



Board Meeting Date: 4/14/2022  
ACTION ITEM

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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)

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### 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](mailto: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.**

17 **Subchapter J. Administrative Sanctions**

18 **43 TAC §215.505**

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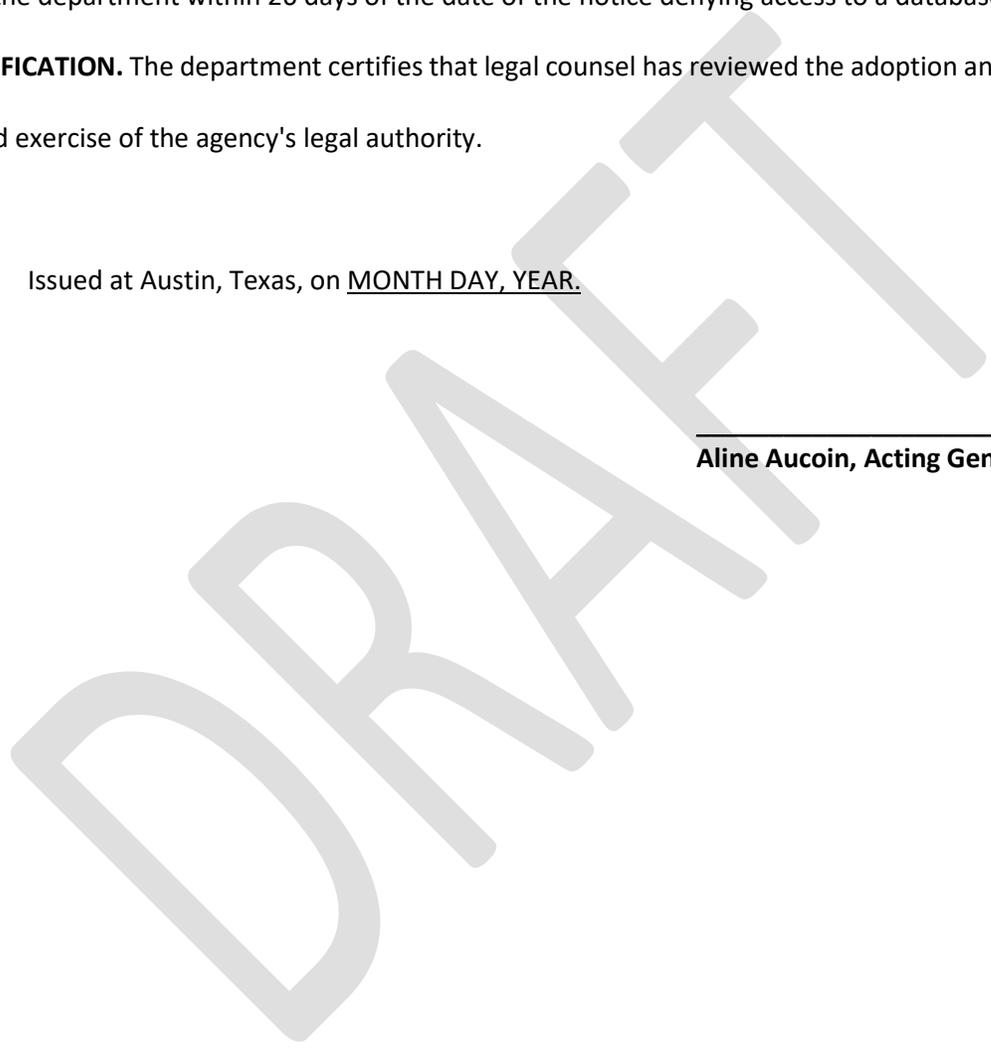
9 Issued at Austin, Texas, on MONTH DAY, YEAR.

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**Aline Aucoin, Acting General Counsel**



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**

