



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Board Meeting

9:00 a.m.

Thursday, January 27, 2022

AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
WILLIAM P. CLEMENTS BUILDING
300 W. 15TH STREET, ROOM 103
AUSTIN, TEXAS 78701
THURSDAY, JANUARY 27, 2022
9:00 A.M.

THE PUBLIC PHYSICAL LOCATION WITH PRESIDING OFFICER:

William P. Clements Building
300 W. 15th Street, Room 103
Austin, Texas 78701

Link to January 27, 2022, TxDMV Board Meeting Documents:
<https://www.txdmv.gov/about-us/txdmv-board-meetings>

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. Presentations may be made by the identified staff, Board member or other personnel as needed. The Board reserves the right to discuss any items in closed session where authorized by the Open Meetings Act.

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1. **Roll Call and Establishment of Quorum**
2. **Pledges of Allegiance - U.S. and Texas**
3. **Executive Director Reports - Whitney Brewster**
 - 5 A. [Collaboration with Law Enforcement on Criminal Referrals and Other Temporary Tag Initiatives](#)
 - 7 B. [Motor Vehicle Industry Regulation Advisory Committee \(MVIRAC\) Update](#)

ACTION ITEMS

- 8 4. [Fingerprinting Policy and Rulemaking Discussion regarding Applicants for Licensure - Whitney Brewster \(ACTION ITEM\)](#)

RULE ADOPTIONS

- 9 5. **Chapter 215, Motor Vehicle Distribution - MVIRAC Presiding Officer Blasingame, Monique Johnston and Clint Thompson (ACTION ITEM)**
Amendments, §215.152 and §215.158
[\(Relating to HB 3927, establishing the maximum number of temporary tags that a dealer or converter may issue in a calendar year\)](#)
(Proposal Published - November 12, 2021 - 46 TexReg 7757)

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6. **Chapter 215, Motor Vehicle Distribution** - Brian Ge (ACTION ITEM)
Amendments, §§215.150, 215.151, 215.153, 215.154, and 215.155
New, §215.505
(Relating to HB 3927, including, allowing for denial of access to the temporary tag database and issuance of temporary tags to certain vehicles without inspection)
(Proposal Published - November 12, 2021 - 46 TexReg 7752)

CLOSED SESSION

7. **The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code Chapter 551:**

Section 551.071 - Consultation with and advice from legal counsel regarding:

- pending or contemplated litigation, or a settlement offer;
- a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code Chapter 551; or
- any item on this agenda.

Section 551.074 - Personnel matters.

- Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
- Discussion relating to TxDMV dispute resolution process and recent EEOC complaints and internal Civil Rights Office complaints.

Section 551.076 - Deliberation Regarding Security Devices or Security Audits.

- the deployment, or specific occasions for implementation, of security personnel or devices; or
- a security audit.

Section 551.089 - Deliberation Regarding Security Devices or Security Audits.

- security assessments or deployments relating to information resources technology;
- network security information as described by Government Code Section 2059.055(b); or
- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

8. **Action Items from Closed Session**

9. **Public Comment**

10. **Adjournment**

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

If you would like to comment on any agenda item (including an open comment under Item #9), you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board or send an email to GCO_General@txdmv.gov to register by providing the required information prior to the agenda item being taken up by the Board:

1. a completed [Public Comment Registration Form](#); or
2. the following information:
 - a. the agenda item you wish to comment on;
 - b. your name;
 - c. your address (optional), including your city, state, and zip code; and
 - d. who you are representing.

Public comment will only be accepted in person. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact David Richards by telephone at (512) 465-1423.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Tracey Beaver, General Counsel, (512) 465-5665.



Board/Committee Meeting Date: 1/27/2022
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 3.A
Subject: Collaboration with Law Enforcement on Criminal Referrals and Other Temporary Tag Initiatives

RECOMMENDATION

Briefing Only

PURPOSE AND EXECUTIVE SUMMARY

To brief the Board on the activities and initiatives Texas Department of Motor Vehicles staff are undertaking to combat the production and distribution of unauthorized or illegal temporary tags, including collaboration with law enforcement.

FINANCIAL IMPACT

No financial impact.

BACKGROUND AND DISCUSSION

Stopping the fraudulent production and use of temporary tags is the top priority of the Texas Department of Motor Vehicles (TxDMV). Addressing this serious issue requires the ongoing collaboration of law enforcement, TxDMV staff, and state and local leadership.

Criminals are circumventing requirements to obtain vehicle dealer licenses to fraudulently issue temporary tags to avoid state registration and inspection requirements and conceal vehicles used in illegal activities. Some use the fraudulent tags themselves, while others sell tags through social media or in-person deals.

TxDmv is pursuing initiatives on multiple fronts to combat this fraudulent and illegal behavior. The most significant of which is the continuing consideration and adoption of administrative rules necessary to implement the provisions of House Bill 3927, passed during the 87th Regular Legislative Session. The bill provides the authority for TxDMV to limit the number of temporary tags available to licensed dealers and terminate access to temporary tags when the department identifies licensed dealers are involved in fraudulent activities.

As part of regular department operations, TxDMV works closely with local, state, and federal law enforcement to stop criminal activity related to temporary tags. Collaboration with the Texas Department of Public Safety and the Montgomery County Sheriff's Office recently resulted in numerous [arrests in Montgomery County](#). TxDMV is also working with local law enforcement to embed TxDMV investigators in operations around the state to help identify the illegal sale and use of temporary tags as part of criminal investigations. TxDMV welcomes the opportunity to work with law enforcement across the state and at all levels of government as they pursue investigations into motor vehicle crimes.

Additionally, department staff is working with the investigative and compliance programs of social media platforms to identify and remove advertisements, postings, and groups related to the attempted sale of Texas temporary tags

through online marketplace structures. These cooperative activities have already resulted in the removal of numerous postings and are assisting machine-learning algorithms to better identify the tactics used to avoid detection and more quickly act on illegal sales activity.

Finally, beginning in calendar year 2021, TxDMV dealer licensing and enforcement staff began reviewing licensing application records to verify existing licensed dealers and refer specific concerns to local law enforcement for potential criminal investigations. Department staff is also able to use the information collected from these reviews to take administrative action to reduce access to temporary tag systems when appropriate and allowed by law.



Board/Committee Meeting Date: 1/27/2022
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 3.B
Subject: Executive Director Reports
Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) Update

RECOMMENDATION

Briefing Only

PURPOSE AND EXECUTIVE SUMMARY

To brief the Board on the activities of the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC).

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

The MVIRAC met on December 16, 2021 and discussed TxDMV's proposed maximum tag limit rules that implement House Bill 3927, which also gives the department authority to deny a dealer's or converter's access to the temporary tag database if it is found that tags have been fraudulently obtained from the system. The MVIRAC reviewed the proposed formulas TxDMV created to set the maximum tag limits and provided advice based on their expertise to ensure the formulas are a valuable tool to combat temporary tag fraud but are also reasonable and ensure legitimate dealers are able to operate in Texas.

MVIRAC also recommended the department require non-franchised dealers or independent dealers to be electronically fingerprinted at their personal expense, with a records review by TxDMV licensing, prior to their being issued a general distinguishing number (GDN); and that the department conduct in-person onsite premise inspections of all non-franchised GDN applicants prior to their being issued a license to ensure they are in compliance with all TxDMV requirements.



Board Meeting Date: 1/27/2022
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Whitney Brewster, Executive Director
Agenda Item: 4
Subject: Fingerprinting Policy and Rulemaking Discussion regarding Applicants for Licensure

RECOMMENDATION

Approval to instruct the department to draft rule proposals based on policy statements of the TxDMV board, publish the proposals in the *Texas Register* for comment, and return a proposed adoption to the board for review and adoption.

PURPOSE AND EXECUTIVE SUMMARY

The purpose is to enable the board to instruct the department to draft propose rules related to fingerprinting independent and franchise General Distinguishing Number (GDN) applicants, with all costs paid by the applicant, for the department to publish the proposed rules in the Texas Register for public comment, and for the department to bring the proposed rules and any public comments back to the board in a future board meeting to consider for adoption.

FINANCIAL IMPACT

The department will not propose rules that will result in a fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal during any year of the first five years the rules would be in effect.

BACKGROUND AND DISCUSSION

Some GDN license applicants have been using forged identification documents, allowing applicants to mask their identity and prior criminal history. The department seeks board authorization to draft and propose rules requiring all GDN applicants to submit on initial licensure, and renewal, a complete set of fingerprints. The fingerprints would be submitted to the Texas Department of Public Safety and the Federal Bureau of Investigation through the Texas Department of Public Safety third party vendor. Applicants would be required to pay all costs for submission and review of the fingerprints. Fingerprints would not be required for an applicant that has previously submitted fingerprints and is subject to the FBI's RAP Back program.



Board Meeting Date: 1/27/2022
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Monique Johnston, Motor Vehicle Division Director
Agenda Item: 5
Subject: **Chapter 215, Motor Vehicle Distribution** - Monique Johnston and Clint Thompson (ACTION ITEM)
Amendments, §215.152 and §215.158
(Relating to HB 3927, establishing the maximum number of temporary tags that a dealer or converter may issue in a calendar year)

PENDING APPROVAL

The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor.
<https://gov.texas.gov/organization/regulatory-compliance>

RECOMMENDATION

Adopt the proposed amendments and approve publication in the *Texas Register*.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of the amendments to §215.152 and §215.158 is to implement House Bill (HB) 3927, Regular Session (2021), which authorized the department to establish the maximum number of temporary tags a dealer or converter may issue in a calendar year. Further implementation of HB 3927, including denial of access to the temporary tag database will be addressed in Agenda Item 5, as a separate proposal.

FINANCIAL IMPACT

The department has determined that for each year of the first five years the proposed amendments and new section 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 proposal. There will be no significant costs to the department, and the proposed amendments will have no significant impact on revenue collections.

BACKGROUND AND DISCUSSION

House Bill 3927 provides the department with significant new tools to address temporary tag misuse and fraud, including denial of access to the temporary tag database and establishing the maximum number of temporary tags that a dealer or converter may issue. This proposal relates to establishing the maximum number of temporary tags that a dealer or converter may issue. Considering the requirements of new Transportation Code §503.0632(a)-(e), the department has developed a formula to annually set individual calendar year temporary tag limits for each dealer and converter by temporary tag type.

For license holders past their initial license term, the formula sets a base number of the license holder's greatest use of temporary tags in the prior three fiscal years. That number is increased by multiplying the base by 10 percent for each year of the last 10 years that the license holder has been licensed. The number of tags is increased again by multiplying the amount by the expected growth rate and adding that to the total, with the expected growth rate being the greater of the license holder's actual growth rate of the statewide actual growth rate. The department then reserves the ability to further increase the total for all license holders should market conditions warrant.

For new licensees, the department will award a block of temporary tags for each calendar year, until the beginning of the calendar year after that license expires. The department has added to reasons that the initial amount may be increased, during licensure.

Also, as required by HB 3927, the §215.152 sets out a process for a license holder to request additional temporary tags based on the license holder's business results and anticipated needs. Requests for additional tags would be made through the department's eLICENSING system. The license holder may make requests for additional tags as needed.

The rule is intended to provide license holders with enough temporary tags to handle a significant increase in sales over the best of the three prior fiscal years, while preventing unlimited fraudulent activity by license holders only interested in selling temporary tags.

COMMENTS

The proposed sections were published for comment in the November 12, issue of the *Texas Register*. The comment period closed on December 13, 2021.

The department received written comments requesting a change in the proposed text from Senator Bettencourt, Cernosek Wrecker/Deer Park Paint & Body, Representative Harris, Representative Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

In response to comments, the department changed the calculation of the base number of temporary tags based on comments. The change applies the limitation of two times the greatest number of title transactions processed by the license holder in a fiscal year only to the actual number of in state buyer's tags issued. The limitation does not apply to out of state buyer's tags issued. The number of in state buyer's tags is then added to the actual number of out of state buyer's tags issued to determine the base number.

In response to comments, the department clarified the increase in the multiplier for the number of years that a dealer or converter has been in service to state for buyer's dealer's, and converter's tags. For each tag type, the multiplier will increase by 10 percent annually until it reaches a maximum increase of 100 percent after 10 years. The proposal stated did not specify that the annual increase was 10 percent per year.

In response to comments, the department changed the calculation for determining a dealer's or converter's growth rate for buyer's tags. The multiplier will be the greater of the dealer's or converter's actual growth rate or the actual statewide growth rate. The growth rate for individual a dealer or converter will be determined by calculating the growth rate of the license holder's title transactions and adding that growth rate to the license holder's growth rate for out of state temporary tags issued. To avoid an astronomical growth rate due to unusual factors, including new licensees being licensed for part of a fiscal year, the department has limited the actual growth rate is limited to 200 percent. The cap does not prevent a license holder from requesting additional tags if necessary under §217.152(i). The statewide actual growth rate will be the growth rate in the number of title transactions statewide.

In response to comments, the department also changed the calculation for determining a dealer's or converter's growth rate for dealer's and converter's tags. The multiplier will be the greater of the dealer's or converter's actual growth rate or the actual statewide growth rate. The growth rate for individual a dealer or converter will be determined by calculating the growth rate for the number of dealer's or converters tags issued by the license holder. The statewide actual growth rate will be the growth rate in the number of title transactions statewide.

In response to comments, the department also added reasons why the initial amount of temporary tags available to a new dealer may be increased during licensure.

The department also set out the appeal process in more detail. However, the department emphasizes that a dealer or converter may request additional tags in a future request.

TITLE 43. TRANSPORTATION
Part 10. Texas Department of Motor Vehicles
Chapter 215 - Motor Vehicle Distribution

Adoption Sections

PENDING APPROVAL

The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor. <https://gov.texas.gov/organization/regulatory-compliance>

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ADOPTION OF
CHAPTER 215. MOTOR VEHICLE DISTRIBUTION
SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS
43 TAC §215.152 and §215.158

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §215.152 and §215.158 concerning the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. The amendments are necessary to implement amended Transportation Code §503.0626 and §503.0631 and new §503.0632(a)-(e) under House Bill 3927, 87th Legislature, Regular Session (2021). The department adopts §215.158 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757). The department adopts §215.152 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757). Sections 215.152 and 215.158 have been adopted for immediate effect.

The department has also adopted amendments to 43 TAC §§215.150, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database in this issue of the *Texas Register*.

REASONED JUSTIFICATION. House Bill 3927 amended Transportation Code and added new §503.0632(a)-(e) to authorize the department to establish by rule the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063. The maximum tag limit adopted amendments in §215.152 are intended to prevent dealers and converters from fraudulently

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1 issuing an excessive amount of temporary tags while allowing legitimate businesses to continue
2 operations unimpacted.

3 The department met with the Motor Vehicle Industry Regulatory Advisory Committee in
4 considering comments submitted on the proposal. The Motor Vehicle Industry Regulatory Advisory
5 Committee also met twice in considering the proposal. The department appreciates the committee
6 members' serious consideration of the issues presented by HB 3927 and the members' comments.

7 The department published the proposal for comment in the *Texas Register* on November 20,
8 2021. The department also published on that day proposals for amendments to 43 TAC §§215.150,
9 215.151, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and
10 temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag
11 database; and 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and 217.89 concerning
12 the implementation of SB 876. Some commenters chose to make comments on more than one proposal
13 in one submission or not specify the proposal that they were commenting on. The department has
14 considered all timely received comments in respect to the proposal the commenter stated that they
15 were commenting on, or to which the comment could apply. The department has not excluded any
16 comments because the submission included, referred to, or could apply to multiple proposals.

17 The department analyzed data from multiple department systems and developed a model that
18 considers the factors identified in §503.0632(b) to greatly reduce the volume of fraudulent tag issuance,
19 yet balances the business needs of legitimate dealers and converters. Implementation of setting the
20 maximum tag limits under HB 3927 involves programming to multiple department systems.

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1 The department recognizes that implementing fraud prevention and detection mechanisms
2 should not adversely impact dealers or converters that are not fraudulently issuing temporary tags. The
3 model developed by the department is intended to provide dealers or converters with the number of
4 temporary tags they need to operate without having to request additional tags. Also, by using existing
5 department systems, the adopted amendments add no additional costs for a dealer or converter and
6 create no new required activities or reports for dealers.

7 The department also recognizes all dealers and converters are not the same. As such, the adopted
8 amendments consider actual temporary tag issuance specific to each established dealer and converter as
9 a minimum allotment and then provides an increase based on each dealer’s and converter’s licensing
10 tenure, as well as an increase for growth, resulting in a maximum number of temporary tags unique to
11 each dealer and converter.

12 New licensees have been considered as well, and the adopted amendments provide an initial
13 allotment of temporary tags based on the type of dealer and whether the dealer or converter is a first-
14 time licensee, an existing licensee moving locations, or an established dealer moving into the state.
15 Additional considerations include buy - sell arrangements, inheritances, or an existing licensee
16 establishing an additional location. All considerations will ensure a maximum tag limit appropriate to each
17 situation.

18 The following paragraphs address the amendments in this adoption.

19 The amendment to §215.152(b)(1) is a response to fraudulent activity and clarifies that
20 information entered to obtain a temporary tag must be true and accurate.

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The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor. <https://gov.texas.gov/organization/regulatory-compliance>

1 The amendments to §215.152 add new subsections (c)-(l) to establish the maximum number of
2 temporary tags that may be allotted to a dealer or converter. In summary, §215.152(c)-(e) implement
3 Transportation Code §503.0632(b) and establish the calculated number of temporary tags that a dealer
4 or converter past its initial license period will receive from the department with no dealer or converter
5 action. Section 215.152(f) establishes a maximum tag limit for newly licensed dealers and converters.
6 Section 215.152(i) creates the process for dealers to request additional tags. Section 215.152(g), (h), and
7 (j)-(l) address general matters related to the maximum number of temporary tags.

8 Section 215.152(c) establishes the calculation for determining the number of buyer's temporary
9 tags a dealer or converter will receive.

10 Section 215.152(c)(1) creates the base number of the calculation from activity related to sales
11 implementing §503.0632(b)(1)(B). The base starts with the greater of the dealer's highest number of in-
12 state buyer temporary tags issued or title transactions recorded in the Registration and Title System (RTS)
13 over the prior three fiscal years. The department is using state fiscal years, because it will allow the
14 department time to collect data, determine the multipliers, test the system, and be ready to release the
15 maximum limits prior to the January 1st calendar year implementation date. All months will be counted
16 towards the maximum limit although a lag will exist.

17 To limit potential fraudulent action, the department will limit the number of in-state buyer's tags
18 issued in the calculation to twice the number of RTS transactions. The department then adds to the in-
19 state total the number of out-of-state temporary tags issued to set the base. The department revised
20 215.152(c)(1) based on comments.

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1 The text has been amended to clarify that only the number of in-state buyer’s temporary tags
2 issued will be used in determining if the amount exceeds two times the number of in-state title
3 transactions. The number of buyer’s temporary tag issued for out-of-state sales will not be included in
4 the limitation analysis.

5 The allowed number of issued in-state buyer’s temporary tags, or title transactions if it is
6 greater, will then be added to the number of buyer’s temporary tags issued for out-of-state sales to
7 provide the base amount of temporary tags. That total will be increased by the growth rate and time in
8 business multipliers.

9 The department takes this action because for most dealers the number of temporary tags issued
10 for out-of-state sales is not the majority of the dealer’s business. Also, while the limit analysis does
11 provide a tool to identify potential unauthorized use of buyer’s temporary tag, the department does not
12 have access to a similar readily available tool for out-of-state sales. The department can require dealers
13 to present sales documentation and records; however, that would be burdensome for legitimate dealers
14 to present on an annual basis without any related issue of unauthorized use of temporary tags.

15 The change will also clarify that the amount will be the greatest number of buyer’s temporary
16 tags issued in one fiscal year of the previous three fiscal years.

17 The changes do not add additional requirements or costs, or affect persons not on notice of the
18 proposal.

19 Section 215.152(c)(2) then multiplies the base total by a time in business factor to implement
20 §503.0632(b)(1)(A). The anticipated factor is based on the percentage of years the dealer has been in
21 business over the last 10 years. In response to comments the department has amended the text to clarify

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1 that the factor will increase by 10% each year. For example, a dealer that has been in business for five
2 years would receive a 50% addition to the base. Thus, a hypothetical dealer that had a calculated base of
3 100 tags and was in business for five years would have allotted 150 buyer's tags. The change does not
4 add additional requirements or costs, or affect persons not on notice of the proposal.

5 Section 215.152(c)(3) then multiplies the base total after the addition of the time in business
6 factor by a determined market growth rate factor of not less than zero to implement §503.0632(b)(1)(C).
7 In response to comments, the department changed the calculation for determining a dealer's or
8 converter's growth rate for buyer's tags. The multiplier will be the greater of the dealer's or converter's
9 actual growth rate or the actual statewide growth rate. The growth rate for an individual dealer or
10 converter will be determined by calculating the growth rate of the license holder's title transactions and
11 adding that growth rate to the license holder's growth rate for out-of-state temporary tags issued. The
12 statewide actual growth rate will be the growth rate in the number of title transactions statewide. To
13 avoid having unusual factors result in excessively large growth rates, including new licensees being
14 licensed for part of the prior fiscal year, the department has limited the actual growth rate is limited to
15 200 percent. The cap does not prevent a license holder from requesting additional tags if necessary under
16 §217.152(i). The changes do not add additional requirements or costs, or affect persons not on notice of
17 the proposal.

18 Section 215.152(c)(4) is used here as a remedy if the standard formula is not working based on
19 sudden changes in the market to implement §503.0632(b)(2)-(4). This provision allows the department to
20 make adjustments to increase the number of buyer's temporary tags to all dealers in the state, or a more
21 limited area, if the standard formula is lagging behind. For example, a sudden increase in sales after a

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PENDING APPROVAL

The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor. <https://gov.texas.gov/organization/regulatory-compliance>

1 slow market period may require a separate temporary increase in the number of buyer's temporary tags
2 for all dealers until the increased sales data can be incorporated into the standard calculation. Remedies
3 for individual dealer situations are addressed in §215.152(g), (h), and (i).

4 Section 215.152(d) and (e) apply to dealer and converter temporary tags. The subsections are
5 similar in construction to the §215.152(c) in that the subsections use prior temporary tag data to establish
6 a base and then increase the allotment with multipliers based on time in business and growth rate. Section
7 215.152(d)(2) and (e)(2) have been amended based on comments similarly to §215.152(c)(2) to state that
8 the time in business multiplier increases by 10 percent each year. Section 215.152(d)(3) and (e)(3) have
9 been amended similarly to 215.152(c)(3) to state that the growth rate multiplier is the greater of the
10 license holder's actual growth rate or the statewide actual growth rate. As in §217.152(c)(3) the license
11 holder's actual growth rate is limited to 200 percent. The changes do not add additional requirements or
12 costs, or affect persons not on notice of the proposal. Also, §215.152(d) and (e) have a similar provision
13 to §215.152(c)(4) to make adjustments to a rapidly changing market.

14 Section 215.152(f) establishes the minimum number of allotted buyer, dealer, and converter tags
15 for new licensees. The allotment is by an annual block, because new dealers or converters will have no
16 prior history to establish a base, or time in operation to establish a time in operation or annual growth
17 multiplier. The annual block allotment is not subject to the time in operation or annual growth multiplier.
18 The period of allotment will run through the dealer's or converter's first two-year license period and end
19 the following December 31st. This will provide information to calculate a base, a three-year multiplier,
20 and the annual growth rate multiplier. However, even with this information, many dealers and converters

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1 may see a significant drop in the number allotted temporary tags depending on the actual base number
2 of tags issued and sales.

3 Based on comments and the discussions of the MVIRAC, the department has amended
4 §215.152(f) to confirm that the license holder may present information to the department in licensing
5 that the increase the minimum number of temporary tags allotted to the new license holder. First, the
6 department has added the word "initial" before the word "allocations" and after the word "The" in the
7 second sentence. The statement clarifies that a new dealer is not prohibited from requesting additional
8 temporary tags under §215.152(i).

9 Section 215.152(f)(1) and (2), which apply to franchise dealers and converters is changed to add
10 the statement "unless the" dealer or converter "provides credible information indicating that a greater
11 number of tags is warranted based on anticipated sales, including information from the manufacturer or
12 distributor, or as otherwise provided in this section" and §215.152(f)(3) is similarly modified by adding
13 the statement "unless the dealer provides credible information indicating that a greater number of tags
14 is warranted based on anticipated sales as otherwise provided in this section." As such a new dealer or
15 converter may request additional tags over the minimum number, which is consistent with
16 Transportation Code §503.0632(c) which authorizes the dealer or converter to make a request for
17 additional tags. Statute does not authorize third parties to submit requests on behalf of a dealer or
18 converter. The changes do not add additional requirements or costs, or affect persons not on notice of
19 the proposal.

20 The reasons for increasing the number of temporary tags for a new dealer are addressed in
21 §215.152(g) and (h), as changed based on comments.

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1 Proposed §215.152(g) and (h) have been combined and redesignated §215.152(g)(1) and (2).
2 Section 215.152(g)(1) is intended to avoid the situation under §215.152(f) in which an existing dealer or
3 converter could inflate the number of temporary tags they are allotted or be limited in its ability to
4 expand. Section 215.152(g)(1) provides that an existing dealer or converter that is moving its operations
5 from one location to a different location will continue with its allotment of temporary tags. The dealer or
6 converter will not be issued a block allotment under subsection (f). Thus, an existing dealer with less than
7 300 allowed buyer's tags, cannot inflate its number, and conversely a dealer with more than 300 buyer's
8 tags will not be penalized for making a business decision.

9 Section 215.152(g)(2) provides that an existing dealer or converter opening an additional location
10 will receive an allotment based on the allotment provided to existing locations. In addition to being
11 redesignated, §215.152(g)(2) has been changed to read similarly to §215.152(g)(2) by adding "of
12 temporary tags" between "allotment" and "based," and adding the statement "and not be allocated
13 temporary tags under subsection (f) of this section" to the end of the paragraph after the word
14 "locations." The changes and redesignation to proposed §215.152(g) and (h) are not substantive and the
15 provisions continue to apply to existing dealers opening additional locations or relocating a location as
16 addressed in the proposal.

17 Section 215.152(h) is added based on comments and the discussions of the MVIRAC to list
18 additional circumstances under which a new dealer or converter may request additional temporary tags
19 under §215.152(f). The situations each involve a type of circumstance with "some continuity in existing
20 operations that will result in increased sales." The list is

21 "(1) franchise dealer manufacturer or distributor sales expectations;

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- 1 (2) a buy-sell change of ownership agreement;
- 2 (3) a change in license required by death or retirement;
- 3 (4) prior year’s sales by a dealership moving into the state; or
- 4 (5) other similar change of location or ownership that indicates some continuity in
- 5 existing operations that will result in increased sales.”

6 The change does not add additional requirements or costs, or affect persons not on notice of the
7 proposal. Further, the changes in §215.152(f)(g) and (h) do not limit a dealer or converter from requesting
8 additional temporary tags under §215.152(i).

9 Section 215.152(i) establishes the process under which a dealer or converter may request
10 additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i)
11 establishes that the dealer may request additional tags after 50 percent of the calendar allotment have
12 been used. Also, requests will be made through the eLICENSING system.

13 Section 215.152(i)(1) establishes that the dealer or converter is required to demonstrate that the
14 need for additional temporary tags results from business operations, including anticipated needs, as
15 required by §503.0632(c), and lists some types of information that may be presented, including evidence
16 of factors under §503.0632(b) related to the individual license holder. The list is not exclusive. Section
17 215.152(i)(2) establishes that the department will consider the information provided but may also
18 consider any additional information that the department considers to be relevant to making a
19 determination. As in §215.152(i)(1), a non-exclusive list of information that the department may consider
20 is listed in §215.152(i)(2).

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1 Section 215.152(i)(3) establishes that the department is not bound to issue only the number of
2 additional temporary tags requested by the dealer or converter and may issue more or less than the
3 request. A decision to grant the request on whole or in part does not constitute a denial of the request.
4 In response to comments and questions for the Regulatory Compliance Division of the Office of the
5 Governor, the department has added the following sentence to clarify that the “Allocation of additional
6 temporary tags under this paragraph does not limit the dealer’s or converter’s ability to submit additional
7 requests for more temporary tags.”

8 Additionally, the department has amended §215.152(i)(4) to expand on the appeal process.
9 Section 215.152(i)(4) provides that a denied request may be appealed to the director of the department’s
10 Motor Vehicle Division. The process, should it be necessary, is intended to be quickly resolved. Further,
11 as addressed in §215.152(i)(4)(E)(i), denial of an appeal does not prevent a license holder from submitting
12 additional requests for temporary tags under the rules. The changes to §215.152(i)(3) and (4) do not add
13 additional requirements or costs, or affect persons not on notice of the proposal.

14 The director’s decision is final. Section 215.152(i)(5) establishes that once a denial is final, a dealer
15 or converter may only submit a subsequent request for additional temporary tags during that calendar
16 year if the dealer or converter is able to provide additional information not considered in the prior request.

17 Section 215.152(j) provides that an allotment change under §215.152(i) does not result in a
18 change to the base allotment in future years. That number will be calculated under §215.152(c), (d), or
19 (e), or allotted under §215.152(f), (g), or (h). Ultimately if the additional number of temporary tags are
20 used, that number will become the base in the calculation. Section 215.152(k) provides that the
21 department will continue to monitor temporary tag usage that suggests that misuse or fraud has occurred

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1 as described in Transportation Code §§503.038, 503.0632(f), or 503.067. Section 215.152(l) provides that
2 unused temporary tags do not roll over to subsequent years. The base calculations will be done annually.

3 The amendments to §215.158(d) address the changes in Transportation Code §503.0626 and
4 §503.0631 that removed the requirement for the temporary tag databases to be within the
5 department's Vehicle Titles and Registration Division. The department has assigned the function to the
6 department's Motor Vehicle Division. Otherwise, the proposal does not change the process for
7 determining preprinted internet-down tags. The amendments to §215.158 also add new subsection (e),
8 which clarifies that a preprinted internet-down tag will apply against the dealer's maximum number of
9 allotted buyer's tags when the preprinted tag is entered into the temporary tag database as a sale.

10 Preprinting the tags will not reduce the maximum number of allotted buyer's tags.

11 The department adopts §215.152 and §215.158 for immediate effect to act against continuing
12 temporary tag fraud.

13

14 **SUMMARY OF COMMENTS.**

15 The department received written comments requesting a change in the proposed text from
16 Senator Bettencourt, Cernosek Wrecker/Deer Park Paint & Body, Representative Harris, Representative
17 Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

18

19 **General**

20 **Comment:**

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1 Multiple commenters stated that the purpose of HB 3927 was to aid law enforcement in
2 stopping the fraud without being onerous to legitimate dealers.

3 **Agency Response:**

4 That department agrees with the commenters and has endeavored to implement HB 3927 in
5 that respect, including the

6 (1) adoption of maximum tag limits in §215.152 in this adoption as authorized under
7 Transportation Code §503.0632(a)-(e) that sets out a formula designed to provide dealers with more
8 tags than they have used in prior fiscal years and not require any additional reporting on behalf of
9 dealers, while preventing criminals from accessing unlimited numbers of tags; and

10 (2) in a separate adoption submitted on this day, the adoption of

11 (a) security requirements for managing user access to the temporary tag database in
12 §215.150 as authorized in Transportation Code §503.0631;

13 (b) a denial of access process in §215.505 as authorized under Transportation Code
14 §503.0632(f).

15

16 **Comment:**

17 Multiple commenters asserted that adoption of rules under Transportation Code §503.07632(a)
18 is discretionary, and that the department need not apply the rules to franchise dealers.

19 **Agency Response:**

20 The department agrees that the use of “may” in Transportation Code §503.07632(a) makes the
21 choice to adopt rules discretionary but declines to make a change based on the comment because the

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1 statute does not make the application of those rules discretionary after the decision to adopt rules is
2 made. Statute states that the rules apply to dealers and converters. It does not authorize an exception
3 for franchise dealers or state that it only applies to independent dealers.
4

Comment:

5
6 Multiple commenters asserted that the rules create burdensome requirements for license
7 holders and the department; that the department should create exceptions, set forth in a variety of
8 alternative combinations, for license holders that have been in business for a number of years and that
9 are not under suspicion of issuing fraudulent temporary tags for non-existent sales; and that the statute
10 does not require that the rule limit the number of temporary tags of dealers who are not the source of
11 the problem that the statute and rule are intended to address.

Agency response:

12
13 The department disagrees with the comments because the comments are not supported by
14 statute, and the rules do not create burdensome requirements for license holders or the department. As
15 such the department declines to make a change based on the comments.

16 As previously addressed, Transportation Code §503.0632(a) does not create an exception for
17 certain types of dealers or converters. Following on that Transportation Code §503.07632(b) requires
18 that "The maximum number of temporary tags that the department determines a dealer or converter
19 may obtain under this section must be based on the dealer's or converter's anticipated need for
20 temporary tags." An exception based solely on the number of years the license holder has been in

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1 business and the license holder’s administrative violations is not “based on the dealer’s or converter’s
2 anticipated need for temporary tags.”

3 The department also disagrees that the rules create burdensome requirements for dealers and
4 converters. As required by statute, the rules set a calendar year maximum tag limit that requires no
5 action, paperwork, or submissions at all on behalf of existing or new dealers. The formula incorporates
6 the factors laid out in statute by the legislature for existing dealers with a history and establishes a basis
7 for new dealers. Based on comments the department has expanded and clarified that new licensees
8 may request additional tags at time of licensure if they believe more are needed. All license holders may
9 request additional tags after they have used 50 percent of their annual allocation, but a request is not
10 required. The request for additional temporary tags will be based on the licensee’s business operations
11 and anticipated needs as required by statute. Dealers will need to monitor the use of temporary tags
12 and if necessary anticipate a need for additional temporary tags based on Transportation Code
13 §503.0632(c).

14 As it relates to any burden on the department, the information the department will use to
15 determine basic calendar year maximum tag limits for the approximately 20,000 existing dealers and
16 other license holders is accessible to the department electronically, and the department will
17 programmatically implement the formula by computer to determine each existing license holder’s
18 annual allotment. New dealers and converters also have a base limit, but if the license holder requests
19 for additional tags, this may be reviewed and determined during the licensing process. As for requests
20 for additional temporary tags, the department has designed the formula with the intent that dealers and
21 converters should not have a need to request additional tags.

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1 In addition, from a practical aspect the commenters suggestion of a time period to obtain
2 unlimited tags raises the concern of what the department has heard of what some are describing as
3 stealth dealers - a dealer that is part of a criminal enterprise of dealers waiting for one to be taken down
4 only to open and continue the criminal activity. A dealer only needs to sell five vehicles a year to
5 maintain its license. Yet under the commenters suggestion, such a dealer with no suspicion of
6 fraudulently obtaining temporary tags would have access to an unlimited number of tags, thousands of
7 which could be issued in a few days from a database that is purposefully by statute open 24 hours a day,
8 365 days a year, to facilitate legitimate dealer sales.

9 Also, the criminals to date, would have qualified as a small or micro-business and new entrants
10 to the market. A rule designed or intended to primarily affect these groups without specific legislative
11 authorization is inconsistent with statute. Government Code §2006.001, defines a "micro-business" as
12 having not more than 20 employees, and a "small business" as having fewer than 100 employees or less
13 than \$6 million in annual gross receipts (Emphasis added). This would include the majority of the
14 approximately 20,000 license holders affected by these rules. Government Code §2006.002 requires the
15 department to prepare a regulatory flexibility analysis if a proposed rule has an adverse effect on a small
16 or micro-business. The analysis studies ways to reduce the impact on a small or micro-business, most
17 often by exemption. In addition, the Regulatory Compliance Division of the Office of the Governor
18 reviews rules to ensure that they do not raise barriers to new market entrants.

19 Finally, the commenters' request to apply the rules to a license holder based on mere suspicion
20 of fraudulent activity is also not supported by statute. Transportation Code §503.0632 creates two tools
21 for identifying dealers selling temporary tags, by setting maximum tag limits, and denial of access to the

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1 temporary tag database. As stated in this response, statute requires the maximum tag limits to be
2 established by rule, apply to a calendar year, and provides for no exemptions for license holder type,
3 size, or administrative history. The denial of access rule authorized under Transportation Code
4 §503.0632(f) is adopted in a separate proposal as §215.505. Statute and rule provide that the
5 department may deny access to the temporary tag database if the department determines that the
6 license holder has fraudulently obtained temporary tags. Neither statute or rule allow for action based
7 on mere suspicion and the action is denial of access to the database, not imposition of maximum tag
8 limits. Further, establishing a criterion to implement maximum tag limits on a license holder at any point
9 in a calendar year based on mere suspicion could be both burdensome and disruptive to the license
10 holder.

11
12 **§215.152(c) General**

13 **Comment:**

14 A commenter supports limiting the number of issued buyer's temporary tags, agent temporary
15 tags, and converter temporary tags as a means to curb or reduce temporary tag fraud.

16 **Agency response:**

17 The department appreciates the supportive comment.

18
19 **§215.152(c) General**

20 **Comment:**

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1 A commenter recommends that the department set the minimum number of temporary tags at
2 300 for all small and micro-businesses, because 300 is the minimum used for new businesses, and the
3 complex calculations that are required for determining if the dealership has received the correct
4 number of temporary tags.

5 **Agency Response:**

6 The department agrees that all dealers and converters should have a sufficient number of
7 temporary tags to conduct business and grow; however, the department declines to make a change
8 based on the comment.

9 The 300 temporary tags allotted annually to new independent dealers is a minimum based on
10 the discussions during the MVIRAC meetings. This number is intended to provide a new dealer with no
11 prior sales history a reasonable number of temporary tags to enter into the business, knowing full well
12 that some may need to request additional tags, and some may never use a tenth of those tags,
13 considering that five sales annually are required to maintain a dealer’s license and many dealers fail to
14 meet that requirement. At the end of the first licensing cycle the dealer will transition to a maximum
15 limit based on the dealer’s history, dealer’s or statewide growth rate, and tenure as provided in
16 Transportation Code §503.0632(b).

17 Further, the department does not believe that the calculations are complex or more importantly
18 beyond the ability of any individual who can operate a dealership or perform the calculations necessary
19 to complete a sales or financing contract.

20

21 **§215.152(c) General**

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1 **Comment:**

2 Three commenters stated that the department should do on-site visits of every dealer or
3 converter before issuing a license or allowing them access to the temporary tag system. One of the
4 commenters further suggested the following additional language be added to §215.505, which is
5 proposed in a separate proposal. As previously stated, the department recognizes that some comments
6 may apply to different proposals. The commenter proposed adding the following:

7 Due to the magnitude of the abuse of the temporary tag program, in order to determine the
8 number of temporary tags that will be available to the dealer or converter on an annual basis, any and
9 all dealers and converters shall be assessed on the following criteria through an on-location visit by DMV
10 personnel:

11 (1) the dealer 's or converter 's:

12 (A) time in operation;

13 (B) sales data; and

14 (C) expected growth;

15 (2) expected changes in the dealer 's or converter 's market;

16 (3) temporary conditions that may affect sales by the dealer or converter;

17 (4) the size and actual inspection of the physical location of the dealer or converter; and

18 (5) any other information the department considers relevant.

19 **Agency Response:**

20 The department appreciates the comment and has attempted to implement the statutory items
21 set out in the comment in this adoption. The department is further evaluating the benefit of site visits

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1 versus the cost and burden to the 20,000 legitimate dealers in this state and the department. Because
2 site visits were not addressed in the proposal for public comment, the department declines to add them
3 to this adoption; however, they may be considered in future proposals.

4
5 **215.152(c) Notice**

6 **Comment:**

7 A commenter requests that the department provide each dealer and converter with 30 days'
8 notice of the department's annual temporary tag number allotment prior to the beginning of the
9 calendar year by email and regular mail.

10 **Agency Response:**

11 The department appreciates the comment; however, declines to make the requested change in
12 the proposal. The department will endeavor to work with dealers throughout the process and be as
13 transparent as possible; however, the proposed notice would not affect the number of tags being
14 allocated or allow the dealer to take any action prior to using 50 percent of its temporary tag allotment.

15 The department intends for the system to allow dealers and converters to be able to see their
16 annual tag limits at any time, including the number of remaining tags they have for the year, when the
17 user logs into the eTAG system. Additionally, the department intends for the system to send email alerts
18 to dealers and converters once they have reached 50 percent of their annual temporary tag limit, and
19 possibly more often.

20

21 **§215.152(c)(1) Calculation of Buyer's Tags**

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1 **Comment:**

2 A commenter notes that the proposed dealer's annual buyer's temporary tag formula is
3 calculated from the dealer's sales data from the previous three fiscal years as determined from the
4 department's systems. The commenter recommends that for clarity and so there is no confusion, that
5 the three fiscal years be included in §215.152(c)(1)(A), (B), and (C).

6 In addition, commenters stated that the formula adversely affects dealers who make a
7 significant portion of their sales to out-of-state customers, because the base number of temporary tags
8 issued is predominantly tied to and limited by in-state Registration and Title System transactions.

9 **Agency Response:**

10 The department agrees with the comment and has changed §215.152(c)(1) to amend and clarify
11 the formula.

12 The text has been amended to clarify that only the number of in-state buyer's
13 temporary tags issued will be used in determining if the amount exceeds two times the number of in-
14 state title transactions. The number of buyer's temporary tag issued for out-of-state sales will not be
15 included in the limitation analysis.

16 The allowed number of issued in-state buyer's temporary tags, or title transactions if it is
17 greater, will then be added to the number of buyer's temporary tags issued for out-of-state sales to
18 provide the base number of temporary tags. That total will be increased by the growth rate and time in
19 business multipliers.

20 The department takes this action because for most dealers the number of temporary tags issued
21 for out-of-state sales is not the majority of the dealer's business. Also, while the limit analysis does

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1 provide a tool to identify potential unauthorized use of buyer's temporary tag, the department does not
2 have access to a similar readily available tool for out-of-state sales. The department can require dealers
3 to present sales documentation and records; however, that would be burdensome for legitimate dealers
4 to present on an annual basis without any related issue of unauthorized use of temporary tags.

5 The change will also clarify that the amount will be the greatest number of buyer's temporary
6 tags issued in one fiscal year of the previous three fiscal years.

7 To implement the described changes, the department has amended the proposed text of as
8 follows, showing changes to the proposed text in underlines and strike throughs.

9 "(1) Sales data determined from the department's systems from previous three fiscal
10 years. A dealer's base number will contain the sum ~~[greater]~~ of:

11 (A) the greater of

12 (i) ~~[the maximum] number of~~ in-state buyer's temporary tags issued in
13 one fiscal year during the previous three fiscal years, or

14 (ii) ~~[(B) the maximum] number of~~ title transactions processed through
15 the Registration and Title System in one fiscal year during the previous three fiscal years; except that

16 (iii) the amount will be limited to an amount that is not more than two
17 times the number of title transactions identified in subparagraph (ii) of this paragraph; and

18 (B) ~~[C]~~ the addition of the greatest ~~[maximum]~~ number of out-of-state buyer's
19 temporary tags issued in one fiscal year during the previous three fiscal years.

20 ~~[(D) the dealer's base number will be limited to an amount that is not more than~~
21 two times the number of title transactions identified in subparagraph (B) of this paragraph.]"

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1 The changes do not impose new costs or requirements, or affect persons not on notice of the
2 proposal.

3

4 **§215.152(c)(1) Calculation of Buyer's Tags**

5 **Comment:**

6 A commenter states that §215.152(c)(1)(A) should be removed, because basing the number of
7 buyer's temporary tags on the maximum number of in-state buyer's temporary tags issued during
8 previous fiscal years may give unscrupulous dealers or converters an inflated baseline and does not
9 ensure that these tags are tied to actual vehicle sales like using the number of title transactions
10 processed.

11 **Agency Response:**

12 The department agrees that criminals may attempt to corrupt any system, and has considered it
13 in creating a maximum tag formula that will limit potential unauthorized use of temporary tags while
14 also allowing legitimate dealer's and converter's the ability to freely conduct and expand their
15 businesses without burdensome regulation and department involvement. The department recognizes
16 that a one-one tie between the number of tags being issued and the number of title transactions is
17 unlikely due to returns, voids, and other errors that may occur, but are not fraudulent in nature. As
18 addressed in other responses to comments, the comparison to the number of title transactions analysis
19 provides a tool to identify potential unauthorized use of buyer's temporary tags. The number of title
20 transaction is also readily available to the department without burdening legitimate dealers with
21 additional requirements. The department declines to make a change in response to the comment.

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1

2 **§215.152(c)(2), §215.152(d)(2), and §215.152(e)(2) Time in business multiplier**

3 **Comment:**

4 Commenters stated that the multipliers based on years in operation are unclear and should be
5 included within the rule text.

6 **Agency Response:**

7 The department agrees with the comment and has revised the rule text to state that the time in
8 operation multipliers will be increased by 10 percent for each year the dealer or converter is in
9 operation up to 10 years. The changes do not impose new costs or requirements, or affect persons not
10 on notice of the proposal.

11

12 **§215.152(c)(2), §215.152(d)(2), and §215.152(e)(2) Time in business multiplier**

13 **Comment:**

14 A commenter asserts that the years in operation multiplier also consider the license holders
15 prior experience.

16 **Agency Response:**

17 The department agrees that many factors may affect sales; however, the department declines
18 to make the requested change because the time in business multiplier §§215.152(c)(3), 215.152(d)(3),
19 and 215.152(e)(3) is a general multiplier applicable to all license holders. To the extent that a license
20 holder’s actual legitimate use of tags, be it related to an individual or other reason, does indicate the
21 need for temporary tags in excess of the annual allotment, a license holder could assert that in a request

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1 for additional tags under §215.152(i)(1) or when being licensed under §215.152(f) as modified.
2 However, increased sales would normally be reflected in an increase in the base number and carried
3 through the formula for an increase in future years without the need for additional action by the license
4 holder.

5

6 **§215.152(c)(3), §215.152(d)(3), and §215.152(e)(3) Growth rate multiplier**

7 **Comment:**

8 Commenters stated that the multipliers limiting growth rate to the statewide average were
9 unfair to dealers and converters that grew at a faster rate.

10 **Agency Response:**

11 The department agrees with the comment and has revised the rule text to state that the growth
12 rate multipliers in §215.152(c)(3), (d)(3) and (e)(3) will be the greater of the dealer’s or converter’s
13 actual growth rate or the statewide actual growth rate. Increased sales and a stellar growth rate would
14 normally be reflected in an increase in the base number and carried through the formula for future
15 years without the need for additional action by the license holder. To the extent that a license holder’s
16 actual legitimate use of tags does indicate the need for temporary tags in excess of the annual
17 allotment, be it related to phenomenal growth or other reason, a license holder could assert that in a
18 request for additional tags and under §215.152(i)(1) or when being licensed under §215.152(f) as
19 modified. To avoid having unusual factors result in excessively large growth rates, including new
20 licensees being licensed for part of the prior fiscal year, the department has limited the actual growth
21 rate is limited to 200 percent. The cap does not prevent a license holder from requesting additional tags

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1 if necessary under §217.152(i). The changes do not impose new costs or requirements, or affect
2 persons not on notice of the proposal.

3

4 **§215.152(c)(4), §215.152(d)(4), and §215.152(e)(4) Special Circumstances**

5 **Comment:**

6 A commenter asserts that a statewide growth factor versus a regional growth factor may not
7 take into account a recent change in circumstances, such as a new plant in a dealer’s market. In
8 addition, for a franchised dealer, the line-make may play a role in a dealer’s expected market growth.

9 **Agency Response:**

10 The department agrees with the comment but declines to make a change in the rule text
11 because individual license holder situations are already addressed in the ability of the license holder to
12 request additional tags under §215.152(i)(1) or when being licensed under §215.152(f) as modified.

13 The department has developed the formula using historical dealer information increased by
14 historical growth and time in operation multipliers. In addition, the department may increase the
15 number of tags generally under §§215.152(c)(4), 215.152(d)(4), and 215.152(e)(4) based on general
16 market conditions. The intent is to carry legitimate dealers and converters through the calendar year
17 with a significant cushion of temporary tags and without the need to request additional temporary tags.

18 However, in some cases additional tags may be needed to maintain that cushion because of
19 circumstances unique to that dealer. As such, §215.152(i) authorizes the license holder to request
20 additional tags by providing information demonstrating the need for additional temporary tags based on
21 sales, information of anticipated need, or other information of the factors listed in §503.0632(b), which

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1 would include a factor that the department considered relevant based on the dealer’s or converter’s
2 particular circumstance.

3

4 **§215.152(d)**

5 **Comment:**

6 A commenter requests a process to increase the allotment of dealer temporary tags when a
7 dealer switches from agent specific tags to vehicle specific tags.

8 **Agency Response:**

9 The department recognizes the concern, but has made no change in the text. Allocation of
10 dealer tags should adjust in future years based on historical use; however, current year allocations can
11 also be considered in requests for additional tags, or at time of licensing.

12

13 **§215.152(f) New Dealers**

14 **Comment:**

15 Multiple commenters raised concerns that the proposed limitations for new dealers and
16 converters in §215.152(f) and allowances for additional tags under §215.152(g) and (h) were inadequate
17 and failed to address many potential situations related to franchise dealers, buy-sell agreements,
18 change of license holder because of retirement or inheritance, and entry of existing out-of-state
19 operations in to the market. A commenter also requested that the department clarify that is the
20 minimum number that a license holder may obtain under §215.152(f) by inserting the word "initial"
21 before the word "allocations" and after the word "The" to makes it clear that a dealer or converter can

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1 obtain more temporary tags. A commenter also requests that §215.152(h) be changed to read like
2 215.152(g).

3 **Agency Response:**

4 The department agrees with the comments and has made changes to §§215.152(f), 215.152(g),
5 and 215.152(h). The changes do not add new requirements or costs, or affect persons not on notice of
6 the proposal.

7 Section 215.152(f) is changed to add the word "initial" before the word "allocations" and after
8 the word "The" in the second sentence. The statement clarifies that a new dealer is not prohibited from
9 requesting additional temporary tags under §215.152(i).

10 Section 215.152(f)(1) and (2), which apply to franchise dealers and converters is changed to add
11 the statement "unless the" dealer or converter "provides credible information indicating that a greater
12 number of tags is warranted based on anticipated sales, including information from the manufacturer or
13 distributor, or as otherwise provided in this section" and §215.152(f)(3) is similarly modified by adding
14 the statement unless the dealer provides credible information indicating that a greater number of tags is
15 warranted based on anticipated sales as otherwise provided in this section. As such, a new dealer or
16 converter may request additional tags over the minimum number, which is consistent with
17 Transportation Code §503.0632(c) which authorizes the dealer or converter to make a request for
18 additional tags. Statute does not authorize third parties to submit requests on behalf of a dealer or
19 converter.

20 The department recognizes that this is not consistent with the MVIRAC recommendation to
21 allow manufacturers and distributors to independently submit information on behalf of dealers and

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1 converters to the department. As stated, the recommendation is inconsistent with statute and could
2 create a burden for dealers and converters in responding to requests that they did not make. The
3 department though has included a specific statement that a dealer or converter may submit the
4 information both at the time of being a new licensee or in requests for additional temporary tags to
5 clarify that a dealer may submit the information to support a request.

6 To effect the changes in §215.152(f) and address the circumstances under which a dealer or
7 converter may request additional temporary tags the department has changed §215.152(g) and (h). The
8 department has changed §215.152(g) by redesignating the proposed subsection as §215.152(g)(1) and
9 redesignating proposed §215.152(h) as §215.152(g)(2). In addition to being redesignated, §215.152(g)(2)
10 has been changed to read similarly to §215.152(g)(2) by adding “of temporary tags” between
11 “allotment” and “based,” and adding the statement “and not be allocated temporary tags under
12 subsection (f) of this section” to the end of the paragraph after the word “locations.” The changes are
13 not substantive and the provisions continue to apply to existing dealers opening additional locations or
14 relocating a location as addressed in the proposal.

15 Finally, in response to the comments, the department has added new §215.152(h) to list
16 additional circumstances under which a new dealer or converter may request additional temporary tags
17 under subsection (f). The situations each involve a type of circumstance with “some continuity in
18 existing operations that will result in increased sales.” The list is

- 19 “(1) franchise dealer manufacturer or distributor sales expectations;
20 (2) a buy-sell change of ownership agreement;
21 (3) a change in license required by death or retirement;

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1 (4) prior year’s sales by a dealership moving into the state; or

2 (5) other similar change of location or ownership that indicates some continuity in

3 existing operations that will result in increased sales.”

4 The change does not add additional requirements or costs, or affect persons not on notice of
5 the proposal. Further, the changes in §215.152(f)(g) and (h) do not limit a dealer or converter from
6 requesting additional temporary tags under §215.152(i).

7

8 **§215.152(f)(1) New Franchise Dealers**

9 **Comment:**

10 A commenter is concerned that 600 is not an adequate number for all new franchised dealers.
11 The commenter suggests that the department inquire of a new franchised dealer licensee what he or
12 she expects to sell in their location over the calendar year and multiply that number by no less than 2 to
13 derive an initial temporary tag number

14 **Agency Response:**

15 The department agrees with the comment, however, the department has resolved the issue
16 differently as addressed in other responses to comment. The department declines to make a change
17 based on this comment.

18

19 **§215.152(f)(1) and (2) Dealer tags for New Dealers**

20 **Comment:**

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1 A commenter suggests that the department reduce the number of dealer tags for new dealers
2 because the tags have limited and defined uses and they are not directly connected to a vehicle sale.

3 **Agency Response:**

4
5 The department agrees that the uses of dealer’s tags are limited and that the use is not always
6 directly linked to a sale, but the department declines to make a change based on the comment because
7 they are necessary to dealer operations. In addition, dealers and converters use agent and vehicle tags
8 for customer test drives, and the number of agent and vehicle temporary tags must provide for multiple
9 test drives before a vehicle is sold.

10

11 **§215.152(f)(2)**

12 **Comment:**

13 Three commenters objected to allowing new independent dealers to have “900” temporary tags
14 as being excessive and failing to address the problem.

15 **Agency Response:**

16 The department appreciates the comment but disagrees. The limits for new licensees were
17 determined based on recommendations provided by MVIRAC. Also, after the end of the first licensing
18 cycle the dealer will transition to a maximum limit based on the dealer’s history, dealer’s or statewide
19 growth rate, and tenure as provided in Transportation Code §503.0632(b).

20

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1 **§215.152(g) and (h) Tags for Dealers or Converters with Existing Operations Relocating or Opening**
2 **New Operations**

3 **Comment:**

4 The language in the new §215.152(g) and (h) is favored as it addresses dealers moving to
5 different locations or opening additional locations and determines how they will be treated during the
6 issuance of temporary tags.

7 **Agency Response:**

8 The department appreciates the supportive comment.

10 **§215.152(i) Notice of 50 percent Level**

11 **Comment:**

12 A commenter requests that the department send a notice to a dealer or converter prior to the
13 license holder’s 50 percent allotted use.

14 **Agency Response:**

15 The department agrees with the comment and will work programmatically to provide notices to
16 license holder and make this a transparent process but declines to make a change based on the
17 comment. Dealers and converters are responsible for temporary tag use, and the annual allocation and
18 remaining tags available will be available to all eTAG users every time they sign on to the system.

20 **§215.152(i) Appeal after Using 50 percent of the Temporary Tag Allotment**

21 **Comment:**

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1 A commenter suggests, assuming appropriate resources are available to process allotments in a
2 timely manner, consider increasing from 50 percent to 75 percent of maximum number before a dealer
3 or converter can request an increase in allotment.

4 **Agency Response:**

5 The agency department agrees with the commenter that reviewing requests for additional
6 temporary tags needs to be handled on a timely basis; however, the department declines to make a
7 change based on the comment. The department believes that the 50 percent level of use provides
8 sufficient ability for license holders to proactively manage their temporary tag allotments and determine
9 if there is a need to request additional tags, and for the department to evaluate the request.

10

11 **215.152(i)(3) Denial of a Request for Additional Temporary Tags.**

12 **Comment:**

13 Several commenters stated that issuance of less than the requested number of temporary tags
14 in response to a request for additional temporary tags should be considered a denial and be subject to
15 appeal.

16 **Agency Response:**

17 The department appreciates the commenters concern, but declines to make a change based on
18 the comment because the license holder may simply request additional temporary tags, if needed.

19 The department has tried to avoid an adversarial process in the allocation of calendar year
20 temporary tags and has developed a formula with the intent of providing legitimate license holders with

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1 enough temporary tags to make the need to request additional temporary tags unnecessary for the
2 majority of license holders. Those that need additional tags may request them.

3

4 The following comments are not associated with a particular section of the proposal.

5

6 **Comment:**

7 Six commenters stated that dealers should not be allowed to issue excessive numbers of
8 temporary tags.

9 **Agency response:**

10 The department agrees with the comments and has adopted rules to implement HB 3927 both
11 with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of
12 temporary tags and to denial of access for criminals that try to engage in selling temporary tags.

13

14 **Comment:**

15 Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and
16 drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in
17 violation of licensing and registration laws can result in numerous costs to the state and private citizens,
18 including risks to law enforcement at traffic stops with potential criminals, higher insurance rates,
19 accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and
20 increasing toll fees, and higher pollution levels.

21 **Agency response:**

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1 The department agrees with the comments and has adopted rules to implement HB 3927 both
2 with regards to maxim tag limits to prevent criminals from having access to unlimited numbers of
3 temporary tags and denial of access for any that still try to engage in selling temporary tags.

4
5 **Comment:**

6 Five commenters recommended that the department should require fingerprinting and
7 background checks for all users of the temporary tag database.

8 **Agency response:**

9 The department appreciates these comments. The department is evaluating fingerprinting and
10 other means and may present these actions in future proposals; however, the request goes beyond the
11 scope of this proposal.

12
13 **Comment:**

14 Five commenters recommended that the department cease issuing paper tags.

15 **Agency response:**

16 The department appreciates the comment. The use of paper tags is required by statute and is an
17 effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur
18 annually in the state. The legislature enacted HB 3927 which is being implemented by the department to
19 combat the criminals that have sought to exploit the system.

20
21 **Comment:**

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1 Four commenters asserted that the department should do more to take action against drivers
2 who operate their vehicle with expired or illegible paper plates.

3 **Agency response:**

4 The department appreciates the comment. The department is not a criminal law enforcement
5 agency and is limited to the authorized actions that the legislature has provide it under statute.

6
7 **Comment:**

8 Two commenters asserted the department should do more to stop the sale of fraudulent
9 temporary tags on social media and prosecute both the people that are advertising on social media and
10 the social media sites themselves.

11 **Agency response:**

12 The department appreciates the comment. The department is not a criminal law enforcement
13 agency. The department has acted to notify social media sites of the activity when it is discovered;
14 however, even if a site is removed it may appear again.

15
16 **Comment:**

17 Two commenters recommended that the department deter the use of fraudulent tags by
18 enlisting citizens to assist with finding the fraudulent sellers and create a system for people to report
19 violations they witness.

20 **Agency response:**

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1 The department appreciates the comment. The department is not a criminal law enforcement
2 agency.

3
4 **Comment:**

5 Two commenters asserted that the department needs to process title applications faster and
6 eliminate its backlog.

7 **Agency Response:**

8 The department appreciates the comment. The department is not currently experiencing a
9 backlog of title applications. All title applications received by the department are being processed
10 within five days of receipt, in accordance with Transportation Code §501.027.

11
12 **Comment:**

13 An individual commenter asserted that dealers should not be able to sell a vehicle until the
14 dealer possess the title.

15 **Agency response:**

16 The department appreciates the comment. Under Transportation Code §503.038, the
17 department may take administrative action against a dealer that "fails to take assignment of any basic
18 evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the
19 dealer acquires."

20
21 **Comment:**

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1 An individual commenter asserted that title applications should be executed on the date of the
2 sale.

3 **Agency Response:**

4 The department appreciates the comment. The titling process involves multiple entities,
5 including the seller, the buyer, the department and the county tax assessor-collectors, who complete
6 different steps. Multiple statutes address the length of time each entity has to complete specific steps.
7 Specifically, Transportation Code §501.023 states the county tax assessor-collector has 72 hours after
8 receipt to send its application to the department; Transportation Code §501.027 gives the department
9 five days after the receipt of the application to make its determination. The department is not able to
10 change statute by rule.

11
12 **Comment:**

13 An individual commenter recommended that the department require a dealer to be in
14 possession of the vehicle to issue a temporary tag to the vehicle.

15 **Agency Response:**

16 The department appreciates the comment. The existing rule in Title 43 Tex. Admin. Code
17 §215.151 requires the dealer to secure the temporary tag to the vehicle. This requirement is not being
18 removed by this adoption.

19
20 **Comment:**

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1 An individual commenter recommended that the department require dealers and converters to
2 renew their licenses annually.

3 **Agency response:**

4 The department appreciates the comment. The license term is set by statute and cannot be
5 altered by rule.

6

7 **Comment:**

8 An individual commenter recommended that the department track how many paper plates are
9 issued by each dealer and converter.

10 **Agency response:**

11 The department appreciates the comment. The department's system tracks the number of
12 plates issued by each dealer and converter. Prior to the enactment of HB 3927, statute did not allow the
13 department to limit or deny a dealer's or converter's access to the database unless the license was
14 revoked which is a long process.

15

16 **Comment:**

17 An individual commenter recommended that the department require buyers of vehicles go in-
18 person to their TxDMV Regional Service Center to receive a temporary tag.

19 **Agency response:**

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1 The department appreciates the comment. The use of paper tags is required by statute and is an
2 effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur
3 annually in the state.

4
5 **Comment:**

6 An individual commenter asserted that the department should not allow small dealerships to
7 issue paper tags; instead, people who purchase from small dealerships should be required to get their
8 paper tags from TxDMV.

9 **Agency response:**

10 The department appreciates the comment. The department disagrees that creating barriers for
11 the thousands of small dealerships in this state to prevent a few criminals is an appropriate response,
12 and declines to make a change based on this comment.

13
14 **Comment:**

15 An individual commenter recommended that the department immediately revoke access to the
16 temporary tag database for any dealer that duplicates a paper tag.

17 **Agency response:**

18 The department appreciates the comment. The department's denial of access rules in §215.505
19 under HB 3927 will allow for this. Prior to the enactment of HB 3927, statute did not allow the
20 department to limit or deny or limit a dealer's or converter's access to the database unless the license
21 was revoked which is a long process.

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1

2 **Comment:**

3 An individual commenter recommended that the department and county tax assessor-collector
4 should promptly complete their reviews of sale information before the department issues a temporary
5 tag to a vehicle.

6 **Agency Response:**

7 The department appreciates the comment. The complete sales transaction that is processed by
8 a dealer or converter, the county tax assessor-collector, and the department, can be complex with all
9 information not being available for several weeks after the customer has purchased the vehicle.

10

11 **Comment:**

12 An individual commenter stated that license plates should be issued to the person and
13 transferrable between cars; when the person sells the vehicle, they should keep the plate and use it on
14 any vehicle the person subsequently purchases.

15 **Agency response:**

16 The department appreciates the comment. The department notes that new vehicles do not have
17 license plates and some used vehicles have missing or used license plates. Also, the license plate relates
18 to the prior owner, which may cause confusion for law enforcement and other agencies and
19 unwarranted burdens for the new owner.

20

21 **Comment:**

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1 An individual commenter recommended that the department require buyers to purchase an
2 insurance policy that is effect for the 60 days the temporary tag is in effect, to provide financial
3 responsibility.

4 **Agency Response:**

5 The department appreciates the comment. Owners are required by statue to comply with motor
6 vehicle financial responsibility laws at all times. The department cannot change statute by rule.

8 **Comment:**

9 An individual commenter recommended that the department include the dealer's phone
10 number on the temporary tag.

11 **Agency Response:**

12 The department appreciates the comment. The department will consider the comment in future
13 updates to temporary tags.

14
15 **STATUTORY AUTHORITY.** The department adopts amendments to §215.152 and §215.158 under
16 Transportation Code §§503.002, 503.0632, and 1002.001.

17 Transportation Code §503.002 authorizes the department to adopt rules to administer
18 Transportation Code Chapter 503.

19 Transportation Code §503.0632(a) provides that the department by rule may establish the
20 maximum number of temporary tags that a dealer or converter may obtain in a calendar year under
21 §§503.062, 503.0625, or 503.063.

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

3 **CROSS REFERENCE TO STATUTE.** Transportation Code §§503.062, 503.0625, 503.063, and 503.0632(a)-
4 (e).

5

6 **TEXT.**

7

Subchapter E. General Distinguishing Numbers

8

43 TAC §215.152 and 215.158

9

10 §215.152. Obtaining Numbers for Issuance of Temporary Tags.

11 (a) A dealer, a federal, state, or local governmental agency, or a converter is required to have
12 internet access to connect to the temporary tag databases maintained by the department.

13 (b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted Internet-
14 down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a dealer, a
15 federal, state, or local governmental agency, or converter must:

16 (1) enter in the temporary tag database true and accurate information about the vehicle,
17 dealer, converter, or buyer, as appropriate; and

18 (2) obtain a specific number for the temporary tag.

19 (c) The department will inform each dealer annually of the maximum number of buyer's
20 temporary tags the dealer is authorized to issue during the calendar year under Transportation Code

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1 §503.0632. The number of buyer’s temporary tags allocated to each dealer by the department will be
2 determined based on the following formula:

3 (1) Sales data determined from the department’s systems from previous three
4 fiscal years. A dealer’s base number will contain the sum [greater] of:

5 (A) the greater number of

6 (i) [the maximum] number of in-state buyer’s temporary tags
7 issued in one fiscal year during the previous three fiscal years, or

8 (ii) [(B) the maximum] number of title transactions processed
9 through the Registration and Title System in one fiscal year during the previous three fiscal years; except
10 that

11 (iii) the amount will be limited to an amount that is not more than
12 two times the number of title transactions identified in subparagraph (ii) of this paragraph; and

13 (B) [C]the addition of the greatest [maximum] number of out-of-state
14 buyer’s temporary tags issued in one fiscal year during the previous three fiscal years.

15 [(D) the dealer’s base number will be limited to an amount that is not more than
16 two times the number of title transactions identified in subparagraph (B) of this paragraph.]

17 (2) the total value of paragraph (1) of this subsection will be increased by a multiplier
18 based on the dealer’s time in operation giving a 10 percent increase in tags for each year the dealer has
19 been in operation up to 10 years; and

20 (3) the total value of paragraph [s-(1) and](2) of this subsection will be increased by a
21 multiplier that is the greater of:

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1 (A) the dealer’s actual growth rate percentage identified from the preceding two
2 fiscal years, calculated by the growth of the number of title transactions processed through the
3 Registration and Title System plus the growth of the number of out-of-state buyer’s dealer’s temporary
4 tags issued, except that it may not exceed 200 percent; or

5 (B) the statewide actual growth rate percentage identified from the preceding
6 two fiscal years, calculated by the growth of the number of title transactions processed through the
7 Registration and Title System plus the growth of the number of out-of-state buyer’s temporary tags issued
8 [, multiplied by the dealer’s highest expected annual growth rate percentage during previous three fiscal
9 years], not less than zero, to determine the buyer’s dealer’s temporary tag allotment; and in addition:

10 (4) the department may increase the determined allotment of buyer’s temporary tags for
11 dealers in the state, in a geographic or population area, or in a county, based on:

- 12 (A) changes in the market;
- 13 (B) temporary conditions that may affect sales; and
- 14 (C) any other information the department considers relevant.

15 (d) The department will inform each dealer annually of the maximum number of agent temporary
16 tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under
17 Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags
18 allocated to each dealer by the department, for each tag type, will be determined based on the following
19 formula:

20 (1) dealer temporary tag data for agent temporary tags and vehicle specific temporary
21 tags determined from the department’s systems from the previous three fiscal years. A dealer’s base

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PENDING APPROVAL

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1 number will contain the maximum number of dealer temporary tags issued during the previous three
2 fiscal years;

3 (2) the total value of paragraph (1) of this subsection will be increased by a multiplier
4 based on the dealer’s time in operation giving a 10 percent increase in tags for each year the dealer has
5 been in operation up to 10 years; and

6 (3) the total value of paragraph [s (1) and](2) of this subsection will be increased by a
7 multiplier that is the greater of:

8 (A) the dealer’s actual growth rate percentage identified from the preceding two
9 fiscal years, calculated by the growth of the number of dealer’s temporary tags issued, except that it may
10 not exceed 200 percent; or

11 (B) the statewide actual growth rate percentage identified from the preceding
12 two fiscal years, calculated by the growth of the number of dealer’s temporary tags issued[, multiplied by
13 the dealer’s highest expected annual growth rate percentage during previous three fiscal years], not less
14 than zero, to determine the dealer’s temporary tag allotment; and in addition:

15 (4) the department may increase a dealer’s allotment of agent temporary tags and vehicle
16 specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based
17 on:

18 (A) changes in the market;

19 (B) temporary conditions that may affect sales; and

20 (C) any other information the department considers relevant.

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1 (e) The department will inform each converter annually of the maximum number of temporary
2 tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632.
3 The number of temporary tags allocated to each converter by the department will be determined based
4 on the following formula:

5 (1) converter temporary tag data determined from the department’s systems from the
6 previous three fiscal years. A converter’s base number will contain the maximum number of converter
7 temporary tags issued during the previous three fiscal years;

8 (2) the total value of paragraph (1) of this subsection will be increased by [A]multiplier
9 based on the converter’s time in operation giving a 10 percent increase in tags for each year the dealer
10 has been in operation up to 10 years; and

11 (3) the total value of paragraph [s (1) and](2) of this subsection will be increased by a
12 multiplier that is the greater of:

13 (A) the converter’s dealer’s actual growth rate percentage identified from the
14 preceding two fiscal years, calculated by the growth of the number of converter’s dealer’s temporary tags
15 issued, except that it may not exceed 200 percent; or

16 (B) the statewide actual growth rate percentage identified from the preceding
17 two fiscal years, calculated by the growth of the number of converter’s dealer’s temporary tags issued,
18 multiplied by the dealer’s highest expected annual growth rate percentage during previous three fiscal
19 years], not less than zero, to determine the converter’s dealer’s temporary tag allotment; and in addition:

20 (4) The department may increase a converter’s allotment of converter temporary tags for
21 converters in the state, in a geographic or population area, or in a county, based on:

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- 1 (A) changes in the market;
- 2 (B) temporary conditions that may affect sales; and
- 3 (C) any other information the department considers relevant.
- 4 (f) A dealer or converter that is licensed after the commencement of a calendar year shall be
- 5 authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the
- 6 remaining months until the commencement of the calendar year after the dealer’s or converter’s initial
- 7 license expires. The initial allocations shall be as determined by the department in granting the license,
- 8 but not more than:
- 9 (1) 600 temporary tags for a franchised dealer per each tag type, buyer’s temporary tags,
- 10 agent temporary tags, and vehicle specific tags, unless the dealer provides credible information indicating
- 11 that a greater number of tags is warranted based on anticipated sales, including information from the
- 12 manufacturer or distributor, or as otherwise provided in this section;
- 13 (2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer’s temporary
- 14 tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information
- 15 indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in
- 16 this section; and
- 17 (3) A converter will be allocated 600 temporary tags, unless the converter provides
- 18 credible information indicating that a greater number of tags is warranted based on anticipated sales,
- 19 including information from the manufacturer or distributor, or as otherwise provided in this section.
- 20 (g) An existing dealer or converter that is

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1 (1) moving its operations from one location to a different location will continue with its
2 allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

3 (2) [An existing dealer or converter] opening an additional location will receive a maximum
4 allotment of temporary tags based on the allotment provided to existing locations and not be allocated
5 temporary tags under subsection (f) of this section.

6 (h) A new dealer or converter may also provide credible information supporting a request for
7 additional temporary tags to the amount allocated under subsection (f) of this section based on

8 (1) franchise dealer manufacturer or distributor sales expectations;

9 (2) a buy-sell change of ownership agreement;

10 (3) a change in license required by death or retirement;

11 (4) prior year's sales by a dealership moving into the state; or

12 (5) other similar change of location or ownership that indicates some continuity in
13 existing operations.

14 (i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or
15 converter may request an increase in the number of temporary tags by submitting a request in the
16 department's eLICENSING system.

17 (1) The dealer or converter must provide information demonstrating the need for
18 additional temporary tags result from business operations, including anticipated needs, as required by
19 §503.0632(c). Information may include documentation of sales and tax reports filed as required by law,
20 information of anticipated need, or other information of the factors listed in §503.0632(b).

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1 (2) The department shall consider the information presented and may consider
2 information not presented that may weigh for or against granting the request that the department in its
3 sole discretion determines to be relevant in making its determination. Other relevant information may
4 include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's
5 temporary tag activity.

6 (3) The department may allocate a lesser or greater number of additional temporary tags
7 than the amount requested by the dealer or converter. Allocation of a lesser or greater number of
8 additional temporary tags is not a denial of the request. Allocation of additional temporary tags under this
9 paragraph does not limit the dealer's or converter's ability to submit additional requests for more
10 temporary tags.

11 (4) If a request is denied, a dealer or converter may appeal the denial to the Director of
12 the Motor Vehicle Division whose decision is final.

13 (A) The denial will be sent to the license holder by email to the email used by the
14 license holder in the request.

15 (B) The appeal must be requested within 10 business days of the denial being sent
16 to the department through the eLICENSING system.

17 (C) The appeal may discuss information provided in the request but may not
18 include additional information.

19 (D) The Motor Vehicle Division Director will review the submission and any
20 additional statements concerning the information submitted in the original request and render an opinion
21 within 10 business days of receiving the appeal. The Motor Vehicle Division Director may decide to deny

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1 the request and issue no additional tags, or award an amount of additional temporary tags that is lesser,
2 equal to, or greater than the request.

3 (E) The requesting license holder will be notified as follows:

4 (i) If the Motor Vehicle Division director has decided to deny the appeal,
5 the license holder will be contacted by email regarding the decision and options to submit a new
6 request with additional relevant credible supporting documentation or to pursue a claim in district
7 court; or

8 (ii) If the Motor Vehicle Division Director has decided to award an
9 amount of additional temporary tags that is lesser, equal to, or greater than the request, the additional
10 temporary tags will be added to the license holders account and the license holder will be contacted by
11 email regarding the decision, informed that the request has not been denied, and options the license
12 holder has to submit a new request.

13 (5) Once a denial is final, a dealer or converter may only submit a subsequent request for
14 additional temporary tags during that calendar year if the dealer or converter is able to provide additional
15 information not considered in the prior request.

16 (j) A change in the allotment under subsection (i) of this section does not create a dealer or
17 converter base for subsequent year calculations.

18 (k) The department may at any time initiate an enforcement action against a dealer or converter
19 if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code
20 §§503.038, 503.0632(f), or 503.067.

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1 (l) Unused dealer or converter tag allotments from a calendar year do not roll over to subsequent
2 years.

3
4 §215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

5 (a) The dealer, or a federal, state, or local governmental agency, is responsible for the safekeeping
6 of preprinted Internet-down temporary tags and shall store them in a secure place, and promptly destroy
7 any expired tags. The dealer, or a federal, state, or local governmental agency shall report any loss, theft,
8 or destruction of preprinted Internet-down temporary tags to the department within 24 hours of
9 discovering the loss, theft, or destruction.

10 (b) A dealer, or a federal, state, or local governmental agency, may use a preprinted Internet-
11 down temporary tag up to 12 months after the date the preprinted Internet-down temporary tag is
12 created. A dealer, or a federal, state, or local governmental agency, may create replacement preprinted
13 Internet-down temporary tags up to the maximum allowed, when:

14 (1) a dealer, or a federal, state, or local governmental agency, uses one or more
15 preprinted Internet-down temporary tags and then enters the required information in the temporary tag
16 database after access to the temporary tag database is again available; or

17 (2) a preprinted Internet-down temporary tag expires.

18 (c) The number of preprinted Internet-down temporary tags that a dealer, or federal, state, or
19 local governmental agency, may create is equal to the greater of:

20 (1) the number of preprinted Internet-down temporary tags previously allotted by the
21 department to the dealer or a federal, state, or local governmental agency;

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1 (2) 30; or
2 (3) 1/52 of the dealer's, or federal, state, or local governmental agency's, total annual
3 sales.

4 (d) For good cause shown, a dealer, or a federal, state, or local governmental agency, may obtain
5 more than the number of preprinted Internet-down temporary tags described in subsection (c) of this
6 section. The director of the Motor Vehicle Division [~~Vehicle Titles and Registration Division~~] of the
7 department or that director's delegate may approve, in accordance with this subsection, an additional
8 allotment of preprinted Internet-down temporary tags for a dealer, or a federal, state, or local
9 governmental agency, if the additional allotment is essential for the continuation of the dealer's, or a
10 federal, state, or local governmental agency's, business. The director of the Motor Vehicle Division
11 [~~Vehicle Titles and Registration Division~~] of the department, or a federal, state, or local governmental
12 agency, or that director's delegate will base the determination of the additional allotment of preprinted
13 Internet-down temporary tags on the dealer's, or a federal, state, or local governmental agency's, past
14 sales, inventory, and any other factors that the director of the Motor Vehicle Division [~~Vehicle Titles and~~
15 ~~Registration Division~~] of the department or that director's delegate determines pertinent, such as an
16 emergency. A request for additional preprinted Internet-down temporary tags must specifically state why
17 the additional preprinted Internet-down temporary tags are necessary for the continuation of the
18 applicant's business.

19 (e) Preprinted Internet-down temporary tags created under subsection (c) of this section apply to
20 the maximum tag limit established in §215.152 of this title (relating to Obtaining Numbers for Issuance of
21 Temporary Tags) when the preprinted tag is entered into the temporary tag database as a sale.

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

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

4

5

6

Tracey Beaver, General Counsel

DRAFT



Board Meeting Date: 1/27/2022
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Brian Ge, Managing Attorney
Agenda Item: 6
Subject: **Chapter 215, Motor Vehicle Distribution Amendments, §§215.150, 215.151, 215.153, 215.154, and 215.155 New, §215.505**
(Relating to HB 3927, including, allowing for denial of access to the temporary tag database and issuance of temporary tags to certain vehicles without inspection)
(*Proposal Published - November 12, 2021 - 46 TexReg 7752*)

PENDING APPROVAL

The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor.
<https://gov.texas.gov/organization/regulatory-compliance>

RECOMMENDATION

Adopt the amendments and new section and approve publication in the *Texas Register*.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of the amendments to §§215.150, 215.151, 215.153, 215.154, and 215.155 and new §215.505 is to implement House Bill (HB) 3927, Regular Session (2021), including, allowing for denial of access to the temporary tag database and issuance of temporary tags to certain vehicles without inspection. Further implementation of HB 3927, including establishing maximum tag limits will be addressed in Agenda Item 5, as a separate adoption.

FINANCIAL IMPACT

The department has determined that for each year of the first five years the amendments and new section 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 proposal. There will be no additional costs to the department and the amendments and new section will have no significant impact on revenue collections.

BACKGROUND AND DISCUSSION

House Bill 3927 provides the department with significant new tools to address temporary tag misuse and fraud, including denial of access to the temporary tag database and establishing the maximum number of temporary tags that a dealer or converter may issue. This proposal relates to denial of access to the temporary tag database. Considering the requirements of new Transportation Code §503.0632(f), the department has defined in §215.505 the conduct that may result in a determination that the dealer or converter has "fraudulently obtained temporary tags from the temporary tag database" and the dealer's or converter's denial of access to the temporary tag database. The section also establishes a notice and an appeal process for denials of access through the State Office of Administrative Hearings (SOAH) as required under §503.0632(f).

House Bill 3927 also authorized buyer's temporary tags to be issued without a vehicle inspection in certain transactions involving out-of-state sales and antique auto auctions, which are addressed in amendments to §215.155. Also, relating to

HB 3927 amendments to Transportation Code §503.067, the department has made amendments to §215.150 and §215.153 to limit the unauthorized use of temporary tags by limiting unauthorized access to temporary tags.

Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 will be adopted for immediate effect to act against continuing temporary tag fraud.

COMMENTS

The proposed sections were published for comment in the November 12, issue of the *Texas Register*. The comment period closed on December 31, 2021.

The department received written comments requesting a change in the proposed text from Senator Bettencourt, Cernosek Wrecker/Deer Park Paint & Body, Representative Harris, Representative Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

The department changed new section §215.505 to remove the 10-day period and begin the denial of access immediately upon sending notice to the license holder. In making this decision the department has considered that the determination will follow an investigation of the license holder engaging in fraudulently obtaining temporary tags from the database.

In addition, the department added examples of means to secure and destroy preprinted temporary tags in §215.150, corrected a typographical error concerning courtesy cars in §215.155.

Finally, based of questions from the Regulatory Compliance Division the department removed the proposed amendment to the reference to §215.153(d)(3) or (4) in §215.155(f). The existing reference to §215.153(d)(3) or (4) was stuck because it is a typographical error. The Regulatory Compliance Division requested why the sentence was not parallel to the statement in the preceding sentence. The change is not intended to authorize the issuance of buyer's tags for golf carts or all-terrain vehicles. The matter may be reconsidered in future rulemaking.

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ADOPTION OF

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §§215.150, 215.151, 215.153, 215.154, AND 215.155

SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§215.150, 215.151, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database. The amendments and new section are necessary to implement amended Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f) concerning denial of access to the temporary tag database, management of the temporary tag database, requirements related to the issuance of certain temporary tags without an inspection, and prohibits the display and issuance of unauthorized temporary tags under House Bill (HB) 3927, 87th Legislature, Regular Session (2021). The department adopts §§215.151, 215.153, and 215.155 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 *TexReg* 7754). The department adopts §§215.150, 215.154, and 215.505 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 *TexReg* 7754). Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 have been adopted for immediate effect.

The department has also adopted amendments to 43 TAC §215.152 and §215.158 concerning maximum temporary tag limits in this issue of the *Texas Register*.

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1 **REASONED JUSTIFICATION.** House Bill 3927 amended Transportation Code §503.0626 and §503.0631 and
2 adds §503.0632 to provide the department with tools to limit the fraudulent misuse of the temporary tag
3 database. The tools include the authority to deny access to the temporary tag database without having to
4 first revoke the dealer's or converter's license and to establish the maximum number of temporary tags
5 that a dealer or converter may issue. New §215.505 addresses the process for denial of access to the
6 temporary tag database.

7 In addition, HB 3927 amended Transportation Code §503.0626 and §503.0631 to direct the
8 department to manage the temporary tag database and amended Transportation Code §503.067 to
9 prohibit the display and issuance of unauthorized temporary tags. Amendments to §§215.150, 215.151,
10 215.153, 215.154, and 215.155 address managing the database and limiting the ability of unauthorized
11 users to obtain and display temporary tags.

12 Finally, HB 3927 amended Transportation Code §503.063 concerning requirements related to the
13 issuance of buyer's temporary tags to certain vehicles sold out-of-state or at auction without an
14 inspection, which is addressed in amendments to §215.155.

15 The department met twice with the Motor Vehicle Industry Regulatory Advisory Committee in
16 considering this adoption. The department appreciates the committee member's serious consideration of
17 the issues presented by HB 3927 and the member's comments.

18 The department published the proposal for comment in the *Texas Register* on November 12,
19 2021. The department also published proposals for amendments to §215.152 and §215.158 concerning
20 maximum temporary tag limits and 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and
21 217.89 concerning the implementation of SB 876. Some commenters chose to make comments on more

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1 than one proposal in one submission or not specify the proposal that they were commenting on. The
2 department has considered all timely received comments in respect to the proposal the commenter
3 stated that they were commenting or to which the comment could apply. The department has not
4 excluded any comments because the submission included, referred to, or could apply to multiple
5 proposals.

6 The following paragraphs address the amendments and new section.

7 The amendments to §215.150(a) conform to the amendment requirement in Transportation Code
8 §503.067 that temporary tags must be for an authorized purpose. The amendments to §215.150(b)
9 reference that a dealer's or converter's ability to obtain temporary tags is limited by new Transportation
10 Code §503.0632(a-e) concerning maximum tag limits and §503.0632(f) concerning denial of access to the
11 temporary tag database.

12 New §215.150(d) establishes requirements to manage access to the temporary tag database. The
13 requirements are consistent with Transportation Code §503.0626 and §503.0631 which, as amended,
14 require the department to manage a secure database and support preventing unauthorized access to the
15 database necessary to implement §503.067. The department has amended §215.150(d)(4) in response to
16 comments. The department agrees with the comment that the preprinted tags should be securely stored
17 and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited
18 numbers under §215.158. Consistent with the commenters suggestions, the department has changed the
19 text to add to §215.150(d)(4) "securing printed tags and destroying expired tags, by means such as storing
20 printed tags in locked areas and shredding or defacing expired tags;" as examples of securing and
21 destroying the preprinted tags. Establishing a requirement for a separate secure office space or shredding

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1 equipment would be inconsistent with the minimal premises requirements set forth in §215.140(5) and
2 (6), which has not been proposed for amendment.

3 The amendment to §215.151 adds converters to the procedure for displaying a temporary tag as
4 required by Transportation Code §503.0625.

5 The amendments to §215.153 are necessary to prevent unauthorized access to temporary tags necessary
6 to implement §503.067. The amendments remove the sample copies of temporary tags from display,
7 because the department is concerned that unauthorized persons may be able to use computer software
8 to manipulate the sample to create a high-quality tag, or at least a better-quality copy of a temporary tag
9 than could be obtained by photography or scanning. Further, having the tags online limit the
10 department's ability to change the design even if requested by law enforcement. As such, the department
11 proposes not to display the design. Law enforcement would be informed of the design and any design
12 changes, and dealers and converters using the database will print the current design for their customers
13 and own needs.

14 The amendments to §215.154 clarify the use of dealer's tags and support preventing unauthorized
15 access to the database necessary to implement §503.067. The amendment to §215.154(d)(1) adds that
16 designation and informs the reader that Transportation Code §503.062 states the authorized uses of a
17 dealer temporary tag. This avoids the potential incorrect inference that a dealer's tag could be used for
18 any purpose not prohibited in redesignated §215.154(d)(2). The amendments to redesignated
19 §215.154(d)(2)(D) clarify that a dealer's tag cannot be issued for an off-highway vehicle, which are now
20 defined in Transportation Code §551A.001, because off-highway vehicles are not eligible for registration

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1 under Transportation Code §502.140. Section 551A.001 defines an off-highway vehicle as an "all-terrain
2 vehicle or recreational off-highway vehicle," a "sand rail," or a "utility vehicle."

3 The amendments to §215.154(e)(3) update the limitation on use of courtesy cars to the current
4 allowed use. As addressed in the comments, the department has changed the reference to correct a
5 typographical error and conform §215.154(e)(3) with the limitation on metal dealer plates under
6 §215.138(d)(3). Transportation Code §503.068(b)(1) provides that "A person may not use a metal
7 dealer's license plate or dealer's temporary tag on: (1) service or work vehicle, except as provided by
8 Subsection (b-1)." The department has defined "a dealer's service or work vehicle" in §215.138(d)(3) as
9 "a courtesy car on which a courtesy car sign is displayed;" and in §215.154(e)(3) as "a courtesy car,"
10 despite the source of the prohibition being the same statute.

11 As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a
12 dealer's temporary tag on a vehicle used by a prospective buyer to operate while the vehicle is being
13 demonstrated, or on a vehicle for a customer to operate while the customer's vehicle is being repaired.
14 These are commonly called "courtesy vehicles," although the actual term is not defined in rule. Thus,
15 §215.15(e)(3) is changed to read "a courtesy car on which a courtesy car sign is displayed," which is
16 consistent with §215.138(d)(3). The change is intended to clarify that a "courtesy car" operating under
17 Transportation Code §503.062(b) may have a dealer's temporary tag. The change does not add additional
18 costs or requirements or affect persons not on notice of the proposal.

19 Based of questions from the Regulatory Compliance Division of the Office of the Governor, the
20 department removed the proposed amendment to the reference to §215.153(d)(3) or (4) in §215.155(f).
21 The existing reference to §215.153(d)(3) or (4) was stuck because it is a typographical error. The

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1 Regulatory Compliance Division requested why the sentence was not parallel to the statement in the
2 preceding sentence. The change is not intended to authorize the issuance of buyer's tags for golf carts or
3 all-terrain vehicles. The matter may be reconsidered in future rulemaking. The change does not add
4 additional costs or requirements or affect persons not on notice of the proposal.

5 New §215.505 establishes the process for denial of access to the temporary tag database under
6 new Transportation Code §503.0632(f), as added by HB 3927. New §215.505(a) describes the conduct
7 that constitutes "fraudulently obtained temporary tags from the temporary tag database," and is grounds
8 under §503.0632(f), for denial of access to the temporary tag database.

9 New §215.505(b) has been revised based on comments to remove the 10-day period and begin
10 the denial of access immediately upon sending notice to the license holder. In making this decision, the
11 department has considered that the determination will follow an investigation of the license holder
12 engaging in fraudulently obtaining temporary tags from the database. The investigation will vary
13 depending on the activity involved, its continuing occurrence, the response of the license holder to
14 department inquiries, and information the license holder has provided the department. The dealer or
15 converter may negotiate with the department during this period. New §215.505(c) provides that the
16 notices will be sent to the dealer's or converter's last known address on the department's records.

17 New §215.505(d) establishes the appeal process under Subchapter O, Chapter 2301, Occupations
18 Code as required by new §503.0632(f) and HB 3927. The appeal process requires the dealer to submit a
19 request for hearing with the department within 26 days from the date the initial notice is sent to the
20 dealer of converter. Further, as proposed, requesting a hearing will not stay the denial of access.

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1 New §215.505(e) provides that the department may also issue a Notice of Department Decision
2 stating administrative violations as provided in §215.500 concurrently with the notice of denial of access.
3 The subsection is to clarify that the denial of access process based on the department’s determination
4 that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database
5 is separate from any administrative action the department may bring against the dealer or converter,
6 even though they may be based on the same facts. New §215.505(f) provides that the denial
7 determination will become final if the dealer or converter does not request a hearing or enter into a
8 settlement agreement with the department within 26 days of the date of the notice denying access to a
9 database.

10 The department adopts §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 for
11 immediate effect to act against continuing temporary tag fraud.

12
13 **SUMMARY OF COMMENTS.**

14 The department received written comments requesting a change in the proposed text from
15 Senator Bettencourt, Cernosek Wrecker/Deer Park Paint & Body, Representative Harris, Representative
16 Hefner, NCTCOG, TADA, TIADA, Vroom, and 27 individual commenters.

17 **General**

18 **Comment:**

19 Multiple commenters stated that the purpose of HB 3927 was to aid law enforcement in
20 stopping the fraud without being onerous to legitimate dealers.

21 **Agency Response:**

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1 That department agrees with the commenters and has endeavored to implement HB 3927 in
2 that respect to aid law enforcement and the department to work together in stopping the fraud without
3 being onerous to legitimate dealers, including the:

4 (1) adoption of:

5 (a) security requirements for managing user access to the temporary tag database in
6 §215.150 as authorized in Transportation Code §503.063;

7 (b) a denial of access process in §215.505 as authorized under Transportation Code
8 §503.0632(f);

9 (2) in a separate adoption submitted on this day, the adoption of maximum tag limits in
10 §215.152 in this adoption as authorized under Transportation Code §503;0632(a)-(e) that sets out a
11 formula designed to provide dealers with more tags than they have used in prior fiscal years and not
12 require any additional reporting on behalf of dealers, while preventing criminals from accessing
13 unlimited numbers of tags.

14
15 **§215.150(d)**

16 **Comment:**

17 A commenter suggests that each person who has access to the temporary tag database must
18 have and use a unique identification code and password and that a list of all authorized users, including
19 their identification information, be made available to the department.

20 **Agency Response:**

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1 The department agrees with the comment and has designed the temporary tag database system
2 to require each person who has access to the temporary tag database to have and use a unique
3 identification code and password and that a list of all authorized users, including their identification
4 information, be made available to the department.

5 Under law prior to HB 3927, the department was not authorized to deny a dealer of converter
6 access to the temporary tag database. The individuals with access to the temporary database are
7 authorized as sub-users by a license holder. The new denial of access authority under new
8 Transportation Code §503.0362(f) and as implemented in §215.505 will allow the department to take
9 action against criminals engaging in such practices.

10

11 **§215.150(d)**

12 **Comment:**

13 A commenter states that the proposed requirements for dealers and converter to securely store
14 and later fully destroy preprinted temporary tags is ambiguous. The commenter suggests adding means
15 to accomplish securing and destroying the tags.

16

17 **Agency Response:**

18 The department agrees with the comment that the preprinted tags should be securely stored
19 and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited
20 numbers under §215.158. Consistent with the commenters suggestions the department has changed
21 the text to add to §215.150(d)(4) “securing printed tags and destroying expired tags, by means such as

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1 storing printed tags in locked areas and shredding or defacing expired tags;” as examples of securing and
2 destroying the preprinted tags. Establishing a requirement for a separate secure office space or
3 shredding equipment would be inconsistent with the minimal premises requirements set forth in
4 §215.140(5) and (6), which has not been proposed for amendment.

5
6 **§215.150(d)**

7 **Comment:**

8 A commenter suggests that the department have and maintain a secure real-time database of
9 information on vehicles which the dealer or converter has issued a temporary tag; and that that the
10 department have and maintain a secure real-time database of information on persons whom temporary
11 buyer’s tags are issued.

12 **Agency Response:**

13 The department agrees with the comment and has designed the temporary tag database system
14 as a secure real-time database for recording information on vehicles which the dealer or converter has
15 issued a temporary tag, and information on persons whom temporary buyer’s tags are issued. The
16 information entered by criminals may, in some respects, be fictitious, including the location of the
17 vehicle, and the name or address of the owner. Transportation Code §503.0362(f) and as implemented
18 in §215.505 will allow the department to take action against criminals engaging in such practices.

19
20 **215.150(d)**

21 **Comment:**

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1 A commenter asserts that the department should require license holders to maintain a record of
2 any unauthorized access to the temporary tag database, the details of the issuance of the unauthorized
3 temporary tags, and report such access to the department on a weekly or on occurrence basis, including
4 providing details of immediate corrective actions, and providing information of such activities to the
5 department.

6 **Agency Response:**

7 The department agrees that the dealer has responsibility to monitor access and use of the data
8 base through the license holder’s account. The department has authority to deny dealers access to the
9 database and enforcement authority. As such, dealers are encouraged to record any unauthorized
10 access to the database, take immediate action to stop the unauthorized access on their account to the
11 database, and report the activity to the department to reduce fraud and mitigate potential sanctions.
12 The department declines to add a reporting and record keeping requirement, because it could add
13 additional costs and burden legitimate dealers.

14
15 **215.150(d)**

16 **Comment:**

17 A commenter asserts that it is inappropriate to make a dealer or converter responsible for all
18 access to the department’s system by unauthorized users, including for breaches of the database that
19 are outside of the license holder’s control such as attacks by hackers. The commenter suggests that the
20 department revise §215.150(d) to read (based on the proposed new text):

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1 "A dealer or converter is responsible for ~~all~~ taking reasonable measures to safeguard the use
2 and access to the applicable temporary tag database under the dealer's or converter's account,
3 including access by any user or unauthorized person. Dealer and converter ~~duties~~ reasonable measures
4 include, but are not limited to monitoring temporary tag usage, managing account access, and taking
5 timely and appropriate actions to maintain system security, including:"

6 Alternatively, the commenter suggests just deleting the word "all" from first sentence from the
7 provision.

8 **Agency Response:**

9 The department agrees that internet hacking is a serious matter, and the department has
10 designed and maintains the temporary tag database system to limit that possibility. The department
11 declines to make either of the proposed change because the temporary tag database is a department
12 system and as such the department retains responsibility for overall system security. However, dealers
13 and converters must be responsible for all access to the system under their account as described in the
14 subsection. A dealer operating within its temporary tag allotment will likely be the first to spot excess
15 tag usage and be able to take corrective action by identifying a criminal and notifying the department of
16 a problem.

17
18 **§215.150(d)**

19 **Comment:**

20 A commenter suggests adding to §215.152(d)(2), a specific number of authorized sub-users that
21 would have access to the database.

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1 **Agency Response:**

2 The department appreciates the comment. The department declines to make the requested
3 change because it was not proposed for comment and may vary based on the dealer or converter, by
4 size type, or another factor unknown to the department. The department will consider the matter for
5 future proposals.

6
7 **§215.150(d)**

8 **Comment:**

9 A commenter suggests adding a requirement for the license holder to submit their password
10 policy and provide employment documentation to support all bona fide employees upon the
11 department request.

12 **Agency Response:**

13 The department agrees with the commenters intent but declines to make the requested change.
14 The department will request the information as needed.

15
16 **§215.153**

17 **Comment:**

18 Two commenters stated that the department should make it harder to copy or recreate paper
19 temporary tags.

20 **Agency response:**

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1 The department appreciates the comment. The department has worked with law enforcement
2 to implement design changes that make the temporary tags harder to copy and recreate. These rules
3 address efforts to stop actual temporary tags from being issued by a few criminals.

4
5 **§215.154 Courtesy Vehicle**

6 **Comment:**

7 Two commenters suggested that the department change or delete the reference to courtesy
8 vehicles because it is incorrect.

9 **Agency Response:**

10 The department agrees and has changed the reference to correct a typographical error and
11 conform §215.154(e)(3) with the limitation on metal dealer plates under §215.138(d)(3). Transportation
12 Code §503.068(b)(1) provides that “A person may not use a metal dealer’s license plate or dealer’s
13 temporary tag on: (1) service or work vehicle, except as provided by Subsection (b-1).” The department
14 has defined “a dealer’s service or work vehicle” in §215.138(d)(3) as “a courtesy car on which a courtesy
15 car sign is displayed;” and in §215.154(e)(3) as “a courtesy car,” despite the source of the prohibition
16 being the same statute.

17 As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a
18 dealer’s temporary tag on vehicles used by a prospective buyer to operate while the vehicle is being
19 demonstrated, or on a vehicle for a customer to operate while the customer’s vehicle is being repaired.
20 These are commonly called “courtesy vehicles,” although the actual term is not defined in rule. Thus,
21 §215.15(e)(3) is changed to read “a courtesy car on which a courtesy car sign is displayed,” which is

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1 consistent with §215.138(d)(3). The change is intended to clarify that a “courtesy car” operating under
2 Transportation Code §503.062(b), may have a dealer’s temporary tag. The change does not add
3 additional costs or requirements or affect persons not on notice of the proposal.

4
5 **§215.155 Inspections of out of state vehicles.**

6 **Comment:**

7 A commenter stated that HB 3927 added Transportation Code §503.063(i) clarifying that
8 vehicles being sold out-of-state could be issued a temporary buyer’s tag without a vehicle inspection.

9 Agency Response:

10 The department agrees with the comment. The department did not assert that vehicles being
11 sold out-of-state required an inspection; however, other states may have misinterpreted Texas law. To
12 aid in clarifying the issue the department proposed §215.155(b)(1) to reference the inspection
13 exemption under Transportation Code §503.063(i).

14
15 **§215.505(a)**

16 **Comment:**

17 Two commenters raise concerns that the section provides no guidepost with respect to what is
18 an excessive number of temporary tags relative to a dealer's sales. The commenters ask

19 (1) is the benchmark twice the number of sales or ten percent;

20 (2) is the amount one tag or an amount that is “grossly” excessive;

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1 (3) and what is an "excessive" number of buyer's temporary tags versus excessive agent's
2 temporary tags versus excessive vehicle specific temporary tags?

3 **Agency Response:**

4 The department appreciates the comments and considers that HB 3927 is meant to aid law
5 enforcement and the department to work together in stopping the fraud without being onerous to
6 legitimate dealers. The department declines to set a threshold number or percentage, because setting a
7 threshold could create a safe harbor for fraudulent activity. Further, denial of access will be based on a
8 department determination. The department will conduct an investigation to reach the determination
9 that the license holder, or sub-user of the license holder, has violated the rule and statute. The
10 investigation will vary depending on the activity involved, if the activity is ongoing, the response of the
11 license holder to department inquiries, and information the license holder has provided the department.

12

13 **§215.505(a)**

14 **Comment:**

15 A commenter states that in addition to other elements, fraud carries with it a material
16 misrepresentation that is known to be false or recklessly performed. If the agency infers fraud by an
17 excessive number of temporary tags relative to a dealer's sales, the investigators need markers as well
18 as a specific time period for inferring fraud by what is excessive and for what time period as well as
19 which type of temporary tag.

20 **Agency Response:**

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1 The department appreciates the comments and repeats its response made to the prior
2 comment. House Bill 3927 is meant to aid law enforcement and the department to work together in
3 stopping temporary tag fraud without being onerous to legitimate dealers. The department declines to
4 set a number, percentage, or time period, because setting a threshold could create a safe harbor for
5 fraudulent activity. Again, a determination would follow a department investigation.

6
7 **§215.505(a)**

8 **Comment:**

9 A commenter is concerned that a vehicle may be in the dealer's inventory at the time the
10 temporary tag is printed; however, the sale may be rescinded or the vehicle may be dealer-traded so
11 that in neither scenario is the vehicle listed on the "Dealer's Motor Vehicle Inventory Tax Statement."

12 **Agency Response:**

13 The department appreciates the comment. The presumption that if a vehicle is not in a dealer's
14 inventory is rebuttable; if the dealer provides documentation of a sale to another dealer or other
15 evidence that the vehicle was otherwise in the dealer's inventory then the dealer would not be in
16 violation of the rule for that sale. Again, a determination would follow a department investigation.

17
18 **215.505(a)**

19 **Comment:**

20 A commenter is concerned that with respect to a fictitious user or person using a false identity,
21 if a system is compromised by cyberattack or a virus, this scenario may be outside of the control of the

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1 licensee and the licensee will not have made a material misrepresentation that is known to be false or
2 recklessly performed.

3 **Agency Response:**

4 The department appreciates the comment. The department disagrees with the commenters
5 reading of text which is “a dealer or converter account user misusing the temporary tag database
6 authorized under Transportation Code §503.0626 or §503.06321 to obtain: (3) access to the temporary
7 tag database for a fictitious user or person using a false identity.” In the case of a true hacker, the
8 license holder would not be using the account to obtain access for the fictitious user. Determining the
9 nature of the event though would be a question of fact, including how the fictitious user was authorized
10 to act under the license holder’s account to access the system and the license holder’s actions after
11 discovering the fictitious user. For example, did the license holder discontinue the fictitious user’s access
12 permissions, and when. Again, a determination would follow a department investigation.

14 **§215.505(c)**

15 **Comment:**

16 A commenter asserts that it should be the license holder’s responsibility to provide the
17 department with the license holder’s current contact information.

18 **Agency Response:**

19 The department appreciates the comment. Transportation Code §503.006 and §215.141(b)(7)
20 require a license holder to maintain a current address with the department.

21

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1 **§215.505(b) and (d)**

2 **Comment:**

3 Two commenters assert that the department should immediately deny access to a dealer or
4 converter that has been determined to be inappropriately using the temporary tag database, and not
5 provide criminals the ability to continue to issue tags for an additional 10 days.

6 **Agency Response:**

7 The department agrees with the comment and has revised §215.505 to remove the 10-day
8 period and begin the denial of access immediately upon sending notice to the license holder. In making
9 this decision, the department has considered that the determination will follow an investigation of the
10 license holder engaging in fraudulently obtaining temporary tags from the database. The investigation
11 will vary depending on the activity involved, its continuing occurrence, the response of the license
12 holder to department inquiries, and information the license holder has provided the department.

13

14 **§215.505(d) and (f)**

15 **Comment:**

16 A commenter suggests decreasing the time for a license holder to file an appeal from 26 to 14
17 calendar days, because 14 days should be enough time for a dealer or converter to respond to an urgent
18 matter.

19 **Agency Response:**

20 The department appreciates the comment but declines to make a change based on the
21 comment. The 26-calendar day period is a standard time for filing an appeal with the State Office of

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1 Administrative Hearings (SOAH) under other rules such as §.217.500 and allows the license holder and
2 department additional time to reach a solution, if possible, prior to engaging in the appeal process. The
3 license holder will continue to be denied access to the temporary tag database for the 26-day period
4 and a subsequent appeal.

5

6 **§215.505(g)**

7 **Comment:**

8 Three commenters stated that the department should do on-site visits of every dealer or
9 converter before issuing a license or allowing them access to the temporary tag system.

10 One of the commenters further suggested the following additional language be added to
11 §215.505:

12 Due to the magnitude of the abuse of the temporary tag program, in order to determine the number of
13 temporary tags that will be available to the dealer or converter on an annual basis, any and all dealers
14 and converters shall be assessed on the following criteria through an on-location visit by DMV
15 personnel:

16 (1) the dealer 's or converter 's:

17 (A) time in operation;

18 (B) sales data; and

19 (C) expected growth;

20 (2) expected changes in the dealer 's or converter 's market;

21 (3) temporary conditions that may affect sales by the dealer or converter;

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- 1 (4) the size and actual inspection of the physical location of the dealer or converter; and
- 2 (5) any other information the department considers relevant.

3 **Agency Response:**

4 The department appreciates the comment and has attempted to implement the statutory items
 5 set out in the comment in this adoption. This comment has also been addressed in the department's
 6 separate adoption of maximum temporary tag limit rules. The department is further evaluating the
 7 benefit of site visits versus the cost and burden to the 20,000 legitimate dealers in this state and the
 8 department. Because site visits were not addressed in the proposal for public comment, the department
 9 declines to add them to this adoption; however, they may be considered in future proposals.

10
 11 The following comments are not associated with a particular section of the proposal

12 **Comment:**

13 Six commenters stated that dealers should not be allowed to issue excessive numbers of
 14 temporary tags.

15 **Agency response:**

16 The department agrees with the comments and has adopted rules to implement HB 3927 both
 17 with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of
 18 temporary tags and to denial of access for criminals that try to engage in selling temporary tags.

19

20 **Comment:**

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1 Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and
2 drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in
3 violation of licensing and registration laws can result in numerous costs to the state and private citizens,
4 including risks to law enforcement at traffic stops with potential criminals, higher insurance rates,
5 accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and
6 increasing toll fees, and higher pollution levels.

7 **Agency response:**

8 The department agrees with the comments and has adopted rules to implement HB 3927 both
9 with regards to maximum tag limits to prevent criminals from having access to unlimited numbers of
10 temporary tags and denial of access for any that still try to engage in selling temporary tags.

11
12 **Comment:**

13 Five commenters recommended that the department should require fingerprinting and
14 background checks for all users of the temporary tag database.

15 **Agency response:**

16 The department appreciates these comments. The department is evaluating fingerprinting and
17 other means and may present these actions in future proposals; however, the request goes beyond the
18 scope of this proposal.

19
20 **Comment:**

21 Five commenters recommended that the department cease issuing paper tags.

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1 **Agency response:**

2 The department appreciates the comment. The use of paper tags is required by statute and is an
3 effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur
4 annually in the state. The legislature enacted HB 3927 which is being implemented by the department to
5 combat the few criminals that have sought to exploit the system.

6
7 **Comment:**

8 Four commenters asserted that the department should do more to take action against drivers
9 who operate their vehicle with expired or illegible paper plates.

10 **Agency response:**

11 The department appreciates the comment. The department is not a criminal law enforcement
12 agency and is limited to the authorized actions that the legislature has provide it under statute.

13
14 **Comment:**

15 Two commenters asserted the department should do more to stop the sale of fraudulent
16 temporary tags on social media and prosecute both the people that are advertising on social media and
17 the social media sites themselves.

18 **Agency response:**

19 The department appreciates the comment. The department is not a criminal law enforcement
20 agency. The department has acted to notify social media sites of the activity when it is discovered;
21 however, even if a site is removed it may appear again.

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1

2 **Comment:**

3 Two commenters recommended that the department deter the use of fraudulent tags by
4 enlisting citizens to assist with finding the fraudulent sellers and create a system for people to report
5 violations they witness.

6 **Agency response:**

7 The department appreciates the comment. The department is not a criminal law enforcement
8 agency.

9

10 **Comment:**

11 Two commenters asserted that the department needs to process title applications faster and
12 eliminate its backlog.

13 **Agency Response:**

14 The department appreciates the comment. The department is not currently experiencing a
15 backlog of title applications. All title applications received by the department are being processed
16 within five days of receipt, in accordance with Transportation Code §501.027.

17

18 **Comment:**

19 An individual commenter asserted that dealers should not be able to sell a vehicle until the
20 dealer possess the title.

21 **Agency response:**

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1 The department appreciates the comment. Under Transportation Code §503.038, the
2 department may take administrative action against a dealer that "fails to take assignment of any basic
3 evidence of ownership, including a certificate of title or manufacturer's certificate, for a vehicle the
4 dealer acquires."

5

6 **Comment:**

7 An individual commenter asserted that title applications should be executed on the date of the
8 sale.

9 **Agency Response:**

10 The department appreciates the comment. The titling process involves multiple entities,
11 including the seller, the buyer, the department, and the county tax assessor-collectors, who complete
12 different steps. Multiple statutes address the length of time each entity has to complete specific steps.
13 Specifically, Transportation Code §501.023 states the county tax assessor-collector has 72 hours after
14 receipt to send its application to the department; Transportation Code §501.027 gives the department
15 five days after the receipt of the application to make its determination. The department is not able to
16 change statute by rule.

17

18 **Comment:**

19 An individual commenter recommended that the department require a dealer to be in
20 possession of the vehicle to issue a temporary tag to the vehicle.

21 **Agency Response:**

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1 The department appreciates the comment. The existing rule in Title 43 Tex. Admin. Code
2 §215.151 requires the dealer to secure the temporary tag to the vehicle. This requirement is not being
3 removed by this adoption.

4
5 **Comment:**

6 An individual commenter recommended that the department require dealers and converters to
7 renew their licenses annually.

8 **Agency response:**

9 The department appreciates the comment. The license term is set by statute and cannot be
10 altered by rule.

11
12 **Comment:**

13 An individual commenter recommended that the department track how many paper plates are
14 issued by each dealer and converter.

15 **Agency response:**

16 The department appreciates the comment. The department's system tracks the number of
17 plates issued by each dealer and converter. Prior to the enactment of HB 3927, statute did not allow the
18 department to limit or deny a dealer's or converter's access to the database unless the license was
19 revoked which is a long process.

20

21 **Comment:**

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PENDING APPROVAL

The amended sections are pending approval by the Regulatory Compliance Division of the Office of the Governor. <https://gov.texas.gov/organization/regulatory-compliance>

1 An individual commenter recommended that the department require buyers of vehicles go in-
2 person to their TxDMV Regional Service Center to receive a temporary tag.

3 **Agency response:**

4 The department appreciates the comment. The use of paper tags is required by statute and is an
5 effective low-cost means of facilitating the millions of dealer and converter sales transactions that occur
6 annually in the state.

7
8 **Comment:**

9 An individual commenter asserted that the department should not allow small dealerships to
10 issue paper tags; instead, people who purchase from small dealerships should be required to get their
11 paper tags from TxDMV.

12 **Agency response:**

13 The department appreciates the comment. The department disagrees that creating barriers for
14 the thousands of small dealerships in this state to prevent a few criminals is an appropriate response,
15 and declines to make a change based on this comment.

16
17 **Comment:**

18 An individual commenter recommended that the department immediately revoke access to the
19 temporary tag database for any dealer that duplicates a paper tag.

20 **Agency response:**

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1 The department appreciates the comment. The department’s denial of access rules in §215.505
2 under HB 3927 will allow for this. Prior to the enactment of HB 3927, statute did not allow the
3 department to limit or deny or limit a dealer’s or converter’s access to the database unless the license
4 was revoked which is a long process.

5
6 **Comment:**

7 An individual commenter recommended that the department and county tax assessor-collector
8 should promptly complete their reviews of sale information before the department issues a temporary
9 tag to a vehicle.

10 **Agency Response:**

11 The department appreciates the comment. The complete sales transaction that is processed by
12 a dealer or converter, the county tax assessor-collector, and the department, can be complex with all
13 information not being available for several weeks after the customer has purchased the vehicle.

14
15 **Comment:**

16 An individual commenter stated that license plates should be issued to the person and
17 transferrable between cars; when the person sells the vehicle, they should keep the plate and use it on
18 any vehicle the person subsequently purchases.

19 **Agency response:**

20 The department appreciates the comment. The department notes that new vehicles do not have
21 license plates and some used vehicles have missing or used license plates. Also, the license plate relates

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1 to the prior owner, which may cause confusion for law enforcement and other agencies and
2 unwarranted burdens for the new owner.

3

4 **Comment:**

5 An individual commenter recommended that the department require buyers to purchase an
6 insurance policy that is effect for the 60 days the temporary tag is in effect, to provide financial
7 responsibility.

8 **Agency Response:**

9 The department appreciates the comment. Owners are required by statue to comply with motor
10 vehicle financial responsibility laws at all times. The department cannot change statute by rule.

11

12 **Comment:**

13 An individual commenter recommended that the department include the dealer's phone
14 number on the temporary tag.

15 **Agency Response:**

16 The department appreciates the comment. The department will consider the comment in future
17 updates to temporary tags.

18

19 **STATUTORY AUTHORITY.** The department adopts amendments to §§215.150, 215.151, 215.153, 215.154,
20 and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002,
21 503.0626, 503.0631, and 1002.001.

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1 Occupations Code §2301.705 provides that notice of a hearing involving a license holder must
2 be given in accordance with Chapter 2301 and board rules.

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

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

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

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

11 **CROSS REFERENCE TO STATUTE.** Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and
12 503.067.

13
14 **TEXT**

15 **Subchapter E. General Distinguishing Numbers**

16 **43 TAC §§215.150, 215.151, 215.153, 215.154 and 215.155**

17 §215.150. Authorization to Issue Temporary Tags.

18 (a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a
19 preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer
20 is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may
21 issue a converter's temporary tag for authorized purposes only.

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1 (b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or
2 converter's temporary tag until:

3 (1) the department denies access to the temporary tag database under Transportation
4 Code §503.0632(f) and §215.505 of this title (relating to Denial of Dealer or Converter Access to
5 Temporary Tag System);

6 (2) the license holder issues the maximum number of temporary tags authorized under
7 Transportation Code §503.0632(a)-(d); or

8 (3) the license is canceled, revoked, or suspended.

9 (c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the
10 requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or
11 one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A
12 governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag,
13 under this subsection:

14 (1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable
15 to a dealer; and

16 (2) is not required to charge the registration fee under Transportation Code §503.063(g).

17 (d) A dealer or converter is responsible for all use of and access to the applicable temporary tag
18 database under the dealer's or converter's account, including access by any user or unauthorized person.
19 Dealer and converter duties include monitoring temporary tag usage, managing account access, and
20 taking timely and appropriate actions to maintain system security, including:

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- 1 (1) establishing and following reasonable password policies, including preventing the
2 sharing of passwords;
- 3 (2) limiting authorized users to owners and bona fide employees with a business need to
4 access the database;
- 5 (3) removing users who no longer have a legitimate business need to access the system;
- 6 (4) securing printed tags and destroying expired tags, by means such as storing printed
7 tags in locked areas and shredding or defacing expired tags; and
- 8 (5) securing equipment used to access the temporary tag database and print temporary
9 tags.

10

11 §215.151. Temporary Tags, General Use Requirements, and Prohibitions.

12 (a) A dealer or converter shall secure a temporary tag to a vehicle in the license plate display
13 area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times,
14 including when the vehicle is being operated.

15 (b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or
16 preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization
17 to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle,
18 so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is
19 being operated.

20 (c) All printed information on a temporary tag must be visible and may not be covered or
21 obstructed by any plate holder or other device or material.

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1 (d) A motor vehicle that is being transported using the full mount method, the saddle mount
2 method, the tow bar method, or any combination of those methods in accordance with Transportation
3 Code, §503.068(d), must have a dealer's temporary tag, a converter's temporary tag, or a buyer's
4 temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

5
6 §215.153. Specifications for All Temporary Tags.

7 (a) Information printed or completed on a temporary tag must be in black ink on a white
8 background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted
9 Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle,
10 the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four
11 inches high and at least seven inches wide.

12 (b) A temporary tag must be:

- 13 (1) composed of plastic or other durable, weather-resistant material; or
- 14 (2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

15 (c) A temporary tag may only be issued and printed from the department's temporary tag
16 database as described in §215.152 of this title (relating to Obtaining Numbers for Issuance of Temporary
17 Tags) and §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags).

18 ~~[must comply with the specifications of the applicable temporary tag identified by the following~~
19 ~~appendices:~~

- 20 ~~(1) Appendix A-1—Dealer's Temporary Tag—Assigned to Specific Vehicle;~~
- 21 ~~Attached Graphic~~

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1 ~~(2) Appendix A-2 – Dealer's Temporary Tag – Assigned to Agent;~~

2 ~~Attached Graphic~~

3 ~~(3) Appendix B-1 – Buyer's Temporary Tag;~~

4 ~~Attached Graphic~~

5 ~~(4) Appendix B-2 – Preprinted Internet-down Temporary Tag; and~~

6 ~~Attached Graphic~~

7 ~~(5) Appendix C-1 – Converter's Temporary Tag.~~

8 ~~Attached Graphic]~~

9

10 §215.154. Dealer's Temporary Tags.

11 (a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is
12 issued and for which the dealer is licensed by the department to sell.

13 (b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a
14 dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

15 (c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the
16 selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal
17 dealer's license plate on the vehicle.

18 (d) A dealer's temporary tag

19 (1) may be displayed on a vehicle only as authorized in Transportation Code §503.062;

20 and

21 (2) may not be displayed on:

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1 (A) [(1)] a laden commercial vehicle being operated or moved on the public
2 streets or highways;

3 (B) [(2)] on the dealer's service or work vehicles;

4 (C) [(3)] a golf cart as defined under Transportation Code Chapter 551; or

5 (D) [(4)] an [all-terrain vehicle, recreational] off-highway vehicle [~~or a utility~~
6 vehicle] as defined under Transportation Code Chapter 551A.

7 (e) For purposes of this section, a dealer's service or work vehicle includes:

8 (1) a vehicle used for towing or transporting other vehicles;

9 (2) a vehicle, including a light truck, used in connection with the operation of the dealer's
10 shops or parts department;

11 (3) a courtesy car on which a courtesy car sign is displayed;~~[with no signs on the vehicle];~~

12 (4) a rental or lease vehicle; and

13 (5) any boat trailer owned by a dealer or manufacturer that is used to transport more
14 than one boat.

15 (f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not
16 considered a laden commercial vehicle when the vehicle is:

17 (1) towing another vehicle bearing the same dealer's temporary tags; and

18 (2) both vehicles are being conveyed from the dealer's place of business to a licensed
19 wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place
20 of business.

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1 (g) As used in this section, "light truck" has the meaning assigned by Transportation Code,
2 §541.201.

3 (h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer
4 or a dealer's employee.

5 (i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after
6 the date the temporary tag was issued.

7 (j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's
8 inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

9 (k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the
10 following information is placed on the temporary tag:

11 (1) the vehicle-specific number from the temporary tag database;

12 (2) the year and make of the vehicle;

13 (3) the VIN of the vehicle;

14 (4) the month, day, and year of the temporary tag's expiration; and

15 (5) the name of the dealer.

16 (l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following
17 information is placed on the temporary tag:

18 (1) the specific number from the temporary tag database;

19 (2) the month, day, and year of the temporary tag's expiration; and

20 (3) the name of the dealer.

21

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1 §215.155. Buyer's Temporary Tags.

2 (a) A buyer's temporary tag may be displayed only on a vehicle from the seller's inventory that
3 can be legally operated on the public streets and highways and for which a sale has been consummated.

4 (b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in
5 accordance with Transportation Code Chapter 548, unless

6 (1) an inspection is not required under Transportation Code §503.063(i) or (j); or

7 (2) the vehicle is exempt from inspection under Chapter 548.

8 (c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

9 (1) dealer's temporary tag; or

10 (2) metal dealer's license plate.

11 (d) A buyer's temporary tag is valid until the earlier of:

12 (1) the date on which the vehicle is registered; or

13 (2) the 60th day after the date of purchase.

14 (e) The dealer, or federal, state, or local governmental agency, must ensure that the following
15 information is placed on a buyer's temporary tag that the dealer issues:

16 (1) the vehicle-specific number obtained from the temporary tag database;

17 (2) the year and make of the vehicle;

18 (3) the VIN of the vehicle;

19 (4) the month, day, and year of the expiration of the buyer's temporary tag; and

20 (5) the name of the dealer or federal, state, or local governmental agency.

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1 (f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's
2 temporary tag issued, unless the vehicle is exempt from payment of registration fees under
3 Transportation Code, §502.453 or §502.456. A federal, state, or local governmental agency may charge a
4 buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the
5 vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456,
6 ~~or is a vehicle described in §215.154(d)(2)(C) or (D) [§215.153(d)(3) or (4)] of this chapter (relating to~~
7 ~~Dealer's Temporary Tags)~~. The fee shall be remitted by a dealer to the county in conjunction with the title
8 transfer, and, if collected, by a federal, state, or local governmental agency, to the county, for deposit to
9 the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold by a dealer to an
10 out-of-state resident, in which case:

11 (1) the dealer shall remit the entire fee to the department for deposit to the credit of the
12 Texas Department of Motor Vehicles fund if payment is made through the department's electronic title
13 system; or

14 (2) the dealer shall remit the fee to the county for deposit to the credit of the Texas
15 Department of Motor Vehicles fund.

Subchapter J. Administrative Sanctions

43 TAC §215.505

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

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1 (a) In this section "fraudulently obtained temporary tags from the temporary tag database" means
2 a dealer or converter account user misusing the temporary tag database authorized under Transportation
3 Code §503.0626 or §503.06321 to obtain:

4 (1) an excessive number of temporary tags relative to dealer sales;
5 (2) temporary tags for a vehicle or vehicles not in the dealer’s or converter’s inventory a
6 vehicle is presumed not to be in the dealer’s or converter’s inventory if the vehicle is not listed in the
7 relevant monthly Vehicle Inventory Tax Statement; and

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

10 (b) The department shall deny a dealer or converter access to the temporary tag database [10
11 calendar days from] effective on the date the department sends notice electronically and by certified mail
12 to the dealer or converter that the department has determined, directly or through an account user, the
13 dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer
14 or converter may seek a negotiated resolution with the department [within the 10-day period] by
15 demonstrating corrective actions taken or that the department’s determination was incorrect. [If a
16 resolution is not agreed to prior to the end of the 10-day period, the department will deny access to the
17 temporary tag database.]

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

20 (d) A dealer or converter may request a hearing on the denial as provided by Subchapter O,
21 Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under

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1 this section. The department must receive a written request for a hearing within 26 days of the date of
2 the notice denying access to the database. The request for a hearing does not stay the ~~[10-day period or]~~
3 denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution
4 with the department after a request for hearing has been submitted under this subsection by
5 demonstrating corrective actions taken or that the department’s determination was incorrect.

6 (e) The department may also issue a Notice of Department Decision stating administrative
7 violations as provided in §215.500 concurrently with the notice of denial of access under this section. A
8 Notice of Department Decision may include notice of any violation, including a violation listed under
9 subsection (a) of this section.

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

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

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

16
17
18
19

Tracey Beaver, General Counsel

Board Policy Documents

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

Texas Department of Motor Vehicles TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

- 3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:
 - 3.1.1.1. Be proactive and visionary in its thinking.
 - 3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.
 - 3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.
 - 3.1.1.4. Have the courage to lead and make difficult decisions.
 - 3.1.1.5. Listen to the customers and stakeholders needs and objectives.
 - 3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.
 - 3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. TxDMV Board Primary Functions/Characteristics

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
 - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
 - 3.2.1.2. Soliciting input from a broad base of stakeholders.

3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
 - 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
 - 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
 - 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

3.4. Practice Discipline and Assess Performance

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
 - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
 - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
 - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
 - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
 - 3.4.2.3. Do we have a strong orientation for our new members?
 - 3.4.2.4. What goals have we set and how well are we accomplishing them?
 - 3.4.2.5. What can we do as a board to improve our performance in these areas?
 - 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

Texas Department of Motor Vehicles Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
 - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
 - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

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- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
 - 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
 - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
 - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
 - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
 - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
 - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
 - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
 - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
 - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
 - 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.
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Texas Department of Motor Vehicles TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5



The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDmv shall timely meet all legislative requests and mandates.

Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.