

Board Meeting Date: 12/8/2022
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Monique Johnston, Motor Vehicle Division Director
Agenda Item: 7
Subject: **Chapter 215. Motor Vehicle Distribution – Monique Johnston**
Amendments, §215.133 and §215.140
(Relating to Licensing Requirements for Applicants for and Holders of a Dealer General Distinguishing Number (GDN) under Transportation Code Chapter 503)

RECOMMENDATION

Adopt the proposed rules effective January 1, 2023, and approve for publication in the Texas Register.

PURPOSE AND EXECUTIVE SUMMARY

The department requests Board approval to adopt proposed amendments to the pre-licensing requirements for General Distinguishing Number (GDN) dealers. These proposed amendments affect new and renewal dealer applicants and include updates to application requirements and business premises requirements for a dealer to establish a permanent place of business as required by Transportation Code §503.032.

In proposing these rule modifications, the department had five 5 major goals:

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

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

FINANCIAL IMPACT

No significant impact.

BACKGROUND AND DISCUSSION

At the February 10, 2022, board meeting, the board authorized the department to propose pre-licensing rule amendments and to bring the rule proposal back to the board for adoption as quickly as possible.

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

The Motor Vehicle Industry Regulatory Advisory Committee (MVIRAC) discussed pre-licensing requirements during two meetings on December 16, 2021, and on March 9, 2022. MVIRAC recommended that the department require a site visit to all new independent dealer locations prior to the department's licensing staff issuing a GDN. The Committee also recommended the department identify the cost impact and timeline required to implement this requirement.

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

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

Based on the department's review of thousands of applications and the results of hundreds of these investigations, the department identified business premises public safety issues, and is now proposing to reinstate certain requirements that were eliminated in 2012 that directly affect public safety and welfare.

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

The proposed amendments also implement three statutory requirements:

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

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



In proposing these amendments, the department prioritized the public benefits associated with reducing fraud and related crime and improving public health and safety, while carefully considering potential costs to GDN dealers consistent with board and department responsibilities in Occupations Code Chapter 2301, Subchapter D.

If approved, the department anticipates publishing the adoption notice in the December 23, 2022, Texas Register and is recommending a January 1, 2023, effective date.

COMMENTS

The proposed rules were published for comment in the October 28, 2022, issue of the Texas Register. The comment period closed on November 25, 2022. The department received three written comments. Two commenters, the Texas Automobile Dealers Association and an individual commenter, either supported the rule amendments as proposed or requested one or more changes in the rule amendments. One commenter, the Texas Independent Automobile Dealers Association, requested the rules be withdrawn or alternatively requested changes to the rules. The department considered all comments and recommended changes to the rule text in response to these comments.

ADOPTION OF**SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS****43 TAC §215.133 and §215.140**

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §215.133, General Distinguishing Number, and §215.140, Established and Permanent Place of Business, concerning licensing requirements for applicants for and holders of a dealer general distinguishing number (GDN) under Transportation Code Chapter 503. The department adopts §215.133 and §215.140 with changes to the proposed text as published in the October 28, 2022, issue of the *Texas Register* (47 TexReg 7256) and are being republished.

In response to comments, the department adopts changes to amended §215.133 and §215.140. These changes include amendments to add “if applicable” in §215.133(c)(1)(B) to clarify that GDN applicants and license holders do not have to include a website in the application if no website exists. The word “solely” is substituted for the word “only” in §215.140(1) and (2) to clarify that a retail or a wholesale dealer may be open by appointment if the dealer is also open during posted hours that comply with the existing minimum business hour requirements. In §215.140(11)(B)(iv) and (vii) the requirement for a material object or barrier that cannot be readily removed is clarified to state that a material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory. Additionally, in §215.140(11)(C) the requirement to disclose the address of a storage lot was deleted from this proposal to allow time for more stakeholder input and the system programming time required to allow for the efficient submission, storage, and reporting of this information.

REASONED JUSTIFICATION. The amendments to §215.133 and §215.140 are necessary to prevent and deter fraud in the application process, to implement recently adopted fingerprint requirements, to prevent consumer abuse and improve public safety, to clarify existing licensing requirements, to conform

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1 the rules with legislative changes, and to update rule language consistent with the department's
2 electronic application processing requirements. Nonsubstantive changes to standardize and modernize
3 rule language are also being implemented to improve the readability of these rules.

4 Amended §215.133

5 Nonsubstantive changes are necessary to modernize the language for improved readability in
6 §215.133(b), (c), and (k) by deleting the words or phrases "the provisions of," "herein," "of this section,"
7 "Office of the," and "thereon" and substituting words or phrases with the same meaning if required.
8 Current §215.133(k) is renumbered as §215.133(j).

9 In §215.133(b), an amendment is made to add a statutory reference to Transportation Code
10 §503.024 and to delete duplicative statutory text in the rule language. These amendments are necessary
11 to conform the rule with the current statute and avoid future statutory conflicts.

12 Amendments in §215.133(c) specify the requirements for new, renewal, and amendment dealer
13 GDN applications including the requirement to attach documents, pay required fees, and submit
14 applications electronically on a prescribed form in the department's designated licensing system. Fees,
15 including the authority to prorate fees, are prescribed by statute in Transportation Code §§503.007,
16 503.008, and 503.011, and in Occupations Code §2301.264. These amendments are necessary to
17 implement current dealer application requirements and clarify that a dealer renewing or amending a GDN
18 must review current GDN information, update information that has changed, and provide related
19 supporting information or documents for any change or new requirement. These amendments are also
20 necessary to clarify how information must be submitted in the department's electronic application
21 system. These amendments are necessary to implement the department's responsibilities under
22 Transportation Code §§ 503.029, 503.032, and 503.034 and Occupations Code §2301.257 and §2301.303.

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

12 In §215.133(c), the department is adopting three new requirements to deter fraud in the
13 application process and prevent fraud and public abuse if a dealer GDN is issued. The first amendment is
14 to require the applicant to list a manager or other bona fide employee in the application if the applicant
15 is owned by an out-of-state owner or an owner who will not be present during business hours at the
16 established and permanent place of business in Texas. This amendment is necessary so the department
17 can identify and appropriately investigate the background and criminal history record of the authorized
18 business representative who will be physically present at the business location in Texas. The second
19 amendment requires the applicant to designate an owner or representative listed in the application as
20 the applicant's temporary tag database account administrator and provide the individual's business email
21 address. This amendment is necessary to implement dealer responsibilities under §215.150 regarding a
22 dealer's authorization to issue a temporary tag, as well as dealer responsibilities under Transportation
23 Code §503.0631(a) and (e) to help ensure the buyer's temporary tag database is secure. The third

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1 amendment requires applicants to provide information related to insolvency—including outstanding or
2 unpaid judgments and liens—so the department can evaluate financial trustworthiness and stability as
3 required under §215.89 concerning fitness for licensure.

4 In §215.133(c)(1)(B) the phrase “(if applicable)” is added to denote that an applicant must only
5 disclose a business website if one exists.

6 Additionally, in §215.133(c), an amendment allows the department to require any other
7 information or documents necessary to fulfill its statutory duties to review and investigate application
8 information under Occupations Code §2301.256; Transportation Code §§503.029, 503.034, and 503.038;
9 and §215.89. Lastly, an amendment deleting a reference to a concealed handgun license is required
10 because that form of identification no longer exists.

11 New §215.133(d) is required to implement the September 1, 2022, fingerprint requirement for
12 new applicants and existing dealers holding a GDN under §503.029(a)(6). The fingerprint requirement
13 affects the following GDN holders and applicants: franchised motor vehicle dealers, independent motor
14 vehicle dealers, wholesale motor vehicle dealers, motorcycle dealers, house trailer dealers, trailer or
15 semitrailer dealers, and independent mobility motor vehicle dealers. This fingerprint requirement is
16 necessary to reduce identity fraud in the application process and obtain more comprehensive criminal
17 history record for applicants and GDN holders.

18 Current §215.133(d) is renumbered as (e) and amendments substituting the term "applicant" for
19 the word "person" and are necessary to clarify that the applicant is responsible for including in the
20 application any assumed names to be used by the applicant. An applicant may be an individual or one of
21 several types of business structures or legal entities, and the amended language was necessary to ensure
22 that all applicant types are included.

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1 Additionally, the department added assumed name requirements to mirror the requirements in
2 Occupations Code §2302.106 that apply to salvage vehicle dealers. This amendment makes the assumed
3 name requirements consistent for an independent motor vehicle dealer GDN holder acting as a salvage
4 vehicle dealer or rebuilder. Additionally, this amendment provides increased protection for Texas citizens
5 by applying this assumed name requirement to all GDN dealer categories. Under §2302.106, a license may
6 not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity
7 or is otherwise deceptive or misleading to the public. This requirement is necessary to prevent consumer
8 fraud and abuse.

9 The text in current §215.133(d) and (e) is deleted because this requirement is incorporated into
10 amended §215.133(e).

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

18 An amendment to §215.133(g) is necessary to correct the statutory reference to the independent
19 mobility motor vehicle dealer definition in Occupations Code §2301.002.

20 An amendment to §215.133(h) clarifies that the department may require a site visit to the
21 established and permanent place of business in Texas as part of the application evaluation process for a
22 new, renewal, or new location application. Another amendment also allows the department to require a
23 notarized affidavit signed by the applicant confirming that all premises requirements are met and will be

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1 maintained during the license period. These amendments are necessary to discharge the department's
2 responsibility to evaluate applications and investigate compliance under Occupations Code §2301.256
3 and Transportation Code §§503.029, 503.034, and 503.038.

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

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

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

10 The current §215.133(k) is renumbered as §215.133(j) and is amended to add a provision
11 implementing House Bill 139, 87th Legislature Regular Session (2021), which amended Occupations Code
12 §55.004 to allow agencies to adopt rules ensuring that a military service member, military veteran, or
13 military spouse receives appropriate credit for training, education, and professional experience in a
14 licensed profession. Additionally, the phrase "dealer education and" was added to describe the training
15 referenced in this subsection to be consistent with the statutory term in Transportation Code §503.0296.

16 Amended §215.140

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

20 Amendments to §215.140(1) and §215.140(2) clarify that a retail or wholesale motor vehicle
21 dealer's office may not be open solely by appointment. Other amendments add an owner and a voicemail
22 service as acceptable persons or methods of answering the telephone, and clarify that a caller must be
23 able to speak to a natural person or leave a message during the weekday hours of 8:00 a.m. to 5:00 p.m.

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1 These amendments are necessary to deter fraud and prevent consumer abuse and provide more flexibility
2 to dealers.

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

6 Section 215.140(3) and (4) clarify department criteria for determining whether an exterior
7 business sign is conspicuous, permanent, and permanently mounted for retail dealers and wholesale
8 motor vehicle dealers. The amendments also clarify that retail dealers and wholesale motor vehicle
9 dealers are responsible for ensuring that their business sign complies with municipal ordinances and that
10 the lease signage requirements are consistent with the signage requirements in §215.140. Additionally,
11 amendments clarify that retail and wholesale motor vehicle dealers may use a temporary sign or banner
12 if the dealer provides proof that a sign meeting the department's requirements has been ordered and
13 provides a written statement that the sign will be promptly and permanently mounted upon delivery.
14 These amendments are necessary clarifications that will allow GDN retail dealer applicants and license
15 holders to comply with Transportation Code §503.032.

16 Amended §215.140(4) includes new exterior and interior business sign requirements for
17 wholesale motor vehicle dealers. This sign requirement is necessary to eliminate confusion about whether
18 wholesale motor vehicle dealers may exchange or sell vehicles to retail purchasers and informs and
19 protects retail buyers from making unlawful purchases. The effective date for the sign requirement is
20 September 1, 2023, to provide additional time for affected GDN holders to comply. Amendments also
21 clarify department criteria for determining whether a wholesale motor vehicle dealer's interior business
22 sign is considered conspicuous, permanent, and permanently mounted. These amendments are necessary
23 and important clarifications that will allow wholesale dealer applicants and license holders to more easily

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1 comply with statutory requirements to have an established and permanent place of business as required
2 by Transportation Code §503.032.

3 Amendments in §§215.140(4)(B)(i), 215.140(13)(A), and 215.140(13)(D) change the term
4 “landlord” to “property owner” for clarity, consistency, and modernization of the rule language.

5 In amendments to §215.140(5), the word "requirements" is substituted for "structure" in the first
6 sentence because the phrase "office requirements" more accurately describes the content of this
7 paragraph. In §215.140(5)(A), the definition of a building is expanded to require that a building must have
8 a permanent roof in addition to connecting exterior walls on all sides. Additional clarifying examples were
9 added to §215.140(5)(B) to describe typical documents that demonstrate compliance with municipal
10 ordinances and clarify that the dealer has a continuing responsibility to maintain compliance when a space
11 is remodeled or changes use. These amendments are necessary and important clarifications that will allow
12 GDN dealer applicants and license holders to more easily comply with statutory requirements to have an
13 established and permanent place of business as required by Transportation Code §503.032.

14 In §215.140(5)(C) the department is reinstating requirements that a dealer's office may not be
15 located in any room or building that is not open to the public. New §215.140(5)(D) reinstates a
16 requirement that the dealer's office may not be located in a restaurant, gas station, or convenience store,
17 unless the office has a separate entrance door that does not require a dealer's customer to pass through
18 the other unrelated business. These amendments are necessary to deter temporary tag fraud and criminal
19 activity as law enforcement has identified these types of locations as common locations used to commit
20 fraud and serious crimes by bad actor license holders. New §215.140(5)(E) states that a dealer's office
21 may not be virtual or be provided by a subscription for office space or office services and are required
22 because these types of office arrangements do not establish a permanent location as required by
23 Transportation Code §503.032. The amendments to §215.140(5)(C), (D), and (E) are necessary to prevent

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1 fraud and consumer abuse, to protect public health and safety, and to implement the requirements of
2 Transportation Code §503.032.

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

7 Current §215.140(5)(E) is renumbered as §215.140(5)(G). New §215.140(5)(H) reinstates the
8 requirement that a dealer's office have at least 100 square feet of interior floor space exclusive of
9 hallways, closets, or restrooms and have a minimum seven-foot-high ceiling. New §215.140(5)(H) also
10 adds a new requirement that a dealer's office space accommodate required office equipment and allow
11 a dealer's representative and at least one customer to safely access the office and privately conduct
12 business while seated. Transportation Code §503.032(a)(2)(A) says a location is considered to be an
13 established and permanent place of business if the applicant maintains on the location a permanent
14 furnished office that is equipped as required by the department for the sale of vehicles. A customer and
15 the dealer's representative need to be able to enter the office to privately conduct business, including the
16 possible discussion of financing. These amendments are necessary minimum requirements to prevent
17 fraud and consumer abuse and to protect public health and safety.

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

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

22 In §215.140(10) the department adds a requirement that a dealer's office must have permanent
23 interior walls on all sides and be separate from any public area used by another business when the dealer's

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1 business is housed with another business. These amendments are necessary to prevent fraud and
2 consumer abuse and to protect public health and safety. A customer and the dealer's representative need
3 to be able to enter the office to privately conduct business, including the possible discussion of financing.
4 An office is also necessary to safeguard temporary tags and related computer hardware.

5 The department amends the title of §215.140(11) to include the phrase "storage lot", as this
6 subparagraph includes the requirements for both a display area and a storage lot. Other amendments in
7 §215.140(11) clarify that the display area must be located at the retail dealer's physical business address
8 or contiguous to that address, and that the display area may not be in a storage lot. Other amendments
9 clarify that the display area may not be used for customer parking, employee parking, or general storage,
10 and reinstate a requirement that if the dealer's business location includes gasoline pumps or includes
11 another business that sells gasoline, the dealer's display area may not be part of the parking area for
12 gasoline customers and may not interfere with access to or egress from the gasoline pumps, fuel tanks,
13 or fire prevention equipment. A reference to a charging station is added to this requirement in recognition
14 of recent changes in motor vehicle technology. Reinstating the requirement that a dealer's display area
15 not interfere with access to gasoline pumps, fuel tanks, or fire prevention equipment and adding a
16 reference to a charging station is necessary to protect public health as approximately 4,000 fires per year
17 occur in or on gas station properties. These fires cause serious injuries including death and property
18 damage of more than thirty million dollars per year on average. Many of the amendments to
19 §215.140(11)(B) are necessary to protect prospective customers from danger as they approach and leave
20 the display area and as they focus on a display vehicle. Other changes clarify requirements for a shared
21 display area located inside a building and are required so the standards for outdoor and indoor display
22 areas are consistent and comply with the statutory requirement for each dealer to establish a display
23 area, an important part of establishing a permanent place of business. These changes include a

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1 clarification in the existing requirement for a material object or barrier that cannot be readily removed to
2 be used to separate each dealer’s display area. The clarification states that a material object or barrier
3 must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.
4 In §215.140(11)(B), current provisions (v) and (vi) are renumbered (vi) and (vii) to accommodate a new
5 provision. New §215.140(11)(C) includes the existing requirements for a storage lot and clarifies that a
6 storage lot must be fenced or in an access-controlled location to be considered not accessible to the public
7 by the department. This amendment is required to clarify and help dealers comply with the current rule.
8 The amendments in §215.140(11) are also necessary to prevent fraud and consumer abuse and to protect
9 public health and safety. The requirement to disclose the physical location of a storage lot has been
10 deleted from this proposal to allow time the department to get additional input from law enforcement
11 and industry stakeholders, and in recognition of the system programming time required to implement an
12 efficient data submission, storage, and reporting solution.

13 Amendments to §215.140(12) are required to conform the language to be consistent with current
14 §215.133(j) which is renumbered as §215.133(i). This amendment further is required to implement House
15 Bill 1667, 86th Legislature, Regular Session (2019), which added Occupations Code §2302.009 and
16 amended §2302.101 to provide that a person holding an independent motor vehicle GDN is exempt from
17 the requirement that the person also hold a salvage vehicle dealer license to act as a salvage vehicle dealer
18 or rebuilder. The amendment retains the requirement that a salvage motor vehicle offered for sale be
19 conspicuously marked to inform a potential buyer that the vehicle is a salvage motor vehicle to protect
20 the public.

21 Amendments to §215.140(13) clarify that the dealer is responsible for verifying that the physical
22 address on the application is the correct physical address for the property if only a legal description is
23 provided in the lease. Additionally, a new provision is added relating to subleases in which the property

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1 owner is not the dealer's lessor. In this circumstance, the dealer must also obtain a signed and notarized
2 statement from the property owner which includes the property owner's full name, email address, mailing
3 address, and phone number, and a statement from the property owner confirming that the dealer is
4 authorized by the property owner to sublease the location and may operate a vehicle sales business from
5 the business location. These amendments are necessary to prevent fraud in the application process, to
6 prevent consumer abuse, and to protect public health and safety. This provision also protects GDN dealer
7 applicants. The department has received applications from GDN dealers with a signed sublease who are
8 unable to establish a permanent location and qualify for a GDN because the property owner hasn't
9 authorized a sublease or a vehicle dealer to operate on the property. Transportation Code §503.029(a)(3)
10 requires an applicant for a GDN to submit an application that demonstrates the applicant meets the
11 requirements under Transportation Code §503.032, which requires the applicant to demonstrate that the
12 location for which the applicant requests the GDN is an established and permanent place of business.

13 Amendments to §215.140(14) implement House Bill 3533, 87th Legislature, Regular Session
14 (2021), which amended Transportation Code §503.033 to require certain dealers to post a bond notice at
15 the business location. An amendment sets out the information that must be included in the bond notice
16 and is required to implement Transportation Code §503.033.

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

20 In amending these rules, the department prioritized the public benefits associated with reducing
21 fraud and related crime and improving public health and safety, while carefully considering potential costs
22 to GDN dealers consistent with board and department responsibilities in Occupations Code Chapter 2301,
23 Subchapter D.

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1 SUMMARY OF COMMENTS.

2 The department received three written comments. Two commenters, the Texas Automobile
3 Dealers Association and an individual commenter, either supported the rule amendments as proposed or
4 requested one or more changes in the rule amendments. One commenter, the Texas Independent
5 Automobile Dealers Association, requested the rules be withdrawn or alternatively requested changes to
6 the rules.

7 Comment:

8 A commenter stated that requesting an on-site manager or dealer's information seems
9 appropriate considering the rampant dealer consolidations and number of publicly owned dealers in
10 Texas.

11 Agency Response:

12 The department appreciates the commenter's support for this rule amendment.

14 Comment:

15 A commenter stated that it is inappropriate to inquire about insolvency and suggested instead
16 that the department require a bond based on a dealership's number of years in business and annual sales
17 volume of new and used vehicles.

18 Agency Response.

19 The department considered this suggestion and believes requiring a bond of every dealer would
20 be a more burdensome solution for dealers, as insolvency affects a small percentage of dealer applicants
21 and license holders. When insolvency does occur, however, substantial harm to the public may result.
22 Requiring applicants to disclose outstanding liens and judgments provides the department with

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1 information that will allow the department to review the financial obligations of applicants and license
2 holders as part of the licensing process consistent with the department's obligation under §215.89(b)(5).

3

4 Comment:

5 A commenter stated that amendments for additional information should be listed in their
6 potential entirety and provided in advance to dealers, and that broad language is inappropriate and
7 unnecessary.

8 Agency Response.

9 The department disagrees with this comment as the information required of new applicants is
10 provided in the rule and a license amendment is only necessary when the information contained in the
11 new or most recent application changes. Further, the information that the department may request is
12 expressly limited to the information that is required to evaluate the application under current law and
13 rules.

14

15 Comment:

16 A commenter stated that the department should visit every potential dealer site prior to
17 approving a new application, and that a site visit is not necessary for an existing dealer who is expanding
18 to a new location.

19 Agency Response.

20 The department agrees that a site visit is a very important part of the licensing process and is a
21 powerful way to reduce fraud. In Fiscal Year 2022, the department completed 604 site visits to GDN dealer
22 applicants more than doubling the number of site visits from the prior fiscal year. The results of these site

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1 visits informed these rule amendments. The adopted rule language will allow the department to increase
2 the number of site visits as staff and department funding permits.

3

4 Comment:

5 A commenter agreed with the rule amendments to the dealer office minimum requirements
6 including office access.

7 Agency Response.

8 The department appreciates the support.

9

10 Comment:

11 A commenter requested that the department allow more than one contact's name, email address,
12 and telephone number on an application to allow for changes in staff.

13 Agency Response.

14 The department agrees that the ability to add more than one license contact would be helpful for
15 many license holders. The department will request a system enhancement to allow this capability in the
16 future and will notify license holders when this capability becomes available.

17

18 Comment:

19 Two commenters suggest that the proposed rule be amended to not require information in the
20 GDN application that is now obtained through the fingerprint requirement.

21 Agency Response.

22 The department must continue to ask for individual identity and criminal history information to
23 complete other requirements of the background check process and to verify the applicant's veracity and

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1 corresponding eligibility for a dealer GDN under Transportation Code §503.034 and §503.038 and
2 Occupations Code §2301.651. The department requires an applicant or license holder to provide criminal
3 history information only and does not generally require court documents which the department
4 recognizes can be burdensome.

5

6 Comment:

7 Two commenters requested clarification on the storage lot requirements. The first commenter
8 requested clarification regarding when a storage lot is established and when it is temporary as additional
9 storage may be needed for only a short period of time and thus no license amendment is necessary. The
10 second commenter stated that proposed rule requirements to include storage lots on a dealer license
11 needs additional stakeholder input as a storage lot is undefined and recommends striking §215.140(11)(C)
12 in its entirety until there is more clarity.

13 Agency Response.

14 The proposed rule requiring disclosure of the physical address of a storage lot not located at the
15 licensed location is being deleted from this proposal to allow additional input from all stakeholders and
16 to allow time for the system programming necessary to collect, store, and report storage lot location
17 information.

18

19 Comment:

20 A commenter stated that while a vehicle inventory owner has a desire to safeguard vehicles when
21 stored at an offsite lot, a fenced area may not always be available if the lot is temporary storage or if the
22 lot owner refuses to fence the area.

23 Agency Response.

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1 The department agrees that safeguarding inventory is important for GDN dealers given the
2 prevalence of vehicle and catalytical converter theft. The existing rule allowed a storage lot only if the lot
3 has no public access. The proposed rule clarifies that a fenced storage lot complies with this rule
4 requirement. While a fence is a common and cost-effective method of limiting public access, it is a
5 clarifying example and not the sole way a GDN dealer may prevent public access under the rule.

6

7 Comment:

8 A commenter requested that the department withdraw the rules because the rules are too
9 burdensome and delay licensing.

10 Agency Response.

11 The department does not agree with this comment. The pre-licensing changes that have already
12 been implemented are successfully identifying fraudulent applications. Implementing these rules also
13 provide additional necessary protections and important public welfare and safety benefits as described in
14 the preamble. In September 2021, the Motor Vehicle Division (MVD) approved 841 non-franchise GDN
15 new dealer applications in an average of 16 days per application. Most changes in requirements were
16 implemented in September 2021 and affected applications submitted after that date. In December 2021,
17 the average processing time for 885 non-franchise GDN new dealer applications was 20 days. So, the
18 impact of the initial process changes was not more than 4 days for new non-franchise GDN dealer
19 applications. In September 2022, the average processing time for the same group of applications was 29
20 days. From September 2021 to September 2022 the average processing time for renewal applications
21 increased from 5 to 8 days. These increases of 9 days and 3 days in average processing time were largely
22 due to multiple licensing staff vacancies. The department anticipates that these staff vacancies and the
23 new fingerprint requirement will extend processing times beyond 29 days for new and renewal

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1 applications for the remainder of 2022. However, four new licensing staff members will start in December
2 and begin training on the processing of GDN dealer applications. These new staff members will
3 significantly reduce processing times in 2023.

4 These average processing time frames while extended continue to be reasonable and reflect the
5 department's commitment to customer service, reducing fraud, and licensing only applicants that meet
6 all statutory and rule requirements. The department believes this tradeoff is warranted and best serves
7 the public interest.

8

9 Comment:

10 A commenter stated that the proposed rules should recognize that micro-businesses do not
11 always have a website, and recommended adding "(if applicable)" after the words "website address" in
12 §215.133(c)(1)(B).

13 Agency Response.

14 The department agrees that adding "if applicable" could be a helpful clarification for applicants
15 that do not have a website and has implemented this recommendation in the adopted rule.

16

17 Comment:

18 A commenter stated that the proposed rule fails to account for dealers with multiple websites
19 and is unclear if a dealer must provide its main website only or all websites. The commenter recommends
20 adding the word "primary" immediately before the word "website".

21 Agency Response.

22 The department declines to make this change as any website on which a license holder advertises
23 vehicles must comply with department advertising rules and should be disclosed to the department.

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2 **Comment:**

3 A commenter stated that the proposed rule should not require a social security number as a
4 condition to be a licensed dealer. Foreign business owners may obtain an Employer Identification Number
5 or an Individual Taxpayer Identification Number without obtaining a social security number. The
6 commenter recommends adding the words “(if applicable)” after the words “social security number” to
7 §215.133(c)(1)(D) and (E).

8 **Agency Response.**

9 The department declines to make this change as a non-U.S. citizen owner is required to provide
10 an Employer Identification Number as specified in §215.133(c)(1)(F) and has amended text to include
11 resident and non-resident aliens in that subparagraph.

12

13 **Comment:**

14 A commenter noted that proposed rule related to a bona fide employee states a GDN applicant
15 must provide “the name, social security number, date of birth, and identity document information for at
16 least one manager...”. Dealers looking to expand into Texas have already found this rule burdensome
17 because TxDMV is asking for proof of residency. Therefore, the commenter is requesting that a bona fide
18 employee not be required to produce proof of residency and that a dealer is only required to meet this
19 requirement as written.

20 **Agency Response.**

21 The department declines to make this change as the department can handle temporary manager
22 assignments under this rule. For example, a new applicant can submit written confirmation that a
23 manager has temporarily been assigned to a Texas location and provide an affidavit confirming that the

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1 applicant will have a bona fide employee onsite once the manager's temporary assignment is complete.
2 A new GDN dealer is required to have a permanent and established place of business to be eligible for a
3 dealer GDN under Transportation Code §503.032. This statutory requirement includes having an owner
4 or bona fide employee at the location during "reasonable and lawful" business hours.

5

6 Comment:

7 A commenter states that the proposed rule should limit inquiries about adverse credit history to
8 only relevant credit history based on the statute of limitations on debt actions and the initial 10-year
9 period in which a lien is collectible. The commenter recommends amending §215.133(c)(1)(M) to read as
10 follows "any outstanding or unpaid debts for the past four years, and liens or judgments in past 10 years,
11 unless the debt was discharged under 11 U.S.C. §§101 et seq. or pending resolution under a case filed
12 under the Bankruptcy Act".

13 Agency Response.

14 The department declines to make this change as these limitations may not apply to an individual
15 applicant, for example, in Texas a judgment may be renewed or revived after 10 years, and other states
16 may have differing requirements.

17

18 Comment:

19 A commenter states that the Certificate of Responsibility is already incorporated into the
20 application questions and recommends deleting §215.133(c)(1)(N) in its entirety.

21 Agency Response.

22 The department declines to delete the Certificate of Responsibility form as this form documents
23 the applicant's commitment to continue to follow department statutes and rules throughout the GDN

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1 dealer license period. This form is only required if the electronic attestation fails because the form of
2 identification entered by the applicant cannot be verified.

3

4 Comment:

5 A commenter states that the proposed rule should only require one form of identification and
6 fingerprinting to verify the identity of a dealer and recommends amending §215.133(c)(2)(D) by striking
7 the words “at least”.

8 Agency Response.

9 The department declines to make this change as occasionally a natural person is required to
10 provide more than one identity document when the first document provided is not adequate to confirm
11 the person’s identity.

12

13 Comment:

14 A commenter states that the proposed rule should not require dealers to provide both premises
15 photos and a notarized affidavit and recommends striking either “premises photos and” or “and a
16 notarized affidavit” from §215.133(c)(2)(G).

17 Agency Response.

18 The department declines to make this change as the premises photos and the notarized affidavit
19 serve two different purposes. The photos are used to verify that the applicant has met the premises
20 requirements for having an established and permanent place of business. The notarized affidavit confirms
21 the applicant’s understanding of the premises requirements – including the applicant’s obligation to
22 maintain an established and permanent place of business during the license period. The statements in the

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1 notarized affidavit have been incorporated into the new and amendment GDN applications to make it
2 easier for new applicants going forward.

3

4 Comment:

5 A commenter states that the proposed rules are ambiguous as to whether dealers can be open
6 by appointment only and recommended modifying the proposed language of §215.140(2) to add, “Hours
7 open by appointment only do not count towards meeting this requirement.”

8 Agency Response.

9 The department appreciates this comment and substitutes the word “solely” for the word “only”
10 in the adopted rule to clarify that a dealer may not be open solely by appointment.

11

12 Comment:

13 A commenter states that permanent interior walls on all sides should not be required when a
14 dealer’s office is located in a public area used by another business and that a cubicle is sufficient. The
15 commenter recommends striking §215.140(10)(C) in its entirety.

16 Agency Response.

17 The department declines to make this change. A cubicle does not provide the privacy and security
18 necessary for customer’s personal and financial data or to secure temporary tag equipment and supplies
19 when a dealer is located in a public area shared by another business.

20

21 Comment:

22 A commenter states that the display area barrier requirements should be updated, and
23 recommends amending §215.140(11)(B)(iv) to read as, “the dealer’s inventory must be separated from

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1 the business’s display or parking area by a barrier on all sides that do not have a curb except for a side to
2 enter and exit the inventory.”

3 **Agency Response.**

4 The department agrees that space for a dealer to enter and exit inventory on one side of the
5 dealer’s display area is a helpful clarification and has added wording in §215.140(11)(B)(iv) and (vii) to add
6 this clarification. The department added the clarification: “A material object or barrier must be in place
7 on all sides except for the space necessary to allow for entry and exit of vehicle inventory.” A material
8 object could include a curb or building wall for example.

9

10 **Comment:**

11 A commenter states that the proposed rule on the inside display area barrier requirements should
12 allow barriers that are easily removed as safety concern differences do not require a permanent barrier
13 for indoor display areas. The commenter suggest that a rope line is appropriate to distinguish to the public
14 those cars offered by a dealer from vehicles offered by another dealer. The commenter recommends
15 striking the words “by a material object or barrier that cannot be readily removed” and replacing it with
16 “by a barrier.”

17 **Agency Response.**

18 The department declines to make this change as the rule requirement to have a material object
19 or barrier that cannot readily be removed is based on each dealer’s statutory requirement to have display
20 space for at least five vehicles as part of an established and permanent place of business. Allowing barriers
21 that can be readily removed would not be consistent with the statutory requirement and invites confusion
22 and potential for consumer fraud in spaces shared by multiple dealers.

23

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1 Comment:

2 A commenter states that the proposed language in §215.140(13)(A), and §215.140(13)(D) should
3 be amended to avoid confusion based on §215.140(13)(E) and recommends amending §215.140(13)(A)
4 to read as follows “the name of the lessor of the premises and the name of the dealer as the tenant or
5 lessee of the premises;” and amending §215.140(13)(D) to read as “the signature of the lessor and the
6 signature of the dealer as the tenant or lessee.”

7 Agency Response.

8 The department disagrees with this comment. The primary purpose of requiring the property
9 owner to be a party to the lease or to provide a notarized affidavit is to ensure the lease has not been
10 fraudulently executed without the property owner’s knowledge or consent and that the applicant intends
11 to operate a bona fide vehicle business at that location. Establishing a permanent place of business for
12 the term of the license is a statutory requirement.

13

14 Comment:

15 A commenter recommends eliminating a new provision relating to subleases in which the
16 property owner is not the dealer's lessor and is therefore required to obtain authorization from the
17 property owner. The commenter stated that this requirement has been implemented and should not have
18 been without notice and a comment period, and further states that he knows of dealers for whom TxDMV
19 made exceptions such as a Fortune 1000 dealer group that took over the lease of a failed dealership. The
20 commenter recommends amending §215.140(13)(E) to state (E) if the lease agreement is a sublease in
21 which the property owner is not the lessor, the dealer must obtain: (i) a signed notarized statement from
22 the property owner including the following information: . . . or (ii) a copy of the lessor’s lease showing the
23 landlord may reassign their lease or sublease.”

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1 Agency Response.

2 The department has been given statutory authority to review applications and investigate
3 applications for evidence of misrepresentation or fraud, and the circumstances described by the
4 commenter demonstrate that the department is actively doing so. The department declines to make any
5 changes to the text of this rule as the current rule language is necessary to prevent fraud and protects the
6 applicant if the property owner is unwilling or unable to allow a vehicle business at the location.

7 **STATUTORY AUTHORITY** The department adopts amendments to §215.133 and §215.140 under the
8 following provisions of Occupations Code Chapters 2301 and 2302, and Transportation Code Chapters 503
9 and 1002.

10 --Occupations Code §2301.155 authorizes the board to adopt rules as necessary or convenient to
11 administer Occupations Code Chapter 2301 and to govern practice and procedure before the board.

12 --Occupations Code §2302.051 authorizes the board to adopt rules as necessary to administer
13 Occupations Code Chapter 2302.

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

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

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

20 **CROSS REFERENCE TO STATUTE.** Occupations Code §§55.004, 2301.001, 2301.002, 2301.151, 2301.152,
21 2301.153, 2301.255, 2301.256, 2301.264, 2302.009, 2302.101, 2302.106; and Transportation Code
22 §§503.001, 503.006, 503.007, 503.008, 503.011, 503.024, 503.027, 503.029, 503.0296, 503.032,
23 503.033, 503.034, 503.036, and 503.038.

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ADOPTION OF**SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS****43 TAC §215.133 and §215.140****TEXT.****Subchapter E. General Distinguishing Numbers****43 TAC §215.133**

§215.133. General Distinguishing Number.

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

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

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

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

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

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

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

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

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

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1 ~~[(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest~~
2 ~~bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction~~
3 ~~is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and~~
4 ~~this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a~~
5 ~~person who holds a general distinguishing number, the auction may be conducted only at a location for~~
6 ~~which a general distinguishing number has been issued to that person or at a location approved by the~~
7 ~~department as provided in §215.135 of this subchapter (relating to More than One Location); and]~~

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

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

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

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

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

27 (A) type of GDN requested;

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

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

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

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

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

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

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

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

16 (J) military service status;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (h) In evaluating a new or renewal dealer GDN application or an application for a new GDN
28 location, the department may require a site visit to determine if the business location meets the
29 requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized
30 affidavit confirming that all premises requirements are met and will be maintained during the license
31 period [An application for a general distinguishing number may be denied if an applicant for such license
32 has committed any act that could result in license cancellation or revocation under Transportation Code,
33 §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department].

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

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

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

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

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

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

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

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

21

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1 **Subchapter E. General Distinguishing Numbers**2 **43 TAC §215.140**3 §215.140. Established and Permanent Place of Business Premises Requirements.

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

7 (1) Business hours for retail dealers.

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

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

20 (2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor
21 vehicle dealer's GDN [license] must post its business hours at the main entrance of the wholesale motor
22 vehicle dealer's office. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale
23 motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours
24 per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the
25 wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be
26 answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service,
27 voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a
28 message during these hours.

29 (3) Business sign requirements for retail dealers.

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

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

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

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

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

12 (A) Exterior Sign

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

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

29 (B) Interior Sign

30 (i) If the wholesale motor vehicle dealer's office is located in an office
31 building with one or more other businesses and an outside sign is not permitted by the property owner
32 [~~landlord~~], a conspicuous permanent business sign permanently mounted on or beside the main door to
33 the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective
34 September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers"
35 in letters at least one inch in height. An interior business sign is considered conspicuous if it is easily visible
36 to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior
37 sign is considered permanent if made from durable material and has lettering that cannot be changed. An

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1 interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main
2 door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the
3 wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph
4 has been ordered and provides a written statement that the sign will be promptly and permanently
5 mounted upon delivery.

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

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

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

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

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

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

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

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

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

31 (H) The dealer's office space must:

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

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

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- 1 (iii) accommodate required office equipment; and
2 (iv) allow a dealer and customer to safely access the office and conduct business
3 in private while seated.

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

6 (A) a desk;

7 (B) two chairs;

8 (C) internet access; and

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

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

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

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

21 (10) Dealer housed with other business.

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

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

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

33 (11) Display area and storage lot requirements.

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

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

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

10 (ii) The display area must be of sufficient size to display at least five vehicles of
11 the type for which the GDN is issued. Those spaces must be reserved exclusively for the retail dealer's
12 inventory and may not be used for customer parking, employee parking, general storage, or shared or
13 intermingled with another business or a public parking area, a driveway to the office, or another dealer's
14 display area.

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

19 (iv) If a ~~the~~ retail dealer shares a display or parking area with another business,
20 including another dealer, the dealer's vehicle inventory must be separated from the other business's
21 display or parking area by a material object or barrier that cannot be readily removed. A material object
22 or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle
23 inventory.

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

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

30 (vii) ~~(vi)~~ The display area may be located inside a building; however, if multiple
31 dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material
32 object or barrier that cannot be readily removed. A material object or barrier must be in place on all sides
33 except for the space necessary to allow for entry and exit of vehicle inventory.

34 (C) A GDN dealer may maintain a storage lot only if the storage lot is not accessible to the
35 public and no sales activity occurs at the storage lot. A sign stating the dealer's name, contact information,

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1 and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-
2 controlled location to be considered not accessible to the public.

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

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

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

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

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

20 (D) the signature of the property owner [~~landlord~~] as the lessor and the signature of the
21 dealer as the tenant or lessee; and [-]

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

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

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

29 (14) Dealer must display GDN and bond notice [~~license~~]. A dealer must display the dealer's GDN
30 [~~license~~] issued by the department at all times in a manner that makes the GDN [~~license~~] easily readable
31 by the public and in a conspicuous place at each place of business for which the dealer's GDN [~~license~~] is
32 issued. If the dealer's GDN [~~license~~] applies to more than one location, a copy of the GDN [~~original license~~]
33 and bond notice must [~~may~~] be displayed in each supplemental location. A dealer required to obtain a
34 surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed.
35 The notice must include the bond company name, bond identification number, and procedure by which a

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1 claimant can recover under the bond. The notice must also include the department's website address and
2 notify a consumer that a dealer's surety bond information may be obtained by submitting a request to
3 the department.

4

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

7 Filed with the Office of the Secretary of State on **Date.**

8

9

10

Elizabeth Brown Fore, General Counsel



1108 Lavaca, Suite 800
Austin, Texas 78701
Phone: 512-476-2686
www.tada.org

November 23, 2022

Ms. Elizabeth Fore
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

Sent via email: rules@txdmv.gov

Re: Proposed 43 TAC §215.133, §215.140
General Distinguishing Numbers

Dear Ms. Fore:

On behalf of the Texas Automobile Dealers Association (TADA), please accept the association's comments regarding the proposed rules amending the general distinguishing number rules (GDN) as published in the October 28, 2022, *Texas Register*, 47 *TexReg* 7256 - 7267, and amending 43 TAC §215.133 and 43 TAC § 215.140.

Proposed 43 TAC §215.133. General Distinguishing Number

1. §215.133(1)(C)

The request by the Texas Department of Motor Vehicles (TxDMV) for the applicant to provide the "application's contact name, email address, and telephone number" is required information for a GDN and is necessary for licensing.

Yet, as employees retire and change employers and as email addresses are revised, TADA requests that the applicant be given the opportunity to provide the TxDMV more than one contact, email address, and telephone number so that the licensee will be more assured to receive information and license reminders from the agency.

2. §215.133(1)(D), (E), (G), (I), (N)

The proposal requests social security information, DOB, identity document

Ms. Elizabeth Fore
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information for each owner, partner, member, or principal as well as each officer, director, manager, trustee, or other representative who is authorized to act on behalf of the applicant, and criminal history information as well as a required and signed Certificate of Responsibility. The Certificate of Responsibility is a form proposed to be provided by the TxDMV and required to be signed for a GDN.

The new fingerprint rules recently adopted and effective September 1, 2022, now require owners, the president, managing partners, and persons who act in a representative capacity for an applicant or a holder of a license, including the applicant or holder's officers, directors, members, and managers, to be fingerprinted.

The new fingerprint requirement provides criminal offense history from both the DPS and FBI databases and includes crimes committed in other states in addition to human and drug trafficking crimes as well as verifying a person's identity. The TxDMV is also able to participate in the FBI and DPS "Rap Back" subscription service, which notifies the department when a person's criminal history record changes (47 *TexReg* 2122, April 20, 2022).

The use of fingerprint verification and persons required to be fingerprinted through the FBI and DPS databases should provide the agency much of the same information that is proposed in the required GDN application.

TADA is hopeful that as a GDN applicant and renewal licensee is now subject to the fingerprinting requirements and as the agency is now able to obtain criminal history information and receive updates regarding the applicant and GDN holder from law enforcement, that the application process can be streamlined. Thus, TADA requests that the proposed rule be amended not to require the duplicative information in the GDN application that is now obtained through the fingerprint requirements.

Proposed 43 TAC §215.140. Established and Permanent Place of Business Premises Requirements

3. §215.140(11)(C)

A GDN holder may find that a storage lot is necessary for overflow vehicles. The use of a storage lot may be required for a few weeks, months, or years. The proposal provides that the lot is to be fenced or access-controlled as well as requiring the GDN holder to submit a license amendment within 10 days of establishing the storage lot.

TADA suggests that there may be an instance when use of an additional lot is necessary because of vehicle deliveries; however, the storage lot may be a temporary storage use and not an established storage lot.

A clarification regarding when a storage lot is established and when it is temporary

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is appreciated as additional storage may be needed for only a short period of time and thus no license amendment is necessary.

The owner of the inventory has a desire to safeguard their vehicles, especially when the vehicles are stored on an offsite lot. Although a fence is optimum, it may not always be available if the lot is temporary storage or if the lot owner refuses to fence the area. Allowing for a temporary storage lot in which no sales may occur at the lot is all-important; however, a recognition of the use of a temporary storage lot versus an established lot is requested to be taken into account in the proposal as well as the method to limit access to the lot.

On behalf of the franchised dealers of Texas, I appreciate the opportunity to submit comments to the proposed rules regarding GDNs. If you have any question or would like to discuss, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karen Phillips".

Karen Phillips
General Counsel/EVP

From: [Randy Pretzer](#)
To: [Zz - Resource - GCO Rules](#)
Subject: TXDMV's Proposed New Rules
Date: Thursday, November 3, 2022 5:42:07 PM
Attachments: [Outlook-lfakztfu.png](#)

ATTENTION: This email originated from outside of TxDMV. Malicious software, such as viruses, worms, and ransomware can be transmitted via email attachments and links. Do not click any links or open any attachments unless you recognize the sender and have confirmed the content is safe.

Bravo for the fine job the Texas Motor Vehicle Department has always done. Please never lose sight of the strength and unity of Texas' dealer body. Texas Dealers pride themselves in creating a "self disciplined" group of dealers. In many ways this raises Texas far above other state's Dealer/Motor Vehicle Department relationships.

Requesting a On-site Manager/Dealer's information seems appropriate considering the rampant dealer consolidations and Public Groups current imprint in Texas

Insolvency: inappropriate to ask or inquire. May I suggest a bond based on a Dealership's number of years in business and historical new and used annual sales volume. This should cover any liquidity issues regarding perfecting titles, should this situation arise

Amendments for additional information should be listed in their potential entirety, and provided in advance to your dealers. Such broad scope language is inappropriate and unnecessary.

TxDMV SHOULD visit every potential dealer site prior to approving a new application. Current dealer expansion should not apply. A good Dealer is a good Dealer.

Dealer's office and access: AGREED.

Thank you for considering input from your Dealer body.

Randy Pretzer

W. Randy Pretzer
Vice President, Field Operations
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TIADA
TEXAS INDEPENDENT AUTOMOBILE
DEALERS ASSOCIATION

November 28, 2022

Elizabeth Brown Fore
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

Re: 43 TAC Chapter 215 Proposals, Texas Register, October 28, 2022

Dear Ms. Fore:

TIADA represents over 1,000 independent automobile dealers throughout the state of Texas ranging in size from large publicly traded companies to small and micro-businesses. Historically, independent dealers have relied on TxDMV to timely license them. However, since implementing some of these proposed rules, TxDMV is recommending licensees submit their renewal application up to 90 days in advance due to long delays in processing. These delays are significantly costly to new licensees and creates a burden of uncertainty for existing licensees.

TIADA believes these proposed rules are unnecessary for the over 18,000 legitimate licensed dealers and do little to eliminate temporary tag fraud nor do they do much to prevent and deter fraud in the application process. Additionally, other measures enacted with stakeholder input have addressed the issues, specifically those measures enabled TxDMV to deny licensees temporary tag access, limit the new licensees to 300 temporary tags, and ensure the identity of a license applicant through fingerprinting. TIADA believes TxDMV should continue to use the powers granted to it through recently enacted rules to eliminate fraud without further burdening the over 18,000 legitimate licensees based on the actions of a few licensees. Therefore, TIADA recommends that TxDMV withdraw these rules, including the elements of these rules which were already implemented. Alternatively, if TxDMV is unwilling to withdraw these proposed rules, TIADA is offering the following comments.

TIADA, after reviewing the proposed rules, has the following concerns and suggestions for amendments to 43 TAC §:

§215.133

The proposed rules should recognize that micro-businesses do not always have a website. The proposed rule, as written, creates the requirement that a dealer have a website to obtain a license. §215.133(c)(1)(B) states a GDN applicant must provide “business information, including the name, physical and mailing address, telephone number, Secretary of State file number (if applicable), and website address.” Many micro-businesses only advertise on third-party websites to avoid the expense of maintaining and developing a website dedicated to their business. Additionally, wholesale dealers typically do not have a website as they do not advertise to the public. Therefore, TIADA believes the rule

TIADA Comments to TxDMV – 43 TAC Chapter 215

November 28, 2022

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should be amended by adding “(if applicable)” after the words “website address” as the rule does in the immediately preceding requirement of providing a Secretary of State file number.

The proposed rule fails to account for dealers with multiple websites. §215.133(c)(1)(B) states a GDN applicant must provide “business information, including the name, physical and mailing address, telephone number, Secretary of State file number (if applicable), and website address.” However, this fails to account for dealers with multiple websites, as it is unclear if a dealer must provide its main website only or all websites. The practice of owning multiple websites is becoming more prevalent, as dealers often create multiple websites to take advantage of search engine optimization. TIADA believes the information TxDMV is seeking would be contained in a dealer’s primary website. Therefore, TIADA recommends TxDMV adds the word “primary” immediately before the word “website”.

The proposed rule should not require a social security number as a condition to be a licensed dealer. §215.133(c)(1)(D) states a GDN applicant must provide “the name, social security number, date of birth, and identity information, and ownership percentage of each owner, partner, member, or principal if the applicant is not a publicly traded company.” Likewise, §215.133(c)(1)(E) requires a social security number. Foreign business owners may obtain an Employer Identification Number and/or an Individual Taxpayer Identification Number without having a social security number. Therefore, it is likely that numerous dealerships have ownership that includes people without a social security number. The size of those dealerships likely varies from small operations to large multinational companies owned by multiple entities in multiple countries. Therefore, TIADA recommends adding the words “(if applicable)” after the words “social security number” to §215.133(c)(1)(D) and (E) as the proposed rule does in §215.133(c)(1)(B) after the words “Secretary of State file number”.

The proposed rule implementation related to a bona fide employee is concerning based on current practices. §215.133(c)(1)(G) states a GDN applicant must provide “the name, social security number, date of birth, and identity document information for at least one manager...”. TIADA would like to note that this “proposed rule” appears to have already been implemented. Dealers looking to expand into Texas have already found this rule burdensome because TxDMV is asking for proof of residency. For example, one dealer applied for a license with the plan of transferring an employee from their corporate office to Texas after the license was issued. TxDMV required the bona fide employee to provide residency information, which the employee was unable to provide in a timely manner because the employee had to first establish a Texas address and was living at a hotel. Therefore, TIADA requests that a bona fide employee not be required to produce proof of residency and that a dealer is only required to meet this requirement as written.

The proposed rule should limit inquiries about adverse credit history to only relevant credit history. §215.133(c)(1)(M) requires a GDN applicant to provide “history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged...” The requirement to report unpaid debts is overly extensive. Does a dealer principal with medical debt have to report it if it is over 30 years old? Is there any public benefit to said disclosure? As written, the proposed rule would

TIADA Comments to TxDMV – 43 TAC Chapter 215

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require disclosure of that debt. TIADA does not know of any public benefit from a dealer reporting such an old debt because the statute of limitations to collect debt in Texas is generally four years and a Texas judgment is valid for ten years from the date it is signed by the judge. Therefore, TIADA recommends amending §215.133(c)(1)(M) to read as follows “any outstanding or unpaid debts for the past four years, and liens or judgments in past 10 years, unless the debt was discharged under 11 U.S.C. §§101 *et seq.* or pending resolution under a case filed under the Bankruptcy Act”.

The Certificate of Responsibility is already incorporated into the application. §215.133(c)(1)(N) states a GDN applicant must provide “a signed Certificate of Responsibility.” A Certificate of Responsibility provides little benefit, as all it does is have the applicant affirm all statements and documents attached are true and correct and affirms understanding that applications may be denied, or licenses revoked for falsification. Current law already requires an honest and truthful application. Therefore, TIADA recommends striking §215.133(c)(1)(N) in its entirety.

The proposed rule should only require one form of identification and fingerprinting to verify the identity of a dealer. §215.133(c)(2)(D) states a GDN applicant must provide “at least one of the following identity documents...”. One of the listed documents and fingerprints to identify a dealer should be sufficient to verify the identity of an applicant. Fingerprinting was implemented because it would ensure the public knew who was applying for a license and requiring numerous forms of identification should provide little benefit now that a more robust method of identifying applicants has been implemented. Therefore, TIADA recommends amending §215.133(c)(2)(D) by striking the words “at least”.

The proposed rule should not require dealers to provide both premises photos and a notarized affidavit. §215.133(c)(2)(G) requires that an applicant provide both “premises photos and a notarized affidavit”. TIADA first became aware of this “proposed” requirement in September of 2021, when it was created and enacted by TxDMV. TIADA believes this form should be eliminated as it only results in duplicative reassurances by applicants already providing photos. The penal code provides penalties for submitting a false application. Since this form results in duplicate efforts by dealers, thereby slowing down the licensing process, TIADA recommends striking either “premises photos and” or “and a notarized affidavit” from §215.133(c)(2)(G).

§215.140

The proposed rule is ambiguous as to whether dealers can be open by appointment only.

§215.140(1)(A), as proposed, states a dealer must “be open at least four days per week for at least four consecutive hours per day and may not be open only by appointment.” TIADA recommends amending §215.140(1)(A) to “a retail dealer’s office shall be open at least four days per week for at least four consecutive hours per day. Hours open by appointment only do not count towards meeting this requirement.”

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The proposed rule is ambiguous as to whether wholesale dealers can be open by appointment only. §215.140(2), as proposed, states, “A wholesale motor vehicle dealer may not be open only by appointment.” TIADA believes the current language is not clear. Therefore, TIADA recommends modifying the proposed language of §215.140(2) to read as, “Hours open by appointment only do not count towards meeting this requirement.”

The proposed rule should not require permanent interior walls on all sides. Proposed §215.140(10)(C) states, “a dealer’s office must have permanent interior walls on all sides and be separate from any public area used by another business.” Cubicles, which are temporary interior walls often on three sides, have been used for decades successfully to conduct business in numerous businesses. Therefore, TIADA recommends striking §215.140(10)(C) in its entirety.

The display area barrier requirements should be updated. §215.140(11)(B)(iv) states that “the dealer’s inventory must be separated from the other business’s display or parking area by a material object that cannot be readily removed.” TxDMV has long interpreted this obligation to be met by dealers filling buckets with concrete and connecting them by rope. A dealer recently received a deficiency notice from TxDMV that requested “all sides of the display spaces that do not have a curb need to be roped off.” TIADA also believes a barrier should allow for entry into the area without being removed. Therefore, TIADA recommends amending §215.140(11)(B)(iv) to read as, “the dealer’s inventory must be separated from the business’s display or parking area by a barrier on all sides that do not have a curb except for a side to enter and exit the inventory.”

The proposed rule on the inside display area barrier requirements should allow barriers that are easily removed. 215.140(11)(B)(vii) states that a dealer’s inventory “inside a building” must be “separated by a material object or barrier that cannot be readily removed.” The reason for this change according to TxDMV is to “protect prospective customers from danger as they approach and leave the display area.” There are significant differences in the danger offered by a display area outside compared to one inside, which makes a permanent barrier unnecessary. TIADA believes a rope line would distinguish to the public those cars offered by the dealer from other vehicles without increasing the danger for a customer approaching or leaving the display area. Therefore, TIADA recommends striking the words “by a material object or barrier that cannot be readily removed” and replacing it with “by a barrier.”

The proposed rule requirements to include storage lots on a dealer license needs additional stakeholder input. Proposed §215.140(11)(C) requires that a dealer “submit a license amendment within 10 days of establishing a storage lot”. TIADA is unsure as to what a storage lot is. Does it include cars being stored at the auction waiting for sale? Does it include cars at a service station not owned by the dealer waiting for parts? TIADA is unsure what are the requirements of a storage lot. Does the 2-year lease requirement apply? If all cars are removed, is it no longer a storage lot? Is notification required every time it is not being used? TIADA is unsure what dangers are posed to the public. Is a lot that

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suddenly has cars owned by a dealer more dangerous than the same lot with privately owned cars on it? TIADA recommends striking §215.140(11)(C) in its entirety until there is more clarity.

The proposed language in §215.140(13)(A), and §215.140(13)(D) should be amended to avoid confusion based on §215.140(13)(E). §215.140(13)(E) provides that a dealer may sign a sublease in which the property owner is not the lessor, however §215.140(13)(A) and (D) requires the dealer to sign the lease with the property owner listed as the lessor and for the property owner to sign it as the lessor. Instead of using the term property owner in both sections, TIADA recommends amending §215.140(13)(A) to read as follows “the name of the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;” and amending §215.140(13)(D) to read as “the signature of the lessor and the signature of the dealer as the tenant or lessee.”

The new provision proposed relating to subleases in which the property owner is not the dealer's lessor should be eliminated. §215.140(13)(E) requires a dealer to obtain authorization from a property owner. First, TIADA would like to note this “new provision” was already implemented by TxDMV and TIADA believes it should not have been without a notice and comment period. TIADA already knows of dealers whom TxDMV had to make exceptions for. For example, a Fortune 1000 dealer group that took over the lease of a failed dealership was given an exception when it provided a copy of the lessor’s lease that showed the lessor was allowed to sublease to the dealer. TIADA recommends amending §215.140(13)(E) to state (E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must obtain: (i) a signed notarized statement from the property owner including the following information: . . . or (ii) a copy of the lessor’s lease showing the landlord may reassign their lease or sublease.”

TIADA would like to thank TxDMV for the opportunity to offer its comments on these proposed rules and thank TxDMV staff for the time and effort required in proposing these rules. Please contact me directly with any questions or if you would like to discuss in more detail.

Respectfully,



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