code Chapter 503 to investigate whether a representative committed a disqualifying act or omission that would prevent the applicant from being licensed as a GDN dealer.

In §215.133(c), the department is proposing three new requirements to deter fraud in the application process and prevent fraud and public abuse if a dealer GDN is issued. The first proposal is to require the applicant to list a manager or other bona fide employee in the application if the applicant is owned by an out-of-state owner or an owner who will not be present during business hours at the established and permanent place of business in Texas. This requirement will allow the department to identify and appropriately investigate the background and criminal history record of the authorized business representative who will be physically present at the business location in Texas. The second proposal requires the applicant to designate an owner or representative listed in the application as the applicant's temporary tag database account administrator and provide the individual's business email address. This amendment is proposed to implement dealer responsibilities under §215.150 regarding a dealer's authorization to issue a temporary tag, as well as dealer responsibilities under Transportation Code §503.0631(a) and (e) to help ensure the buyer's temporary tag database is secure. The third proposal requires applicants to provide information related to insolvency-including outstanding or unpaid judgments and liens-so the department can evaluate financial trustworthiness and stability as required under §215.89 concerning fitness for licensure.

Additionally, in §215.133(c), proposed amendments allow the department to require any other information or documents necessary to fulfill its statutory duties to review and investigate application information under Occupations Code §2301.256; Transportation Code §§503.029, 503.034, and 503.038; and §215.89. Lastly, the proposal also deletes a reference to a concealed handgun license as a form of identification because that license no longer exists.

Proposed §215.133(d) is new and implements the September 1, 2022, fingerprint requirement for new applicants and existing dealers holding a GDN under §503.029(a)(6). The fingerprint requirement affects the following GDN holders and applicants: franchised motor vehicle dealers, independent motor vehicle dealers, wholesale motor vehicle dealers, motorcycle dealers, house trailer dealers, trailer or semitrailer dealers, and independent mobility motor vehicle dealers.

Current §215.133(d) is renumbered as (e) and the proposed changes add clarity by substituting the term "applicant" for the word "person" and clarifying that the applicant is responsible for including in the application any assumed names to be used by the applicant. An applicant may be an individual or one of several types of business structures or legal entities, and the proposed language includes all applicant types. Additionally, the department proposes adding assumed name requirements to mirror the requirements in Occupations Code §2302.106 that apply to salvage vehicle dealers. This proposed amendment will make the assumed name requirements consistent for an independent motor vehicle dealer GDN holder acting as a salvage vehicle dealer or rebuilder and is therefore subject to the statutory requirements of Occupations Code Chapter 2302. Additionally, this proposal provides increased protection for Texas citizens by applying this assumed name requirement to all GDN dealer categories. Under §2302.106, a license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or is otherwise deceptive or misleading to the public.

The text in current §215.133(d) and (e) is proposed for deletion because this requirement is incorporated into amended §215.133(e).

In §215.133(f) the words "or authorized" and "only" are proposed to be added to reinforce the existing statutory requirement in Transportation Code §503.001(17) and §503.036(c) that wholesale motor vehicle dealers may sell or exchange vehicles only with other licensed or authorized dealers. This change is necessary to clarify that wholesale motor vehicle dealers may not sell vehicles to retail purchasers, and to inform and protect retail buyers. The language in §215.133(f) stating that wholesale dealers may only buy vehicles from other dealers is proposed for deletion as this limitation is not consistent with Transportation Code §503.001(17) and §503.036(c).

An amendment to §215.133(g) corrects the statutory reference to the independent mobility motor vehicle dealer definition in Occupations Code §2301.002.

Proposed §215.133(h) clarifies that the department may require a site visit to the established and permanent place of business in Texas as part of the application evaluation process for a new, renewal, or new location application. This proposal also requires a notarized affidavit signed by the applicant confirming that all premises requirements are met and will be maintained during the license period. These proposed amendments are necessary to discharge the department's responsibility to evaluate applications and investigate compliance under Occupations Code §2301.256 and Transportation Code §§ 503.029, 503.034, and 503.038.

The current §215.133(h) is proposed to be deleted because the circumstances under which an application can be denied are in §215.141 concerning sanctions, and do not need to be duplicated in this section.

The current §215.133(i) is proposed to be deleted as proof of property ownership or proof of a written lease for the term of the license is included in proposed amendments to §215.133(c).

The current §215.133(j) is renumbered as §215.133(i), and the word "vehicle" was added for consistency.

The current §215.133(k) is renumbered as §215.133(j) and is modified to add a provision implementing House Bill 139, 87th Legislature Regular Session (2021), which amended Occupations Code §55.004 to allow agencies to adopt rules ensuring that a military service member, military veteran, or military spouse receives appropriate credit for training, education, and professional experience in a licensed profession. Under Transportation Code §503.0296, certain independent GDN holders must complete web-based education unless they held a GDN for at least 10 years as of September 1, 2019. The proposed amendment provides that a military service member, military spouse, or military veteran will receive appropriate credit when applying for a new GDN or renewing an existing GDN. As a result, the applicant may be exempted from the statutory requirement to take the new applicant or license renewal dealer education course. Additionally, the phrase "dealer education and" was added to describe the training referenced in this subsection to be consistent with the statutory term in Transportation Code §503.0296.

Amended §215.140

For clarity, the title of §215.140 is amended to add the phrase "Premises Requirements" at the end of the title, as this phrase is commonly recognized and used by GDN holders and the department to describe the requirements of this section.

Proposed §215.140(1) and §215.140(2) are amended to clarify that a retail or wholesale motor vehicle dealer's office may not be open by appointment only. Other amendments include adding an owner and a voicemail service as acceptable persons or methods of answering the telephone, and clarifying that a caller must be able to speak to a natural person or leave a message during the weekday hours of 8:00 a.m. to 5:00 p.m. These amendments are necessary to deter fraud and prevent consumer abuse.

Section 215.140(2) is also amended to clarify that a bona fide employee may represent a wholesale motor vehicle dealer at the dealer's office location during the wholesale motor vehicle dealer's posted business hours consistent with the statutory language in Transportation Code §503.032(c)(2).

Section 215.140(3) and (4) clarify department criteria for determining whether an exterior business sign is conspicuous, permanent, and permanently mounted for retail dealers and wholesale motor vehicle dealers. An exterior business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office, and considered permanent only if made of durable, weather-resistant material. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded onto a dedicated exterior pole or other dedicated sign support permanently installed into the ground at the physical location listed in the application. The proposed amendments also clarify that retail dealers and wholesale motor vehicle dealers are responsible for ensuring that their business sign complies with municipal ordinances and that the lease signage requirements are consistent with the signage requirements in §215.140. Additionally, these proposed amendments clarify that retail and wholesale motor vehicle dealers may use a temporary sign or banner if the dealer provides proof that a sign meeting the department's requirements has been ordered and

provides a written statement that the sign will be promptly and permanently mounted upon delivery.

Proposed §215.140(4) includes new exterior and interior business sign requirements for wholesale motor vehicle dealers. On exterior signs, wholesale motor vehicle dealers must include the statement "Purchasers must be Licensed Dealers" in letters at least three inches in height. If the wholesale motor vehicle dealer is in a building that does not allow exterior signs, an interior sign on or beside the main door to the wholesale motor vehicle dealer's office must include the same statement in letters at least one inch in height. This sign requirement is necessary to eliminate any confusion whether wholesale motor vehicle dealers may exchange or sell vehicles to retail purchasers and informs and protects retail buyers from making unlawful purchases. This sign requirement is a solution recommended by AAMVA's Vehicle Standing Committee in its Wholesale Vehicle Dealer Licensing Whitepaper published in December 2019. The effective date for the sign requirement is September 1, 2023, to provide additional time for affected GDN holders to comply. Proposed changes also clarify department criteria for determining whether a wholesale motor vehicle dealer's interior business sign is considered conspicuous, permanent, and permanently mounted. An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office and is considered permanent if the sign is made of durable material with lettering that cannot be changed. An interior business sign is considered permanently mounted if bolted or otherwise permanently attached to the main door or nearby wall of the wholesale motor vehicle dealer's office at the physical location listed in the application.

Proposed language in §215.140(4)(B)(i), §215.140(13)(A), and §215.140(13)(D) changes the term "landlord" to "property owner" for consistency.

In proposed §215.140(5), the word "requirements" is substituted for "structure" in the first sentence because the phrase "office requirements" more accurately describes the content of this paragraph. In §215.140(5)(A), the definition of a building is expanded to require that a building must have a permanent roof in addition to connecting exterior walls on all sides. Additional clarifying examples were added to §215.140(5)(B) to describe typical documents that demonstrate compliance with municipal ordinances and clarify that the dealer has a continuing responsibility to maintain compliance when a space is remodeled or changes use.

In §215.140(5)(C) the department proposes reinstating requirements that a dealer's office may not be located in any room or building that is not open to the public. Proposed new §215.140(5)(D) reinstates a requirement that the dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other unrelated business. Law enforcement officers have told the department that restaurants, gas stations, and convenience stores are more likely than other business locations to be used to commit fraud and crime, including trafficking in drugs, guns, and people and that temporary tag fraud has been committed by license holders operating out of these types of businesses. Proposed new §215.140(5)(E) states that a dealer's office may not be virtual or be provided by a subscription for office space or office services, because these types of office arrangements are not considered an established and permanent location. The proposed changes to §215.140(5)(C), (D), and (E) are

necessary to prevent fraud and consumer abuse and to protect public health and safety.

Current §215.140(5)(D) is proposed to be renumbered as §215.140(5)(F) and clarifies that the dealer's office must be located in Texas and deletes a reference to the mailing of a license which is no longer department practice, as license holders may print a license at any time from the department's licensing system with no fee required. Proposed language also corrects punctuation.

Current §215.140(5)(E) is proposed to be renumbered as §215.140(5)(G). Proposed new §215.140(5)(H) reinstates the requirement that a dealer's office have at least 100 square feet of interior floor space exclusive of hallways, closets, or restrooms and have a minimum seven-foot-high ceiling. New §215.140(5)(H) also proposes a new requirement that a dealer's office space accommodate required office equipment and allow a dealer's representative and at least one customer to safely access the office and privately conduct business while seated. These proposed changes are necessary to prevent fraud and consumer abuse and to protect public health and safety. Department staff have investigated and found applicants who put office equipment in a closet and called the closet an office; however, a customer was not able to enter the "office" because there was no space for a person to walk into the closet. Transportation Code §503.032(a)(2)(A) says a location is considered to be an established and permanent place of business if the applicant maintains on the location a permanent furnished office that is equipped as required by the department for the sale of vehicles. A customer and the dealer's representative need to be able to enter the office to privately conduct business, including the possible discussion of financing.

Amendments to §215.140(5), (7), (8), and (9) are proposed to substitute the word "building" or "office building" for "structure" or "business structure" for consistency and clarity.

In §215.140(8) the words "motor vehicle" are proposed to be inserted for consistency in denoting a wholesale motor vehicle dealer.

In §215.140(10) the department proposes adding a requirement that a dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business when the dealer's business is housed with another business. This proposed change is necessary to prevent fraud and consumer abuse and to protect public health and safety. A customer and the dealer's representative need to be able to enter the office to privately conduct business, including the possible discussion of financing.

The department proposes amending the title of §215.140(11) to include the phrase "storage lot", as this subparagraph includes the requirements for both a display area and a storage lot. Other proposed amendments in §215.140(11) clarify that the display area must be located at the retail dealer's physical business address or contiguous to that address, and that the display area may not be in a storage lot. Other proposed changes clarify that the display area may not be used for customer parking, employee parking, or general storage, and reinstate a requirement that if the dealer's business location includes gasoline pumps or includes another business that sells gasoline, the dealer's display area may not be part of the parking area for gasoline customers and may not interfere with access to or egress from the gasoline pumps, fuel tanks, or fire prevention equipment. A reference to a charging station is being added to this requirement

in recognition of recent changes in motor vehicle fuel technology. Reinstating the requirement that a dealer's display area not interfere with access to gasoline pumps, fuel tanks, or fire prevention equipment and adding a reference to a charging station is necessary to protect public health as research conducted by the National Fire Protection Association shows that local fire departments respond to over 4,000 fires per year in or on gas station properties and these fires cause serious injuries including death and property damage of more than thirty million dollars annually on average. Many of the proposed amendments to §215.140(11)(B) are designed to protect prospective customers from danger as they approach and leave the display area and as they focus on a display vehicle. Other proposed changes clarify requirements for when a display area is located inside a building. This proposed language clarifies that when multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated in the same manner as when the shared display area is located outdoors. Also, in §215.140(11)(B), current provisions (v) and (vi) are renumbered (vi) and (vii) to accommodate a proposed new provision. Proposed new §215.140(11)(C) includes the existing requirements for a storage lot and clarifies that a storage lot must be fenced or in an access-controlled location to be considered not accessible to the public by the department. Additionally, a proposed amendment clarifies that the physical address of a storage lot must be included in a new GDN application or a GDN amendment application. If a current GDN dealer has a storage lot as of the effective date of this amendment, the dealer must submit a license amendment within 10 days of the effective date of this amendment to add the physical address of the storage lot. The department must be able to determine where a storage lot is located, so the department can inspect the lot to ensure compliance with department rules. The proposed changes in §215.140(11) are necessary to prevent fraud and consumer abuse and to protect public health and safety.

Proposed amendments to §215.140(12) conform the language to be consistent with current §215.133(j) which is proposed to be renumbered as §215.133(i). This proposed amendment further implements House Bill 1667, 86th Legislature, Regular Session (2019), which added Occupations Code §2302.009 and amended §2302.101 to provide that a person holding an independent motor vehicle GDN is exempt from the requirement that the person also hold a salvage vehicle dealer license to act as a salvage vehicle dealer or rebuilder. The proposed amendment eliminates a reference to a separate license requirement and retains the requirement that a salvage motor vehicle offered for sale be conspicuously marked to inform a potential buyer that the vehicle is a salvage motor vehicle. Proposed amendments to §215.140(13) clarify that the dealer is responsible for verifying that the physical address on the application is the correct physical address for the property if only a legal description is provided in the lease. Additionally, a new provision is proposed relating to subleases in which the property owner is not the dealer's lessor. In this circumstance, the dealer must also obtain a signed and notarized statement from the property owner which includes the property owner's full name, email address, mailing address, and phone number, and a statement from the property owner confirming that the dealer is authorized by the property owner to sublease the location and may operate a vehicle sales business from the business location. These proposed changes are necessary to prevent fraud in the application process, to prevent consumer abuse, and to protect public health and safety. This provision also protects GDN dealer applicants. The department has received

applications from GDN dealers with a signed sublease who are unable to establish a permanent location and qualify for a GDN because the property owner hasn't authorized a dealership to operate on the property. Transportation Code §503.029(a)(3) requires an applicant for a GDN to submit an application that demonstrates the applicant meets the requirements under Transportation Code §503.032, which requires the applicant to demonstrate that the location for which the applicant requests the GDN is an established and permanent place of business.

Proposed changes to §215.140(14) implement House Bill 3533, 87th Legislature, Regular Session (2021), which amended Transportation Code §503.033 to require certain dealers to post a bond notice at the business location. Proposed changes set out the information that must be included in the bond notice. This information includes the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The posting must also notify a consumer of the department's website address and that the dealer's surety bond information may be obtained from the department.

Proposed language also includes substituting the term "GDN" for "license" or "general distinguishing number" for consistency in §215.133 and §215.140. The term "GDN" is defined in §215.2 as a General Distinguishing Number.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there will be no significant effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston also determined that, for each year of the first five

years the proposed amendments are in effect, several significant public benefits are anticipated, and that certain GDN dealers may incur costs to comply with the proposal. 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 GDN dealers consistent with board and department responsibilities.

Proposed amendments to §215.133 require dealer applicants and GDN holders to provide more information in the application. While some applicants may be required to spend more time completing an application or providing additional information, including notarized affidavits or statements, Ms. Johnston has determined these costs will be offset by the reduced risk of dealer GDN applicants and holders incurring financial penalties due to noncompliance with property owner requirements and municipal ordinances which will benefit both dealers and the public.

In proposed amendments to §215.140, wholesale motor vehicle dealers will be required to add text to their business sign. Department research suggests that the cost to add this additional text to an interior business sign will be approximately \$20. The cost for an exterior sign will vary between \$165 to \$710, with an average expected cost of approximately \$250. The department recognizes that these costs may vary widely based on business owner style and design preferences. The department's civil penalty guidelines for selling a vehicle without the appropriate license type ranges from \$500 to \$2,000 per vehicle. Ms. Johnston has determined that the signage cost will be offset by the

reduced risk of these GDN holders incurring financial penalties due to noncompliance with laws and regulations and will benefit the public by informing the public and preventing unlawful purchases. Additionally, the sign cost is mitigated in the proposal by setting the minimum letter size requirements at one-half the business name lettering size requirement, delaying the effective date of this requirement to September 1, 2023, and by allowing new and renewal applicants to use a temporary sign if they have ordered the required sign and agree to permanently install the sign promptly on delivery.

Proposed amendments to §215.140 include changes in office space, display area, and storage lot requirements to prevent consumer abuse and improve public health and safety. Ms. Johnston anticipates that while most bona fide dealers already comply with these requirements, a few dealers may have to modify their premises to comply. Department research suggests that the cost per square foot of space to comply with office space requirements varies from \$20 to \$30 depending on the market size, however, Ms. Johnston recognizes that the exact cost will vary based on market and business owner preferences, the amount of space currently leased, local construction and material costs, and space availability. She has determined that these costs are necessary to prevent fraud and protect customers' person, property, and personal information. Dealer applicants and GDN holders will have to disclose the physical address of a storage lot. Applicants for a new dealer GDN will not incur an additional fee. Current dealer GDN holders will incur a \$25 statutorily required license amendment fee to add or change the physical address of a storage lot. Ms. Johnston has determined that the public benefit derived from the department's more thorough fitness for licensure investigation, reduction in fraud, and enforcement of department statutes and rules substantially outweighs this cost.

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 amendments 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

proposed amendments to §215.133 and §215.140 may result in additional costs for certain GDN dealers. Based on data from the Comptroller and the Texas Workforce Commission, the department estimates that more than 80% of the approximately 18,900 affected GDN dealers are small or micro-businesses. The department has tried to minimize costs to these GDN holders. The requirements in §215.133 and §215.140 are designed to be the minimum standards that will prevent fraud in the application process, prevent consumer abuse, and protect public health and safety. These requirements do not include requirements that will cause a GDN dealer 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 the §215.133 and §215.140 amendments, exempting small and micro-business GDN dealers from these amendments, and adopting a limited version of these amendments for small and micro-business

GDN dealers. The department rejects all three options. The department reviewed licensing records, including records for 109 license holders who have been denied access to the temporary tag system, and determined that small and micro-business GDN dealers are largely the bad actors perpetrating fraud in the application process. Further, the requirements of §215.133 and §215.140 are minimum standards. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of proposed amendments to §215.133 and §215.140 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 amendments are in effect the amendments:

- will not create or eliminate a government program;
- will not require the creation of new employee positions if acceptable application processing times are extended to accommodate these changes, and will not require the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department unless application processing times must be shortened;
- will require an increase in fees paid to the department;
- will expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will positively affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on November 28, 2022. 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. The department proposes amendments to §215.133 and §215.140 under the following provisions of Occupations Code Chapters 2301 and 2302, and Transportation Code Chapters 503 and 1002.

Occupations Code §2301.155 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 authorizes the board to adopt rules as necessary to administer Occupations Code Chapter 2302.

Transportation Code §503.002 authorizes the board to adopt rules that are necessary to administer Transportation Code Chapter 503.

Transportation Code §503.0631 authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631 regarding the buyer's temporary tag database.

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

CROSS REFERENCE TO STATUTE. Occupations Code §§55.004, 2301.001, 2301.002, 2301.151, 2301.152, 2301.153, 2301.255, 2301.256, 2301.264, 2302.009, 2302.101, 2302.106; and Transportation Code §§503.001, 503.006, 503.007, 503.008, 503.011, 503.024, 503.027, 503.029, 503.0296, 503.032, 503.033, 503.034, 503.036, and 503.038.

§215.133. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid GDN [general distinguishing number] assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN [general distinguishing number] for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) [The provisions of] Subsection [subsection] (a) of this section does [do] not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024. [;]

[(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;]

[(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;]

[(3) an agency of the United States, this state, or local government;]

[(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;]

[(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;]

[(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;]

[(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;]

[(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number

has been issued to that person or at a location approved by the department as provided in §215.135 of this subchapter (relating to More than One Location); and]

[(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:]

[(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or]

[(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.]

(c) A GDN dealer application [Application for a general distinguishing number] shall be on a form prescribed by the department and properly completed by the applicant. A GDN dealer application shall include [showing] all required information, required supporting documents, and required fees [requested thereon] and shall be submitted to the department electronically in a system designated by the department for licensing. A GDN dealer renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees. An applicant for a new dealer GDN must provide [accompanying by] the following:

(1) Required information: [proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety Bond);]

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address;

(C) application contact name, email address, and telephone number;

(D) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company;

(E) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(F) the name, employer identification number, ownership percentage, and non-profit or publicly-traded status for each legal entity that owns the applicant in full or in part;

(G) the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the established and permanent place of business if the owner is out of state or will not be present during business hours at the established and permanent place of business in Texas;

(H) the name and business email address of the temporary tag database account administrator designated by the applicant who must be an owner or representative listed in the application;

(I) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(J) military service status;

(K) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(L) information about the business location and business premises, including whether the applicant will operate as a salvage vehicle dealer at the location;

(M) history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act) or is pending resolution under a case filed under the Bankruptcy Act;

(N) signed Certificate of Responsibility, which is a form provided by the department; and

(O) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document: [the fee for the general distinguishing number as prescribed by law for each type of license requested;]

(A) proof of a surety bond if required under §215.137 of this title (relating to Surety Bond);

(B) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable;

(C) each assumed name certificate on file with the Secretary of State or county clerk;

(D) at least one of the following identity documents for each natural person listed in the application:

(i) current driver license;

(ii) current Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) current license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) current passport; or

(v) current United States armed forces identification.

(E) a certificate of occupancy, certificate of compliance, or other official documentation confirming the business location complies with municipal ordinances, including zoning, occupancy, or other requirements for a vehicle business;

(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees: [the fee as prescribed by law for each metal dealer plate requested as prescribed by law;]

(A) the fee for the GDN for each type of license requested as prescribed by law; and

(B) the fee for each metal dealer plate requested by the applicant as prescribed by law.

~~[(4) a copy of each assumed name certificate on file with the Office of the Secretary of State or county clerk; and]~~

~~[(5) a photocopy of at least one of the following documents for the owner, president, or managing partner of the dealership:]~~

~~[(A) current driver's license;]~~

~~[(B) current Department of Public Safety identification;]~~

~~[(C) current concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;]~~

~~[(D) current passport; or]~~

~~[(E) current United States armed forces identification.]~~

(d) An applicant for a GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for General Distinguishing Numbers), if applicable.

(e) [(d) A] An applicant [person who applies] for a dealer GDN [general distinguishing number and will] operating [operate as a dealer] under a name other than the applicant [name of that person] shall use the name under which the [that] applicant [person] is authorized to do business, as filed with the [Office of the] Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use an assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

~~[(e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the application.]~~

(f) A wholesale motor vehicle dealer GDN [license] holder may [buy,] sell [;] or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN [license] holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) [§2301.002(17-a)] and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal dealer GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements are met and will be maintained during the license period [An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department].

~~[(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.]~~

(i) [(j)] A person holding an independent motor vehicle GDN [general distinguishing number license] does not have to hold a salvage vehicle dealer license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(j) [(k)] To be eligible for an independent motor vehicle GDN [general distinguishing number license], a person must complete dealer education and [licensing] training specified by the department, except as provided in this subsection [herein]:

(1) once a person has completed the required dealer education and training, the person will not have to retake the dealer education and training for subsequent GDN [license] renewals, but may be required to provide proof of dealer education and training completion as part of the GDN [license] renewal process; [and]

(2) a person holding an independent motor vehicle GDN [general distinguishing number license] for at least 10 years as of September 1, 2019, is exempt from the dealer education and [licensing] training requirement; and-

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

§215.140. Established and Permanent Place of Business Premises Requirements.

A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office shall be open at least four days per week for at least four consecutive hours per day and may not be open only by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN [license] must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open only

by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN [license] under which the retail dealer conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN [license]. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN [license] under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application [and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses the wholesale motor vehicle dealer's office]. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner [landlord], a

conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height. An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements [structure] for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal [local] zoning ordinances [and deed restrictions]. The dealer is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) A dealer's office may not be located in [within] a residence, apartment, hotel, motel, [or] rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) [(D)] The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service or capable of receiving U.S. mail. The department will not mail [a license or] a metal dealer's license plate to an out-of-state [out of state] address.

(G) [(E)] A portable-type office building [structure] may qualify as an office only if the building [structure] meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

(i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;

(ii) have a minimum seven-foot-high ceiling;

(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

- (A) a desk;
- (B) two chairs;
- (C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one building [~~office~~]. Not more than four retail dealers may be located in the same building [~~business structure~~]. Each retail dealer located in the same building [~~business structure~~] must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building [~~business structure~~]. Each wholesale motor vehicle dealer located in the same office building [~~business structure~~] must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building [~~business structure~~].

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business are [~~is~~] required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot. [A noneontiguous storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the retail dealer's name, telephone number, and the fact the property is a storage lot is permissible.]

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. Those spaces must be reserved exclusively for the retail dealer's in-

ventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If a [~~the~~] retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed.

(v) If a dealer's business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the dealer's display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(vi) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vii) [~~(vi)~~] The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed.

(C) A GDN dealer may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the dealer's name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. The applicant must include the physical address of a storage lot in an application for a new dealer GDN. If a storage lot is established after a GDN is issued, the dealer must submit a license amendment within 10 days of establishing the storage lot to add the physical address of the storage lot. Current GDN dealers with a storage lot as of the effective date of this amendment must submit a license amendment within 10 days of the effective date of this amendment to add the physical address of the storage lot.

(12) Dealers authorized to sell salvage motor vehicles [holding a license issued under Occupations Code, Chapter 2302]. If an independent motor vehicle [a] dealer [also holds a license issued under Occupations Code, Chapter 2302, each] offers a salvage motor vehicle [that is offered] for sale on the dealer's premises, the vehicle [of the dealer's display area] must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. This requirement does not apply to a licensed salvage pool operator.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner [~~landlord~~] as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a [the] dealer [applicant] must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business; [and]

(D) the signature of the property owner [landlord] as the lessor and the signature of the dealer as the tenant or lessee; and [:]

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice [license]. A dealer must display the dealer's GDN [license] issued by the department at all times in a manner that makes the GDN [license] easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN [license] is issued. If the dealer's

GDN [license] applies to more than one location, a copy of the GDN [original license] and bond notice must [may] be displayed in each supplemental location. A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department.

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 October 17, 2022.

TRD-202204119

Elizabeth Brown Fore

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: November 27, 2022

For further information, please call: (512) 465-4160

◆ ◆ ◆