INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 TAC §215.152 and §215.158 concerning the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. The amendments are necessary to implement amended Transportation Code §503.0626 and §503.0631 and new §503.0632(a)-(e) under House Bill 3927, 87th Legislature, Regular Session (2021). The department has also proposed amendments to 43 TAC §§215.150, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database in this issue of the Texas Register.

EXPLANATION. House Bill 3927 amended Transportation Code and added new §503.0632(a)-(e) to authorize the department to establish by rule the maximum number of temporary tags that a dealer or converter may obtain in a calendar year under §§503.062, 503.0625, or 503.063. The maximum tag limits proposed in §215.152 are intended to prevent dealers and converters from fraudulently issuing an excessive amount of temporary tags while allowing legitimate businesses to continue operations unimpacted.

The department met with the Motor Vehicle Industry Regulatory Advisory Committee twice in considering this proposal. The department appreciates the committee members’ serious consideration of the issues presented by HB 3927 and the members’ comments.

The department analyzed data from multiple department systems and developed a model that proposes to consider the factors identified in §503.0632(b) to greatly reduce the volume of fraudulent tag
issuance, yet balances the business needs of legitimate dealers and converters. Implementation of setting
the maximum tag limits under HB 3927 involves programming to multiple department systems, which the
department intends to leverage to also identify potential fraudulent tag issuance earlier even though the
possible volume will be limited for an individual dealer or converter.

The department recognizes that implementing fraud prevention and detection mechanisms
should not adversely impact dealers or converters that are not fraudulently issuing temporary tags. The
system proposed by the department is intended to provide dealers or converters with the number of
temporary tags they need to operate without having to request additional tags. Also, by using existing
department systems, the proposal adds no additional costs for a dealer or converter and creates no new
required activities or reports for dealers.

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

New licensees have been considered as well, and the proposal provides an initial allotment of
temporary tags based on the type of dealer and whether the dealer or converter is a first-time licensee,
existing licensee moving locations, or an existing licensee establishing an additional location to ensure a
maximum tag limit appropriate to each situation.

The following paragraphs address the amendments in this proposal.

The amendment to §215.152(b)(1) is a response to fraudulent activity and clarifies that
information entered to obtain a temporary tag must be true and accurate.
The amendments to §215.152 add new subsections (c)-(l) to establish the maximum number of temporary tags that may be allotted to a dealer or converter. In summary, §215.152(c)-(e) implement Transportation Code §503.0632(b) and establish the calculated number of temporary tags that a dealer or converter past its initial license period will receive from the department with no dealer or converter action. Section 215.152(f) establishes a maximum tag limit for newly licensed dealers and converters. Section 215.152(i) creates the process for dealers to request additional tags. Section 215.152(g), (h), and (j)-(l) address general matters related to the maximum number of temporary tags. Section 215.2 defines terms used in Chapter 215.

Section 215.152(c) establishes the calculation for determining the number of buyer’s temporary tags a dealer will receive. Section 215.152(c)(1) creates the base of the calculation based on activity related to sales implementing §503.0632(b)(1)(B). The base starts with the greater of the dealer’s highest number of in-state buyer temporary tags issued or title transactions recorded in the Registration and Title System (RTS) over the prior three fiscal years. The department is using state fiscal years, because it will allow the department time to collect data, determine the multipliers, test the system, and be ready to release the maximum limits prior to the January 1st calendar year implementation date. All months will be counted towards the maximum limit although a lag will exist. To limit potential fraudulent action, the department will limit the number of temporary tags issued in the calculation to twice the number of RTS transactions. The department then adds to the in-state total the number of out-of-state temporary tags issued to set the base.

Section 215.152(c)(2) then multiplies the base total by a time in business factor to implement §503.0632(b)(1)(A). The anticipated factor is based on the percentage of years the dealer has been in business over the last 10 years. For example, a dealer that has been in business for five years would receive
Section 215.152(c)(3) then multiplies the base total after the addition of the time in business factor by a determined market growth rate factor of not less than zero to implement §503.0632(b)(1)(C). The factor is based on the percentage growth in the market over the prior three fiscal years. For example, the department’s current analysis beginning in 2018 indicates a 9.7 percent growth rate. Thus, the hypothetical dealer would have an additional 15 temporary tags for a total of 165, which is 65 more than the dealer used in any of the three prior years.

Section 215.152(c)(4) is used here as a remedy if the standard formula is not working based on sudden changes in the market to implement §503.0632(b)(2)-(4). This provision allows the department to make adjustments to increase the number of buyer’s temporary tags to all dealers in the state, or a more limited area, if the standard formula is lagging behind. For example, a sudden increase in sales after a slow market period may require a separate temporary increase in the number of buyer’s temporary tags for all dealers until the increased sales data can be incorporated into the standard calculation. Remedies for individual dealer situations are addressed in §215.152(i).

Section 215.152(d) and (e) apply to dealer and converter temporary tags. The subsections are similar in construction to the §215.152(c) in that the subsections use prior temporary tag data to establish a base and then increase the allotment with multipliers based on time in business and growth rate. The growth rate is based on the actual growth in the use of dealer or converter tags. Also, §215.152(d) and (e) have a similar provision to §215.152(c)(4) to make adjustments to a rapidly changing market.

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

Section 215.152(g) and (h) are added to avoid the situation under §215.152(f) in which an existing 
dealer or converter could inflate the number of temporary tags they are allotted or be limited in its ability 
to expand. Section 215.152(g) provides that an existing dealer or converter that is moving its operations 
from one location to a different location will continue with its allotment of temporary tags. The dealer or 
converter will not be issued a block allotment under subsection (f). Section 215.152(h) provides that an 
existing dealer or converter opening an additional location will receive an allotment based on the 
allotment provided to existing locations. Section 215.152(g) and (h) do not limit a dealer or converter from 
requesting additional temporary tags under §215.152(i).

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

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

Section 215.152(i)(3) establishes that the department is not bound to issue only the number of additional temporary tags requested by the dealer or converter and may issue more or less than the request. A decision to grant the request on whole or in part does not constitute a denial of the request.

Section 215.152(i)(4) establishes that a denied request may be appealed to the director of the department’s Motor Vehicle Division. The director’s decision is final. Section 215.152(i)(5) establishes that once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in the prior request.

Section 215.152(j) provides that an allotment change under §215.152(i) does not result in a change to the base allotment in future years. That number will be calculated under §215.152(c), (d) or (e), or allotted under §215.152(f). Ultimately if the additional number of temporary tags are used, that number will become the base. Section 215.152(k) provides that the department will continue to monitor for temporary tag usage that suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067. Section 215.152(l) provides that unused temporary tags do not roll over to subsequent years. The base calculations will be done annually.

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

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments and new section are in effect, there will be no significant fiscal impact to the state or local governments as a result of the enforcement or administration of the proposal. There will be no significant costs to the department and the proposed amendments will have no significant impact on revenue collections.

Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal, because the overall number of motor vehicle sales should not be affected.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston has also determined that, for each year of the first five years the proposed rules are in effect, the public benefits include establishing rules to implement HB 3927 and limiting the criminal activity of a small subset of dealers who fraudulently obtain and sell tens of thousands of temporary tags to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement; or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment. In addition, the department’s calculations indicate that the numbers will be generous so as not to impede commerce by long time dealers and converters or new entrants to the marketplace; or burden license holder and department resources with unnecessary reviews. The proposal is to limit the unauthorized sale of temporary tags and should not limit or affect a license holder’s ability to sell motor vehicles or otherwise conduct legitimate business.

Ms. Johnston anticipates that the proposal will create no additional costs for license holders. A license holder is not required to purchase any special equipment, employ additional persons, or prepare
additional reports. The department will gather the information and make the necessary calculations to
determine the maximum number of temporary tags each dealer or converter will be allotted. To the
extent a request for additional tags is necessary, the department expects the matter can be handled via
the eLICENSING system with primarily the presentation of sales information that shows the tags have
been legitimately issued and that more are needed. This information should be existing and readily
available to the license holder and the use of the eLICENSING system will expedite the review process by
the department.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The cost analysis in the
Public Benefit and Cost Note section of this proposal has determined that proposed §215.152 and
§215.158 will not result in additional costs for license holders, including any small businesses, micro-
businesses, or rural communities. Therefore, the department is not required to prepare a regulatory

Even if a cost were determined, the department has tried to minimize cost to license holders. The
requirements in §215.152 are designed to be flexible and without a requirement that a license holder
incur costs from the purchase of special equipment, employment of additional persons, or preparation of
additional reports. In addition, the proposal is not to limit or affect a license holder’s ability to sell motor
vehicles.

To the extent the department was to perform a regulatory flexibility analysis under Government
Code §2006.002, the department would consider the alternatives of not adopting the amendments to
§215.152, exempting small and micro-business license holders from the amendments to §215.152, and
adopting a limited version of §215.152 for small and micro-business license holders. The department
would reject all three options. It has been small and micro-business license holders that have misused the
temporary tag database and issued the tens of thousands of illegal tags. Further, the requirements of
§215.152 are minimal. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of proposed §215.150 for a small or micro-business license holder.

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

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulation establishing the process for determining the maximum number of temporary tags that may be allocated to dealers and converters and the procedures for requesting additional tags;
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule’s applicability; and
- will not positively or adversely affect the Texas economy.

**REQUEST FOR PUBLIC COMMENT.**
If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 13, 2021. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The department proposes amendments to §§215.152 and 215.158 under Transportation Code §§503.002, 503.0632, and 1002.001.

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

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

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

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

**TEXT.**

**Subchapter E. General Distinguishing Numbers**

43 TAC §215.152 and 215.158

§215.152. Obtaining Numbers for Issuance of Temporary Tags.
(a) A dealer, a federal, state, or local governmental agency, or a converter is required to have internet access to connect to the temporary tag databases maintained by the department.

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

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

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

(c) The department will inform each dealer annually of the maximum number of buyer’s temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of buyer’s temporary tags allocated to each dealer by the department will be determined based on the following formula:

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

(A) the maximum number of in-state buyer’s temporary tags issued during previous fiscal years, or

(B) the maximum number of title transactions processed through the Registration and Title System during previous fiscal years; and

(C) the addition of the maximum number of out-of-state buyer’s temporary tags issued during previous fiscal years; except

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

(2) a multiplier based on the dealer’s time in operation; and
(3) the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the buyer’s temporary tag allotment; and in addition:

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

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

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

1. dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department’s systems from previous three fiscal years. A dealer’s base number will contain the maximum number of dealer temporary tags issued during previous fiscal years;

2. a multiplier based on the dealer’s time in operation; and

3. the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected annual growth rate percentage, not less than zero, to determine the dealer’s temporary tag allotment; and in addition:

4. the department may increase a dealer’s allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:
(A) changes in the market;
(B) temporary conditions that may affect sales; and
(C) any other information the department considers relevant.

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

1. converter temporary tag data determined from the department’s systems from
   previous three fiscal years. A converter’s base number will contain the maximum number of converter
temporary tags issued during previous fiscal years;
2. A multiplier based on the converter’s time in operation; and
3. the total value of paragraphs (1) and (2) of this subsection, multiplied by the expected
   annual growth rate percentage, not less than zero, to determine the converter’s temporary tag allotment.

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

1. changes in the market;
2. temporary conditions that may affect sales; and
3. any other information the department considers relevant.

(f) A dealer or converter that is licensed after the commencement of a calendar year shall be
authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the
remaining months until the commencement of the calendar year after the dealer’s or converter’s initial
license expires. The allocations shall be as determined by the department in granting the license, but not
more than:
(1) 600 temporary tags for a franchised dealer per each tag type, buyer’s temporary tags, agent temporary tags, and vehicle specific tags;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer’s temporary tags, agent temporary tags, and vehicle specific tags; and

(3) A converter will be allocated 600 temporary tags.

(g) An existing dealer or converter that is moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section.

(h) An existing dealer or converter opening an additional location will receive a maximum allotment based on the allotment provided to existing locations.

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

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

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant’s temporary tag activity.
(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested by the dealer or converter. Allocation of a lesser or greater number of additional temporary tags is not a denial of the request.

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

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

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

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

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

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

(a) The dealer, or a federal, state, or local governmental agency, is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place, and promptly destroy any expired tags. The dealer, or a federal, state, or local governmental agency shall report any loss, theft, or destruction of preprinted Internet-down temporary tags to the department within 24 hours of discovering the loss, theft, or destruction.
(b) A dealer, or a federal, state, or local governmental agency, may use a preprinted Internet-down temporary tag up to 12 months after the date the preprinted Internet-down temporary tag is created. A dealer, or a federal, state, or local governmental agency, may create replacement preprinted Internet-down temporary tags up to the maximum allowed, when:

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

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

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

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

(2) 30; or

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

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

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

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

Issued at Austin, Texas, on October 29, 2021.

/s/ Tracey Beaver
Tracey Beaver, General Counsel