



Board Meeting Date: 4/14/2022
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Corrie Thompson, Enforcement Division Director
Agenda Item: 6
Subject: **Chapter 215, Motor Vehicle Distribution
Amendments, §215.505 – Rulemaking under Government Code §2001.023
and Emergency Rulemaking under Government Code §2001.034**
(Relating to HB 3927, Denial of Access to the Temporary Tag Database)

RECOMMENDATION

Approve the emergency amendments with an effective date of April 14, 2022, and approval to publish the proposed amended section in the *Texas Register* for public comment under the normal rulemaking process.

PURPOSE AND EXECUTIVE SUMMARY

The department proposes amendments to 43 TAC §215.505 concerning denial of access to the temporary tag system. The amendments to §215.505 are necessary to make clarifications to rule text.

FINANCIAL IMPACT

The department has determined that for each year of the first five years the emergency amendments and proposed amendments are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the amendments.

BACKGROUND AND DISCUSSION

The purpose of the emergency rulemaking and rule proposal is to correct a statutory citation regarding the department's temporary buyer's tag database under Transportation Code §503.0631, to add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the dealer's or converter's inventory, and to change the word "and" to "or" in §215.505(a)(2) in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under §215.505. Section 215.505 contains the process for denial of access to the temporary tag database when the department determines that a dealer or converter is fraudulently obtaining temporary tags from the temporary tag database.

Government Code §2001.034 authorizes the department to adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Government Code §2001.034 may not be effective for longer than 120 days and may be renewed for not longer than 60 days. Therefore, the department is also requesting board approval to propose the same amendments in the *Texas Register* for comment under the normal rulemaking process, so the amendments become permanent.

This emergency rulemaking and rule proposal are necessary because a subset of dealers will fraudulently obtain temporary tags from the temporary tag database without clarification of the rule text. Fraudulently obtained temporary tags pose an imminent peril to the public health, safety, and welfare because a subset of dealers has fraudulently

obtained and sold temporary tags to persons who engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently obtained temporary tags that are registered under fake names and addresses to make it harder for law enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose an imminent peril to the public health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the environment. Fraudulently obtained temporary tags further pose an imminent peril to the public health, safety, and welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently obtained temporary tags from the department's system and used the temporary tags in Texas, as well as other states, such as New York and Nevada. Criminals will take advantage of any loopholes they see as available to them.

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1 These amendments are necessary because a subset of dealers will fraudulently obtain temporary
2 tags from the temporary tag database without clarification of the rule text. Fraudulently obtained
3 temporary tags pose a threat to the public health, safety, and welfare because a subset of dealers has
4 fraudulently obtained and sold temporary tags to persons who engage in violent criminal activity,
5 including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently
6 obtained temporary tags that are registered under fake names and addresses to make it harder for law
7 enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose a threat to the public
8 health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags
9 to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the
10 environment. Fraudulently obtained temporary tags further pose a threat to the public health, safety, and
11 welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting
12 buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently
13 obtained temporary tags from the department's system and used the temporary tags in Texas, as well as
14 other states, such as New York and Nevada. In addition, the use of fraudulently obtained temporary tags
15 could deprive the state of revenue. Criminals will take advantage of any loopholes they see as available
16 to them.

17 An amendment to §215.505(a) corrects a statutory citation regarding the department's buyer's
18 temporary tag database under Transportation Code §503.0631, which governs the buyer's temporary tag
19 database. Section 215.505(a) cites to Transportation Code §503.06321, which does not exist. Section
20 215.505 applies to the dealer's and converter's temporary tag database under Transportation Code
21 §503.0626, as well as the buyer's temporary tag database under Transportation Code §503.0631.
22 Amendments to §215.505(a)(2) add parentheses around text that explains when a vehicle is presumed to
23 not be in the dealer's or converter's inventory. The parentheses were included when §215.505(a)(2) was

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1 published for proposal in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); however,
2 they were inadvertently omitted in the adoption order that was published in the February 11, 2022, issue
3 of the *Texas Register* (47 TexReg 662). Another amendment to §215.505(a)(2) changes the word “and” to
4 “or” in the list of activities that constitute “fraudulently obtained temporary tags from the temporary tag
5 database” under §215.505. Together, these clarifying amendments will close any perceived loopholes that
6 criminals might otherwise try to exploit.

7 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
8 has determined that for each year of the first five years the amendments will be in effect, there will not
9 be a significant fiscal impact to state or local governments as a result of the enforcement or administration
10 of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will
11 be no measurable effect on local employment or the local economy as a result of the proposal.

12 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five
13 years the amended section is in effect, the public benefits include clarifications to rule text that help to
14 limit the criminal activity of a small subset of dealers who fraudulently obtain and sell temporary tags to
15 persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and
16 assaults on law enforcement. The public benefits also include clarifications to rule text that help to limit
17 the criminal activity of a small subset of dealers who fraudulently obtain and sell temporary tags to
18 persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the
19 environment.

20 Ms. Thompson anticipates that there will be no costs to comply with these amendments since the
21 amendments clarify the rule text, and it is clear that the existing rule text is intended to have the same
22 meaning as the amended rule text. The people who commented on the original proposed §215.505(a)
23 interpreted the rule text to only require one of the listed activities to constitute “fraudulently obtained

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1 temporary tags from the temporary tag database,” rather than requiring all three activities outlined in
2 paragraphs (a)(1) though (a)(3).

3 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
4 Code §2006.002, the department has determined that the proposed amendments will not have an
5 adverse economic effect on small businesses, micro-businesses, and rural communities because it is clear
6 that the existing rule text is intended to have the same meaning as the amended rule text. Therefore, the
7 department is not required to prepare a regulatory flexibility analysis under Government Code,
8 §2006.002.

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

13 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
14 first five years the proposed amendments are in effect, no government program would be created or
15 eliminated. Implementation of the proposed amendments would not require the creation of new
16 employee positions or elimination of existing employee positions. Implementation would not require an
17 increase or decrease in future legislative appropriations to the department or an increase or decrease of
18 fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit,
19 or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals
20 subject to the rule's applicability and will not affect this state's economy.

21 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written
22 comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from
23 your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by

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1 mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin,
2 Texas 78731. If a hearing is held, the department will consider written comments and public testimony
3 presented at the hearing.

4 **STATUTORY AUTHORITY.** The department proposes amendments to §215.505 under Transportation
5 Code §§503.002, 503.0626, 503.0631, and 1002.001.

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

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

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

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

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

15
16 **TEXT.**

Subchapter J. Administrative Sanctions

43 TAC §215.505

18
19 §215.505. Denial of Dealer or Converter Access to Temporary Tag System.

20 (a) In this section "fraudulently obtained temporary tags from the temporary tag database "means
21 a dealer or converter account user misusing the temporary tag database authorized under Transportation
22 Code §503.0626 or §503.0631 [~~§503.0632~~] to obtain:

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

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

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

6 (b) The department shall deny a dealer or converter access to the temporary tag database
7 effective on the date the department sends notice electronically and by certified mail to the dealer or
8 converter that the department has determined, directly or through an account user, the dealer or
9 converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or
10 converter may seek a negotiated resolution with the department by demonstrating corrective actions
11 taken or that the department’s determination was incorrect.

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

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

21 (e) The department may also issue a Notice of Department Decision stating administrative
22 violations as provided in §215.500 concurrently with the notice of denial of access under this section. A

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1 Notice of Department Decision may include notice of any violation, including a violation listed under
2 subsection (a) of this section.

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

6 **CERTIFICATION.** The department certifies that legal counsel has reviewed the adoption and found it to be
7 a valid exercise of the agency's legal authority.

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9 Issued at Austin, Texas, on MONTH DAY, YEAR.

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Aline Aucoin, Acting General Counsel

DRAFT

1 **EMERGENCY RULEMAKING**

2 **CHAPTER 215. MOTOR VEHICLE DISTRIBUTION**

3 **SUBCHAPTER J. ADMINISTRATIVE SANCTIONS**

4 **43 TAC §215.505**

5 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts, on an emergency basis,
6 amendments to 43 TAC §215.505 concerning denial of access to the temporary tag system, effective April
7 14, 2022. The amendments to §215.505 are necessary to clarify the rule text. As authorized by
8 Government Code §2001.034, the department may adopt an emergency rule without prior notice or
9 hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on
10 fewer than 30 days’ notice. Emergency rules adopted under Government Code §2001.034 may not be
11 effective for longer than 120 days and may not be renewed for longer than 60 days.

12 **BACKGROUND AND PURPOSE.** The purpose of this emergency rulemaking is to correct a statutory
13 citation regarding the department’s temporary buyer’s tag database under Transportation Code
14 §503.0631, to add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to
15 not be in the dealer’s or converter’s inventory, and to change the word “and” to “or” in §215.505(a)(2) in
16 the list of activities that constitute “fraudulently obtained temporary tags from the temporary tag
17 database” under §215.505. Section 215.505 contains the process for denial of access to the temporary
18 tag database under Transportation Code §503.0632(f) when the department determines that a dealer or
19 converter is fraudulently obtaining temporary tags from the temporary tag database.

20 This emergency rulemaking is necessary because a subset of dealers will fraudulently obtain
21 temporary tags from the temporary tag database without clarification of the rule text. Fraudulently
22 obtained temporary tags pose an imminent peril to the public health, safety, and welfare because a subset
23 of dealers has fraudulently obtained and sold temporary tags to persons who engage in violent criminal

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1 activity, including armed robbery, human trafficking, and assaults on law enforcement. Criminals use
2 fraudulently obtained temporary tags that are registered under fake names and addresses to make it
3 harder for law enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose an
4 imminent peril to the public health, safety, and welfare because a subset of dealers has fraudulently
5 obtained and sold temporary tags to persons who operate uninsured and uninspected vehicles that are
6 hazards to Texas motorists and the environment. Fraudulently obtained temporary tags further pose an
7 imminent peril to the public health, safety, and welfare because criminals can attempt to sell stolen
8 vehicles or unsafe salvage vehicles to unsuspecting buyers by using temporary tags to make the vehicles
9 appear legitimate. Criminals have fraudulently obtained temporary tags from the department's system
10 and used the temporary tags in Texas, as well as other states, such as New York and Nevada. Criminals
11 will take advantage of any loopholes they see as available to them.

12 One amendment corrects the statutory citation regarding the department's buyer's temporary
13 tag database under Transportation Code §503.0631, which governs the buyer's temporary tag database.
14 Section 215.505 cites to Transportation Code §503.06321, which does not exist. Section 215.505 applies
15 to the dealer's and converter's temporary tag database under Transportation Code §503.0626, as well as
16 the buyer's temporary tag database under Transportation Code §503.0631. Another amendment adds
17 parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the
18 dealer's or converter's inventory. Another amendment to §215.505(a)(2) changes the word "and" to "or"
19 in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag
20 database." Together, these clarifying amendments will close any perceived loopholes that criminals might
21 otherwise try to exploit.

22 **STATUTORY AUTHORITY.** The emergency rulemaking is adopted under Government Code §2001.034,
23 and Transportation Code §§503.002, 503.0626, 503.0631, and 1002.001.

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1 Government Code §2001.034 authorizes the adoption of emergency rules without prior notice
2 and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires
3 adoption of a rule on fewer than 30 days' notice.

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

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

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

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

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

13
14 **TEXT.**

15 **Subchapter J. Administrative Sanctions**

16 **43 TAC §215.505**

17 §215.505. Denial of Dealer or Converter Access to Temporary Tag System.

18 (a) In this section "fraudulently obtained temporary tags from the temporary tag database "means
19 a dealer or converter account user misusing the temporary tag database authorized under Transportation
20 Code §503.0626 or §503.0631 [~~§503.0632~~] to obtain:

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

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

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

6 (b) The department shall deny a dealer or converter access to the temporary tag database
7 effective on the date the department sends notice electronically and by certified mail to the dealer or
8 converter that the department has determined, directly or through an account user, the dealer or
9 converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or
10 converter may seek a negotiated resolution with the department by demonstrating corrective actions
11 taken or that the department’s determination was incorrect.

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

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

21 (e) The department may also issue a Notice of Department Decision stating administrative
22 violations as provided in §215.500 concurrently with the notice of denial of access under this section. A

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1 Notice of Department Decision may include notice of any violation, including a violation listed under
2 subsection (a) of this section.

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

6 **CERTIFICATION.** The department certifies that legal counsel has reviewed the emergency adoption and
7 found it to be a valid exercise of the agency's legal authority.

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9 Issued at Austin, Texas, on MONTH DAY, YEAR.

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Aline Aucoin, Acting General Counsel

