

1 **PROPOSAL OF**

2 **SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

3 **43 TAC §215.133 and §215.140**

4 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to Title
5 43 TAC §215.133, General Distinguishing Number, and §215.140, Established and Permanent Place of
6 Business, concerning licensing requirements for applicants for and holders of a dealer general
7 distinguishing number (GDN) under Transportation Code Chapter 503. These proposed amendments are
8 necessary to prevent and deter fraud in the application process, to implement recently adopted
9 fingerprint requirements, to prevent consumer abuse, to improve public safety, and to clarify existing
10 licensing requirements.

11 These proposed amendments also implement two statutory changes from the 87th Legislature,
12 Regular Session, and one statutory change from the 86th Legislature, Regular Session. House Bill 139, 87th
13 Legislature, Regular Session (2021), allows agencies to adopt rules ensuring a military service member,
14 veteran, or military spouse receives appropriate credit in a licensed profession. House Bill 3533, 87th
15 Legislature, Regular Session (2021), increases the minimum surety bond amount and requires posting of
16 a bond notice. House Bill 1667, 86th Legislature, Regular Session (2019), allows independent motor vehicle
17 GDN holders to perform salvage dealer activities without holding a salvage vehicle dealer license.

18 The department proposes amending the dealer assumed name requirements in §215.133 to
19 mirror salvage dealer requirements for consistency and to further protect Texas citizens from fraud.

20 The department also proposes nonsubstantive changes to §215.133 to modernize the language.
21 In §215.133, the department added statutory references and deleted rule text to more closely conform
22 the text with current statutes and avoid future statutory conflicts. Similarly, citations and rule text have
23 been updated to reflect changes in the law or to delete duplicative rule provisions. For clarity and

1 consistency, proposed amendments include standardizing the use of certain terms and retitling or
2 reorganizing the rule text.

3 **EXPLANATION.**

4 On August 2, 2012, amendments to §215.133 and §215.140 streamlined and simplified the license
5 application process, benefiting all applicants for and holders of a GDN. However, to obtain a dealer GDN,
6 bad actors have recently provided false information, such as fake identity documents, fictitious lease
7 agreements, and fake photographs of the business premises. These bad actors may operate virtually or
8 out of an existing, unrelated business, such as a restaurant, gas station, or convenience store that does
9 not meet the statutory requirements of an established and permanent business location under
10 Transportation Code §503.032. Even if a business location is properly established, these bad actors
11 frequently abandon the licensed business location once the dealer GDN is obtained or they post a sign
12 stating that the business is open by appointment only to discourage customer visits, hinder department
13 investigations, and impede law enforcement activities. Additionally, bad actors use hidden storage lots to
14 facilitate criminal acts, making it difficult for the department to hold them accountable. Bad actors then
15 use the dealer GDN to facilitate a broad range of crimes, including fraud, theft, and money laundering.
16 Bad actor license holders also use their GDN to print fraudulent temporary tags, enabling criminals to
17 operate stolen vehicles, and facilitate crimes such as human and drug trafficking. Criminals use fraudulent
18 temporary tags registered under fake names and addresses to hinder law enforcement's ability to trace
19 vehicles. Fraudulent temporary tags are also used to operate motor vehicles that violate environmental
20 and safety regulations, thus endangering the public. In addition, fraudulent temporary tags are used to
21 avoid paying registration fees which fund the construction and maintenance of the state's highway
22 system, including county road and bridge projects.

1 To prevent and deter fraud in the dealer GDN application process, the department adopted a new
2 rule requiring fingerprinting of new applicants for and holders of a GDN under Transportation Code
3 §503.029(a)(6). The fingerprint rule is §211.6, which became effective on September 1, 2022. The
4 department is now proposing to amend existing dealer GDN rules to reinstate certain licensing
5 requirements that were eliminated or modified in 2012 and adding new provisions to further prevent and
6 deter fraud in the dealer GDN application process.

7 In proposing these amendments, the department also considered citizen complaints that the
8 department received concerning GDN dealers, as well as best practice recommendations published by the
9 American Association of Motor Vehicle Administrators (AAMVA).

10 Applicants for a new dealer GDN, as well as existing dealer GDN holders, may inadvertently or
11 purposefully fail to comply, or fail to continue complying, with all requirements for establishing a
12 permanent business location required by §215.140 and Transportation Code §503.032. When the
13 department evaluates an application, and is concerned whether a business location meets all statutory
14 and rule requirements to have an established and permanent place of business or suspects fraud, the
15 department assigns an investigator to visit the business location and evaluate compliance as part of the
16 department’s responsibility under Occupations Code §2301.256 and Transportation Code §§ 503.029,
17 503.034, and 503.038. Based on the department's review of thousands of applications and the results of
18 hundreds of these investigations, the department identified public safety issues regarding business
19 premises, and is proposing to reinstate certain requirements that were eliminated in 2012 that directly
20 affect public safety and welfare. These proposed amendments are consistent with the police power the
21 legislature delegated to the department in Occupations Code §2301.001. The term “police power” isn’t
22 defined in §2301.001. Merriam-Webster Online Dictionary defines the term “police power” as follows:
23 the inherent power of a government to exercise reasonable control over persons and property within its

1 jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally
2 prohibited. “police power.” *Merriam-Webster.com Dictionary*, 2022. <https://www.merriamwebster.com>
3 (1 September 2022). Also, Occupations Code §2301.801(b)(1) authorizes the board to consider the harm
4 or potential harm to the safety of the public when determining the amount of a civil penalty, which is
5 further evidence of the department’s authority to protect the safety of the public under Occupations Code
6 Chapter 2301.

7 Additionally, the department identified premises requirements which could be clarified to enable
8 GDN dealers and applicants to more easily determine if they comply with existing rules and demonstrate
9 commitment to continued compliance. The department also identified rule clarifications that will aid GDN
10 dealers and applicants in understanding premises requirements for an established and permanent place
11 of business. This is important as with increasing frequency GDN applicants and holders are failing to
12 comply with municipal occupancy and licensing requirements, resulting in their inability to establish or
13 maintain a permanent place of business as required by statute. Transportation Code §503.029(a)(3) and
14 (4) require an applicant for an original or renewal dealer GDN to submit a written application that contains
15 information that demonstrates the applicant meets the requirements prescribed by Transportation Code
16 §503.032 and has complied with all applicable state laws and municipal ordinances. These requirements
17 under Transportation Code §503.029(a)(3) and (4) are continuing requirements if the department issues
18 a dealer GDN because the department may cancel the dealer’s GDN under Transportation Code
19 §503.038(a)(7) if the dealer fails to maintain the qualifications for a GDN.

20 The proposed amendments also implement House Bill 139, 87th Legislature, Regular Session
21 (2021), which amended Occupations Code §55.004 to allow agencies to adopt rules ensuring that a
22 military service member, military veteran, or military spouse receives appropriate credit for training,
23 education, and professional experience in a licensed profession. Under Transportation Code §503.0296,

1 certain independent GDN holders must complete web-based education unless they held a GDN for at least
2 10 years as of September 1, 2019. The proposed amendment provides that a military service member,
3 military spouse, or military veteran will receive appropriate credit for training, education, and professional
4 experience when applying for a new GDN or renewing an existing GDN.

5 House Bill 3533, 87th Legislature, Regular Session (2021), amended Transportation Code
6 §503.033 to require an increased surety bond of \$50,000 for certain independent GDN holders and
7 posting of a bond notice at the business location. The proposed amendments delete the reference to the
8 former bond amount of \$25,000 and add a reference to the statutory provision, so any future statutory
9 changes will not require rule amendments. The proposal also sets out the information that must be
10 included in the bond notice that certain independent GDN holders are required to post near the GDN.

11 House Bill 1667, 86th Legislature, Regular Session (2019), added Occupations Code §2302.009 and
12 amended §2302.101 to provide that a person holding an independent motor vehicle dealer GDN is exempt
13 from the requirement that the person also hold a salvage vehicle dealer license to act as a salvage vehicle
14 dealer or rebuilder. The proposed amendments eliminate a reference to a separate license requirement
15 but retain the requirement for these GDN dealers to conspicuously mark salvage motor vehicles offered
16 for sale.

17 Amended §215.133

18 Nonsubstantive changes are proposed to modernize the language in §215.133(b), (c), and (k) by
19 deleting the words or phrases "the provisions of," "herein," "of this section," "Office of the," and
20 "thereon" and substituting words or phrases with the same meaning if required. Current §215.133(k) is
21 proposed to be renumbered as §215.133(j).

1 In §215.133(b), a proposed change adds a statutory reference to Transportation Code §503.024
2 and deletes duplicative statutory text in the rule language to conform the rule with the current statute
3 and avoid future statutory conflicts.

4 Proposed changes in §215.133(c) include requirements for new, renewal, and amendment dealer
5 GDN applications and specify that all applications, including attached documents and required fees, must
6 be submitted electronically on a prescribed form in the department's designated licensing system. Fees,
7 including the authority to prorate fees, are prescribed by statute in Transportation Code §§503.007,
8 503.008, and 503.011, and in Occupations Code §2301.264. Since 2017, when the department first
9 implemented the current online licensing portal, eLICENSING, the department has published and updated
10 step-by-step guides for applicants and license holders and will continue to make these resources available
11 on the department's website. These proposed amendments are consistent with current dealer application
12 requirements and clarify that a dealer renewing or amending a GDN must review current GDN
13 information, update information that has changed, and provide related supporting information or
14 documents for any change or new requirement. For clarity, the information required in a new dealer GDN
15 application is grouped into three categories, depending on whether the information must be entered in
16 the application form, attached as an electronic image to the application, or is a required fee.

17 Amendments in §215.133 (c)(1) subparagraphs (D), (E), (G) and (H) and in §215.133 (c)(2)(D)
18 require an applicant or license holder to provide information and an identity document for an employee
19 or other representative listed in the application. Occupations Code §2301.257 authorizes the department
20 to prescribe the application form and require any information necessary to determine the applicant's
21 qualifications to adequately serve the public. Occupations Code §2301.651(b) gives the board authority
22 to deny an application for an act or omission by an officer, director, partner, trustee, or other person
23 acting in a representative capacity that would be cause for denying a license. Without this information

1 the department could not carry out its statutory responsibility under Occupations Code Chapter 2301 or
2 Transportation Code Chapter 503 to investigate whether a representative committed a disqualifying act
3 or omission that would prevent the applicant from being licensed as a GDN dealer.

4 In §215.133(c), the department is proposing three new requirements to deter fraud in the
5 application process and prevent fraud and public abuse if a dealer GDN is issued. The first proposal is to
6 require the applicant to list a manager or other bona fide employee in the application if the applicant is
7 owned by an out-of-state owner or an owner who will not be present during business hours at the
8 established and permanent place of business in Texas. This requirement will allow the department to
9 identify and appropriately investigate the background and criminal history record of the authorized
10 business representative who will be physically present at the business location in Texas. The second
11 proposal requires the applicant to designate an owner or representative listed in the application as the
12 applicant's temporary tag database account administrator and provide the individual's business email
13 address. This amendment is proposed to implement dealer responsibilities under §215.150 regarding a
14 dealer's authorization to issue a temporary tag, as well as dealer responsibilities under Transportation
15 Code §503.0631(a) and (e) to help ensure the buyer's temporary tag database is secure. The third proposal
16 requires applicants to provide information related to insolvency—including outstanding or unpaid
17 judgments and liens—so the department can evaluate financial trustworthiness and stability as required
18 under §215.89 concerning fitness for licensure.

19 Additionally, in §215.133(c), proposed amendments allow the department to require any other
20 information or documents necessary to fulfill its statutory duties to review and investigate application
21 information under Occupations Code §2301.256; Transportation Code §§503.029, 503.034, and 503.038;
22 and §215.89. Lastly, the proposal also deletes a reference to a concealed handgun license as a form of
23 identification because that license no longer exists.

1 Proposed §215.133(d) is new and implements the September 1, 2022, fingerprint requirement for
2 new applicants and existing dealers holding a GDN under §503.029(a)(6). The fingerprint requirement
3 affects the following GDN holders and applicants: franchised motor vehicle dealers, independent motor
4 vehicle dealers, wholesale motor vehicle dealers, motorcycle dealers, house trailer dealers, trailer or
5 semitrailer dealers, and independent mobility motor vehicle dealers.

6 Current §215.133(d) is renumbered as (e) and the proposed changes add clarity by substituting
7 the term "applicant" for the word "person" and clarifying that the applicant is responsible for including in
8 the application any assumed names to be used by the applicant. An applicant may be an individual or one
9 of several types of business structures or legal entities, and the proposed language includes all applicant
10 types. Additionally, the department proposes adding assumed name requirements to mirror the
11 requirements in Occupations Code §2302.106 that apply to salvage vehicle dealers. This proposed
12 amendment will make the assumed name requirements consistent for an independent motor vehicle
13 dealer GDN holder acting as a salvage vehicle dealer or rebuilder and is therefore subject to the statutory
14 requirements of Occupations Code Chapter 2302. Additionally, this proposal provides increased
15 protection for Texas citizens by applying this assumed name requirement to all GDN dealer categories.
16 Under §2302.106, a license may not be issued in a fictitious name that may be confused with or is similar
17 to that of a governmental entity or is otherwise deceptive or misleading to the public.

18 The text in current §215.133(d) and (e) is proposed for deletion because this requirement is
19 incorporated into amended §215.133(e).

20 In §215.133(f) the words "or authorized" and "only" are proposed to be added to reinforce the
21 existing statutory requirement in Transportation Code §503.001(17) and §503.036(c) that wholesale
22 motor vehicle dealers may sell or exchange vehicles only with other licensed or authorized dealers. This
23 change is necessary to clarify that wholesale motor vehicle dealers may not sell vehicles to retail

1 purchasers, and to inform and protect retail buyers. The language in §215.133(f) stating that wholesale
2 dealers may only buy vehicles from other dealers is proposed for deletion as this limitation is not
3 consistent with Transportation Code §503.001(17) and §503.036(c).

4 An amendment to §215.133(g) corrects the statutory reference to the independent mobility
5 motor vehicle dealer definition in Occupations Code §2301.002.

6 Proposed §215.133(h) clarifies that the department may require a site visit to the established and
7 permanent place of business in Texas as part of the application evaluation process for a new, renewal, or
8 new location application. This proposal also requires a notarized affidavit signed by the applicant
9 confirming that all premises requirements are met and will be maintained during the license period. These
10 proposed amendments are necessary to discharge the department's responsibility to evaluate
11 applications and investigate compliance under Occupations Code §2301.256 and Transportation Code §§
12 503.029, 503.034, and 503.038.

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

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

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

20 The current §215.133(k) is renumbered as §215.133(j) and is modified to add a provision
21 implementing House Bill 139, 87th Legislature Regular Session (2021), which amended Occupations Code
22 §55.004 to allow agencies to adopt rules ensuring that a military service member, military veteran, or
23 military spouse receives appropriate credit for training, education, and professional experience in a

1 licensed profession. Under Transportation Code §503.0296, certain independent GDN holders must
2 complete web-based education unless they held a GDN for at least 10 years as of September 1, 2019. The
3 proposed amendment provides that a military service member, military spouse, or military veteran will
4 receive appropriate credit when applying for a new GDN or renewing an existing GDN. As a result, the
5 applicant may be exempted from the statutory requirement to take the new applicant or license renewal
6 dealer education course. Additionally, the phrase "dealer education and" was added to describe the
7 training referenced in this subsection to be consistent with the statutory term in Transportation Code
8 §503.0296.

9 Amended §215.140

10 For clarity, the title of §215.140 is amended to add the phrase "Premises Requirements" at the
11 end of the title, as this phrase is commonly recognized and used by GDN holders and the department to
12 describe the requirements of this section.

13 Proposed §215.140(1) and §215.140(2) are amended to clarify that a retail or wholesale motor
14 vehicle dealer's office may not be open by appointment only. Other amendments include adding an owner
15 and a voicemail service as acceptable persons or methods of answering the telephone, and clarifying that
16 a caller must be able to speak to a natural person or leave a message during the weekday hours of 8:00
17 a.m. to 5:00 p.m. These amendments are necessary to deter fraud and prevent consumer abuse.

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

21 Section 215.140(3) and (4) clarify department criteria for determining whether an exterior
22 business sign is conspicuous, permanent, and permanently mounted for retail dealers and wholesale
23 motor vehicle dealers. An exterior business sign is considered conspicuous if it is easily visible to the public

1 within 100 feet of the main entrance of the business office, and considered permanent only if made of
2 durable, weather-resistant material. A business sign is considered permanently mounted if bolted to an
3 exterior building wall or bolted or welded onto a dedicated exterior pole or other dedicated sign support
4 permanently installed into the ground at the physical location listed in the application. The proposed
5 amendments also clarify that retail dealers and wholesale motor vehicle dealers are responsible for
6 ensuring that their business sign complies with municipal ordinances and that the lease signage
7 requirements are consistent with the signage requirements in §215.140. Additionally, these proposed
8 amendments clarify that retail and wholesale motor vehicle dealers may use a temporary sign or banner
9 if the dealer provides proof that a sign meeting the department's requirements has been ordered and
10 provides a written statement that the sign will be promptly and permanently mounted upon delivery.

11 Proposed §215.140(4) includes new exterior and interior business sign requirements for
12 wholesale motor vehicle dealers. On exterior signs, wholesale motor vehicle dealers must include the
13 statement "Purchasers must be Licensed Dealers" in letters at least three inches in height. If the wholesale
14 motor vehicle dealer is in a building that does not allow exterior signs, an interior sign on or beside the
15 main door to the wholesale motor vehicle dealer's office must include the same statement in letters at
16 least one inch in height. This sign requirement is necessary to eliminate any confusion whether wholesale
17 motor vehicle dealers may exchange or sell vehicles to retail purchasers and informs and protects retail
18 buyers from making unlawful purchases. This sign requirement is a solution recommended by AAMVA's
19 Vehicle Standing Committee in its Wholesale Vehicle Dealer Licensing Whitepaper published in December
20 2019. The effective date for the sign requirement is September 1, 2023, to provide additional time for
21 affected GDN holders to comply. Proposed changes also clarify department criteria for determining
22 whether a wholesale motor vehicle dealer's interior business sign is considered conspicuous, permanent,
23 and permanently mounted. An interior business sign is considered conspicuous if it is easily visible to the

1 public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office and is considered
2 permanent if the sign is made of durable material with lettering that cannot be changed. An interior
3 business sign is considered permanently mounted if bolted or otherwise permanently attached to the
4 main door or nearby wall of the wholesale motor vehicle dealer's office at the physical location listed in
5 the application.

6 Proposed language in §215.140(4)(B)(i), §215.140(13)(A), and §215.140(13)(D) changes the term
7 “landlord” to “property owner” for consistency.

8 In proposed §215.140(5), the word "requirements" is substituted for "structure" in the first
9 sentence because the phrase "office requirements" more accurately describes the content of this
10 paragraph. In §215.140(5)(A), the definition of a building is expanded to require that a building must have
11 a permanent roof in addition to connecting exterior walls on all sides. Additional clarifying examples were
12 added to §215.140(5)(B) to describe typical documents that demonstrate compliance with municipal
13 ordinances and clarify that the dealer has a continuing responsibility to maintain compliance when a space
14 is remodeled or changes use.

15 In §215.140(5)(C) the department proposes reinstating requirements that a dealer's office may
16 not be located in any room or building that is not open to the public. Proposed new §215.140(5)(D)
17 reinstates a requirement that the dealer's office may not be located in a restaurant, gas station, or
18 convenience store, unless the office has a separate entrance door that does not require a dealer's
19 customer to pass through the other unrelated business. Law enforcement officers have told the
20 department that restaurants, gas stations, and convenience stores are more likely than other business
21 locations to be used to commit fraud and crime, including trafficking in drugs, guns, and people and that
22 temporary tag fraud has been committed by license holders operating out of these types of businesses.
23 Proposed new §215.140(5)(E) states that a dealer's office may not be virtual or be provided by a

1 subscription for office space or office services, because these types of office arrangements are not
2 considered an established and permanent location. The proposed changes to §215.140(5)(C), (D), and (E)
3 are necessary to prevent fraud and consumer abuse and to protect public health and safety.

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

8 Current §215.140(5)(E) is proposed to be renumbered as §215.140(5)(G). Proposed new
9 §215.140(5)(H) reinstates the requirement that a dealer's office have at least 100 square feet of interior
10 floor space exclusive of hallways, closets, or restrooms and have a minimum seven-foot-high ceiling. New
11 §215.140(5)(H) also proposes a new requirement that a dealer's office space accommodate required
12 office equipment and allow a dealer's representative and at least one customer to safely access the office
13 and privately conduct business while seated. These proposed changes are necessary to prevent fraud and
14 consumer abuse and to protect public health and safety. Department staff have investigated and found
15 applicants who put office equipment in a closet and called the closet an office; however, a customer was
16 not able to enter the "office" because there was no space for a person to walk into the closet.
17 Transportation Code §503.032(a)(2)(A) says a location is considered to be an established and permanent
18 place of business if the applicant maintains on the location a permanent furnished office that is equipped
19 as required by the department for the sale of vehicles. A customer and the dealer's representative need
20 to be able to enter the office to privately conduct business, including the possible discussion of financing.

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

1 In §215.140(8) the words "motor vehicle" are proposed to be inserted for consistency in denoting
2 a wholesale motor vehicle dealer.

3 In §215.140(10) the department proposes adding a requirement that a dealer's office must have
4 permanent interior walls on all sides and be separate from any public area used by another business when
5 the dealer's business is housed with another business. This proposed change is necessary to prevent fraud
6 and consumer abuse and to protect public health and safety. A customer and the dealer's representative
7 need to be able to enter the office to privately conduct business, including the possible discussion of
8 financing.

9 The department proposes amending the title of §215.140(11) to include the phrase "storage
10 lot", as this subparagraph includes the requirements for both a display area and a storage lot. Other
11 proposed amendments in §215.140(11) clarify that the display area must be located at the retail dealer's
12 physical business address or contiguous to that address, and that the display area may not be in a
13 storage lot. Other proposed changes clarify that the display area may not be used for customer parking,
14 employee parking, or general storage, and reinstate a requirement that if the dealer's business location
15 includes gasoline pumps or includes another business that sells gasoline, the dealer's display area may
16 not be part of the parking area for gasoline customers and may not interfere with access to or egress
17 from the gasoline pumps, fuel tanks, or fire prevention equipment. A reference to a charging station is
18 being added to this requirement in recognition of recent changes in motor vehicle fuel technology.
19 Reinstating the requirement that a dealer's display area not interfere with access to gasoline pumps,
20 fuel tanks, or fire prevention equipment and adding a reference to a charging station is necessary to
21 protect public health as research conducted by the National Fire Protection Association shows that local
22 fire departments respond to over 4,000 fires per year in or on gas station properties and these fires
23 cause serious injuries including death and property damage of more than thirty million dollars annually

1 on average. Many of the proposed amendments to §215.140(11)(B) are designed to protect prospective
2 customers from danger as they approach and leave the display area and as they focus on a display
3 vehicle. Other proposed changes clarify requirements for when a display area is located inside a
4 building. This proposed language clarifies that when multiple dealers are displaying vehicles inside a
5 building, each dealer's display area must be separated in the same manner as when the shared display
6 area is located outdoors. Also, in §215.140(11)(B), current provisions (v) and (vi) are renumbered (vi)
7 and (vii) to accommodate a proposed new provision. Proposed new §215.140(11)(C) includes the
8 existing requirements for a storage lot and clarifies that a storage lot must be fenced or in an access-
9 controlled location to be considered not accessible to the public by the department. Additionally, a
10 proposed amendment clarifies that the physical address of a storage lot must be included in a new GDN
11 application or a GDN amendment application. If a current GDN dealer has a storage lot as of the
12 effective date of this amendment, the dealer must submit a license amendment within 10 days of the
13 effective date of this amendment to add the physical address of the storage lot. The department must
14 be able to determine where a storage lot is located, so the department can inspect the lot to ensure
15 compliance with department rules. The proposed changes in §215.140(11) are necessary to prevent
16 fraud and consumer abuse and to protect public health and safety.

17 Proposed amendments to §215.140(12) conform the language to be consistent with current
18 §215.133(j) which is proposed to be renumbered as §215.133(i). This proposed amendment further
19 implements House Bill 1667, 86th Legislature, Regular Session (2019), which added Occupations Code
20 §2302.009 and amended §2302.101 to provide that a person holding an independent motor vehicle GDN
21 is exempt from the requirement that the person also hold a salvage vehicle dealer license to act as a
22 salvage vehicle dealer or rebuilder. The proposed amendment eliminates a reference to a separate license
23 requirement and retains the requirement that a salvage motor vehicle offered for sale be conspicuously

1 marked to inform a potential buyer that the vehicle is a salvage motor vehicle. Proposed amendments to
2 §215.140(13) clarify that the dealer is responsible for verifying that the physical address on the application
3 is the correct physical address for the property if only a legal description is provided in the lease.
4 Additionally, a new provision is proposed relating to subleases in which the property owner is not the
5 dealer's lessor. In this circumstance, the dealer must also obtain a signed and notarized statement from
6 the property owner which includes the property owner's full name, email address, mailing address, and
7 phone number, and a statement from the property owner confirming that the dealer is authorized by the
8 property owner to sublease the location and may operate a vehicle sales business from the business
9 location. These proposed changes are necessary to prevent fraud in the application process, to prevent
10 consumer abuse, and to protect public health and safety. This provision also protects GDN dealer
11 applicants. The department has received applications from GDN dealers with a signed sublease who are
12 unable to establish a permanent location and qualify for a GDN because the property owner hasn't
13 authorized a dealership to operate on the property. Transportation Code §503.029(a)(3) requires an
14 applicant for a GDN to submit an application that demonstrates the applicant meets the requirements
15 under Transportation Code §503.032, which requires the applicant to demonstrate that the location for
16 which the applicant requests the GDN is an established and permanent place of business.

17 Proposed changes to §215.140(14) implement House Bill 3533, 87th Legislature, Regular Session
18 (2021), which amended Transportation Code §503.033 to require certain dealers to post a bond notice at
19 the business location. Proposed changes set out the information that must be included in the bond notice.
20 This information includes the bond company name, bond identification number, and procedure by which
21 a claimant can recover under the bond. The posting must also notify a consumer of the department's
22 website address and that the dealer's surety bond information may be obtained from the department.

1 Proposed language also includes substituting the term "GDN" for "license" or "general
2 distinguishing number" for consistency in §215.133 and §215.140. The term "GDN" is defined in §215.2
3 as a General Distinguishing Number.

4 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
5 has determined that for each year of the first five years the amendments will be in effect, there will be no
6 significant fiscal impact to state or local governments as a result of the enforcement or administration of
7 the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there
8 will be no significant effect on local employment or the local economy as a result of the proposal.

9 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five
10 years the proposed amendments are in effect, several significant public benefits are anticipated, and that
11 certain GDN dealers may incur costs to comply with the proposal. The department prioritized the public
12 benefits associated with reducing fraud and related crime and improving public health and safety, while
13 carefully considering potential costs to GDN dealers consistent with board and department
14 responsibilities.

15 Proposed amendments to §215.133 require dealer applicants and GDN holders to provide more
16 information in the application. While some applicants may be required to spend more time completing
17 an application or providing additional information, including notarized affidavits or statements, Ms.
18 Johnston has determined these costs will be offset by the reduced risk of dealer GDN applicants and
19 holders incurring financial penalties due to noncompliance with property owner requirements and
20 municipal ordinances which will benefit both dealers and the public.

21 In proposed amendments to §215.140, wholesale motor vehicle dealers will be required to add
22 text to their business sign. Department research suggests that the cost to add this additional text to an
23 interior business sign will be approximately \$20. The cost for an exterior sign will vary between \$165 to

1 \$710, with an average expected cost of approximately \$250. The department recognizes that these costs
2 may vary widely based on business owner style and design preferences. The department's civil penalty
3 guidelines for selling a vehicle without the appropriate license type ranges from \$500 to \$2,000 per
4 vehicle. Ms. Johnston has determined that the signage cost will be offset by the reduced risk of these GDN
5 holders incurring financial penalties due to noncompliance with laws and regulations and will benefit the
6 public by informing the public and preventing unlawful purchases. Additionally, the sign cost is mitigated
7 in the proposal by setting the minimum letter size requirements at one-half the business name lettering
8 size requirement, delaying the effective date of this requirement to September 1, 2023, and by allowing
9 new and renewal applicants to use a temporary sign if they have ordered the required sign and agree to
10 permanently install the sign promptly on delivery.

11 Proposed amendments to §215.140 include changes in office space, display area, and storage lot
12 requirements to prevent consumer abuse and improve public health and safety. Ms. Johnston anticipates
13 that while most bona fide dealers already comply with these requirements, a few dealers may have to
14 modify their premises to comply. Department research suggests that the cost per square foot of space to
15 comply with office space requirements varies from \$20 to \$30 depending on the market size, however,
16 Ms. Johnston recognizes that the exact cost will vary based on market and business owner preferences,
17 the amount of space currently leased, local construction and material costs, and space availability. She
18 has determined that these costs are necessary to prevent fraud and protect customers' person, property,
19 and personal information. Dealer applicants and GDN holders will have to disclose the physical address of
20 a storage lot. Applicants for a new dealer GDN will not incur an additional fee. Current dealer GDN holders
21 will incur a \$25 statutorily required license amendment fee to add or change the physical address of a
22 storage lot. Ms. Johnston has determined that the public benefit derived from the department's more

1 thorough fitness for licensure investigation, reduction in fraud, and enforcement of department statutes
2 and rules substantially outweighs this cost.

3 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
4 Code §2006.002, the department has determined that this proposal may have an adverse economic effect
5 or disproportionate economic impact on small or micro businesses. The department has determined that
6 the proposed amendments will not have an adverse economic effect on rural communities because rural
7 communities are exempt from the requirement to hold a GDN under Transportation Code §503.024.

8 The cost analysis in the Public Benefit and Cost Note section of this proposal determined that
9 proposed amendments to §215.133 and §215.140 may result in additional costs for certain GDN dealers.
10 Based on data from the Comptroller and the Texas Workforce Commission, the department estimates
11 that more than 80% of the approximately 18,900 affected GDN dealers are small or micro-businesses. The
12 department has tried to minimize costs to these GDN holders. The requirements in §215.133 and
13 §215.140 are designed to be the minimum standards that will prevent fraud in the application process,
14 prevent consumer abuse, and protect public health and safety. These requirements do not include
15 requirements that will cause a GDN dealer to incur unnecessary or burdensome costs, such as employing
16 additional persons.

17 Under Government Code §2006.002, the department must perform a regulatory flexibility
18 analysis. The department considered the alternatives of not adopting the §215.133 and §215.140
19 amendments, exempting small and micro-business GDN dealers from these amendments, and adopting a
20 limited version of these amendments for small and micro-business GDN dealers. The department rejects
21 all three options. The department reviewed licensing records, including records for 109 license holders
22 who have been denied access to the temporary tag system, and determined that small and micro-business
23 GDN dealers are largely the bad actors perpetrating fraud in the application process. Further, the

1 requirements of §215.133 and §215.140 are minimum standards. The department, after considering the
2 purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of
3 proposed amendments to §215.133 and §215.140 for small or micro-business GDN dealers. Also,
4 Government Code §2006.002(c-1) does not require the department to consider alternatives that might
5 minimize possible adverse impacts on small businesses and micro-businesses if the alternatives would not
6 be protective of the health and safety of the state.

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

11 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
12 first five years the proposed amendments are in effect the amendments:

13 --will not create or eliminate a government program;

14 --will not require the creation of new employee positions if acceptable application processing times are
15 extended to accommodate these changes, and will not require the elimination of existing employee
16 positions;

17 --will not require an increase or decrease in future legislative appropriations to the department unless
18 application processing times must be shortened;

19 --will require an increase in fees paid to the department;

20 --will expand existing regulations;

21 --will not repeal existing regulations;

22 --will not increase or decrease the number of individuals subject to the rule's applicability; and

23 --will positively affect the Texas economy.

1 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written
2 comments by 5:00 p.m. CST on November 28, 2022. A request for a public hearing must be sent separately
3 from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov*
4 or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue,
5 Austin, Texas 78731. If a hearing is held, the department will consider written comments and public
6 testimony presented at the hearing.

7 **STATUTORY AUTHORITY.** The department proposes 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
17 procedures as 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

21 **CROSS REFERENCE TO STATUTE.** Occupations Code §§55.004, 2301.001, 2301.002, 2301.151, 2301.152,
22 2301.153, 2301.255, 2301.256, 2301.264, 2302.009, 2302.101, 2302.106; and Transportation Code

1 §§503.001, 503.006, 503.007, 503.008, 503.011, 503.024, 503.027, 503.029, 503.0296, 503.032, 503.033,
2 503.034, 503.036, and 503.038.

3

4 **TEXT.**

5

Subchapter E. General Distinguishing Numbers

6

43 TAC §215.133

7 §215.133. General Distinguishing Number.

8 (a) No person may engage in business as a dealer unless that person has a currently valid

9 GDN [general distinguishing number] assigned by the department for each location from which the person
10 engages in business. A dealer must also hold a GDN [general distinguishing number] for a consignment
11 location, unless the consignment location is a wholesale motor vehicle auction.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (1) Required information: ~~[proof of a \$25,000 surety bond as provided in~~
13 ~~§215.137 of this title (relating to Surety Bond);]~~

14 (A) type of GDN requested;

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

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

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

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

- 1 (F) the name, employer identification number, ownership percentage,
2 and non-profit or publicly-traded status for each legal entity that owns the applicant in full or in part;
- 3 (G) the name, social security number, date of birth, and identity
4 document information of at least one manager or other bona fide employee who will be present at the
5 established and permanent place of business if the owner is out of state or will not be present during
6 business hours at the established and permanent place of business in Texas;
- 7 (H) the name and business email address of the temporary tag database
8 account administrator designated by the applicant who must be an owner or representative listed in the
9 application;
- 10 (I) criminal history record information under the laws of Texas, another
11 state in the United States, the United States, and any foreign jurisdiction for each person listed in the
12 application, including offense description, date, and location;
- 13 (J) military service status;
- 14 (K) licensing history required to evaluate fitness for licensure under
15 §215.89 of this title (relating to Fitness);
- 16 (L) information about the business location and business premises,
17 including whether the applicant will operate as a salvage vehicle dealer at the location;
- 18 (M) history of insolvency, including outstanding or unpaid debts,
19 judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 *et seq.* (Bankruptcy Act) or is
20 pending resolution under a case filed under the Bankruptcy Act;
- 21 (N) signed Certificate of Responsibility, which is a form provided by the
22 department; and

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

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

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

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

9 (C) each assumed name certificate on file with the Secretary of State or
10 county clerk;

11 (D) at least one of the following identity documents for each natural
12 person listed in the application:

13 (i) current driver license;
14 (ii) current Texas Identification Card issued by the Texas
15 Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;
16 (iii) current license to carry a handgun issued by the Texas
17 Department of Public Safety under Government Code, Chapter 411, Subchapter H;

18 (iv) current passport; or
19 (v) current United States armed forces identification.

20 (E) a certificate of occupancy, certificate of compliance, or other official
21 documentation confirming the business location complies with municipal ordinances, including zoning,
22 occupancy, or other requirements for a vehicle business;

1 (F) documents proving business premises ownership, or lease or sublease
2 agreement for the license period;

3 (G) premises photos and a notarized affidavit certifying that all premises
4 requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises
5 Requirements) are met and will be maintained during the license period;

6 (H) evidence of franchise if applying for a franchised motor vehicle dealer
7 GDN;

8 (I) proof of completion of the dealer education and training required
9 under Transportation Code §503.0296, if applicable; and

10 (J) any other documents required by the department to evaluate the
11 application under current law and board rules.

12 (3) ~~Required fees: [the fee as prescribed by law for each metal dealer plate~~
13 ~~requested as prescribed by law;]~~

14 (A) the fee for the GDN for each type of license requested as prescribed
15 by law; and

16 (B) the fee for each metal dealer plate requested by the applicant as
17 prescribed by law.

18 ~~[(4) a copy of each assumed name certificate on file with the Office of the~~
19 ~~Secretary of State or county clerk; and]~~

20 ~~[(5) a photocopy of at least one of the following documents for the owner,~~
21 ~~president, or managing partner of the dealership;]~~

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

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

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

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

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

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

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

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

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

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

1 (h) In evaluating a new or renewal dealer GDN application or an application for a new
2 GDN location, the department may require a site visit to determine if the business location meets the
3 requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized
4 affidavit confirming that all premises requirements are met and will be maintained during the license
5 period [An application for a general distinguishing number may be denied if an applicant for such license
6 has committed any act that could result in license cancellation or revocation under Transportation Code,
7 §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department].

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

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

- 13 (1) act as a salvage vehicle dealer or rebuilder; or
14 (2) store or display a motor vehicle as an agent or escrow agent of an insurance
15 company.

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

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

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

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

7

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
5 requirements during the term of the license. If multiple dealers are licensed at a location, each dealer
6 must maintain 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
9 four consecutive hours per day and may not be open only by appointment.

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

20 (2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a
21 wholesale motor vehicle dealer's GDN [~~license~~] must post its business hours at the main entrance of the
22 wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer or bona fide employee shall be
23 at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two

1 consecutive hours per day. A wholesale motor vehicle dealer may not be open only by appointment.
2 Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's
3 telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner,
4 answering service, voicemail service, or answering machine. A caller must be able to speak to a natural
5 person or leave a message during these hours.

6 (3) Business sign requirements for retail dealers.

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

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

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

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

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

1 (A) Exterior Sign

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

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

18 (B) Interior Sign

19 (i) If the wholesale motor vehicle dealer's office is located in an office
20 building with one or more other businesses and an outside sign is not permitted by the property owner
21 [~~landlord~~], a conspicuous permanent business sign permanently mounted on or beside the main door to
22 the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective
23 September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers"

1 in letters at least one inch in height. An interior business sign is considered conspicuous if it is easily visible
2 to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior
3 sign is considered permanent if made from durable material and has lettering that cannot be changed. An
4 interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main
5 door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the
6 wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph
7 has been ordered and provides a written statement that the sign will be promptly and permanently
8 mounted upon delivery.

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

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

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

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

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

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

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

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

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

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

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

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

17 (iii) accommodate required office equipment; and

18 (iv) allow a dealer and customer to safely access the office and conduct
19 business in private while seated.

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

22 (A) a desk;

23 (B) two chairs;

1 (C) internet access; and

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

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

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

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

14 (10) Dealer housed with other business.

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

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

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

3 (11) Display area and storage lot requirements.

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

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

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

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

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

1 (iv) If a ~~the~~ retail dealer shares a display or parking area with another
2 business, including another dealer, the dealer's vehicle inventory must be separated from the other
3 business's display or parking area by a material object or barrier that cannot be readily removed.

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

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

10 (vii) ~~(vi)~~ The display area may be located inside a building; however, if
11 multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by
12 a material object or barrier that cannot be readily removed.

13 (C) A GDN dealer may maintain a storage lot only if the storage lot is not accessible
14 to the public and no sales activity occurs at the storage lot. A sign stating the dealer's name, contact
15 information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an
16 access-controlled location to be considered not accessible to the public. The applicant must include the
17 physical address of a storage lot in an application for a new dealer GDN. If a storage lot is established after
18 a GDN is issued, the dealer must submit a license amendment within 10 days of establishing the storage
19 lot to add the physical address of the storage lot. Current GDN dealers with a storage lot as of the effective
20 date of this amendment must submit a license amendment within 10 days of the effective date of this
21 amendment to add the physical address of the storage lot.

22 (12) Dealers authorized to sell salvage motor vehicles ~~[holding a license issued under~~
23 ~~Occupations Code, Chapter 2302]. If an independent motor vehicle~~ [a]dealer ~~[also holds a license issued~~

1 ~~under Occupations Code, Chapter 2302, each~~ offers a salvage motor vehicle ~~[that is offered]~~ for sale on
2 the dealer's premises, the vehicle ~~[of the dealer's display area]~~ must be clearly and conspicuously marked
3 with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. This requirement does
4 not apply to a licensed salvage pool operator.

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

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

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

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

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

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

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

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

3 (14) Dealer must display GDN and bond notice [~~license~~]. A dealer must display the dealer's
4 GDN [~~license~~] issued by the department at all times in a manner that makes the GDN [~~license~~] easily
5 readable by the public and in a conspicuous place at each place of business for which the dealer's GDN
6 [~~license~~] is issued. If the dealer's GDN [~~license~~] applies to more than one location, a copy of the GDN
7 [~~original license~~] and bond notice must [~~may~~] be displayed in each supplemental location. A dealer
8 required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the
9 dealer's GDN is displayed. The notice must include the bond company name, bond identification number,
10 and procedure by which a claimant can recover under the bond. The notice must also include the
11 department's website address and notify a consumer that a dealer's surety bond information may be
12 obtained by submitting a request to the department.

13
14 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be
15 within the state agency's legal authority to adopt.

16 Filed with the Office of the Secretary of State on October 17, 2022.

17
18 /s/ Elizabeth Brown Fore
19 Elizabeth Brown Fore, General Counsel