

1 **ADOPTION OF**
2 **CHAPTER 215. MOTOR VEHICLE DISTRIBUTION**
3 **SUBCHAPTER J. ADMINISTRATIVE SANCTIONS**
4 **43 TAC §215.505**

5 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC
6 §215.505 concerning denial of access to the temporary tag system. The amendments to §215.505 are
7 necessary to clarify the rule text. The department adopts §215.505 without changes to the proposed text
8 as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2499). The rule will not be
9 republished.

10 **REASONED JUSTIFICATION.** The amendments to §215.505 are necessary to correct a statutory citation
11 regarding the department’s temporary buyer’s tag database under Transportation Code §503.0631, to
12 add parentheses around text in §215.505(a)(2) that explains when a vehicle is presumed to not be in the
13 dealer’s or converter’s inventory, and to change the word "and" to “or” in §215.505(a)(2) in the list of
14 activities that constitute "fraudulently obtained temporary tags from the temporary tag database" under
15 §215.505. Section 215.505 contains the process for denial of access to the temporary tag database under
16 Transportation Code §503.0632(f) when the department determines that a dealer or converter is
17 fraudulently obtaining temporary tags from the temporary tag database.

18 The department adopted these same amendments through an emergency rule with an immediate
19 effective date of April 14, 2022, as published in the Emergency Rules section of the April 29, 2022, issue
20 of the *Texas Register* (47 TexReg 2387). However, emergency rules adopted under Government Code
21 §2001.034 may not be effective for longer than 120 days and may not be renewed for longer than 60 days.
22 The purpose of this adoption order is to make the amendments to §215.505 permanent. Government

1 Code §2001.034 authorizes a state agency to adopt a rule that is identical to the emergency rule under
2 Government Code §2001.023 and §2001.029.

3 These amendments are necessary because a subset of dealers will fraudulently obtain temporary
4 tags from the temporary tag database without clarification of the rule text. Fraudulently obtained
5 temporary tags pose a threat to the public health, safety, and welfare because a subset of dealers has
6 fraudulently obtained and sold temporary tags to persons who engage in violent criminal activity,
7 including armed robbery, human trafficking, and assaults on law enforcement. Criminals use fraudulently
8 obtained temporary tags that are registered under fake names and addresses to make it harder for law
9 enforcement to trace the vehicles. Fraudulently obtained temporary tags also pose a threat to the public
10 health, safety, and welfare because a subset of dealers has fraudulently obtained and sold temporary tags
11 to persons who operate uninsured and uninspected vehicles that are hazards to Texas motorists and the
12 environment. Fraudulently obtained temporary tags further pose a threat to the public health, safety, and
13 welfare because criminals can attempt to sell stolen vehicles or unsafe salvage vehicles to unsuspecting
14 buyers by using temporary tags to make the vehicles appear legitimate. Criminals have fraudulently
15 obtained temporary tags from the department's system and used the temporary tags in Texas, as well as
16 other states, such as New York and Nevada. In addition, the use of fraudulently obtained temporary tags
17 could deprive the state of revenue. Criminals will take advantage of any loopholes they see as available
18 to them.

19 An amendment to §215.505(a) corrects a statutory citation regarding the department's buyer's
20 temporary tag database under Transportation Code §503.0631, which governs the buyer's temporary tag
21 database. Section 215.505(a) cites to Transportation Code §503.06321, which does not exist. Section
22 215.505 applies to the dealer's and converter's temporary tag database under Transportation Code
23 §503.0626, as well as the buyer's temporary tag database under Transportation Code §503.0631.

1 Amendments to §215.505(a)(2) add parentheses around text that explains when a vehicle is presumed to
2 not be in the dealer's or converter's inventory. The parentheses were included when §215.505(a)(2) was
3 published for proposal in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); however,
4 they were inadvertently omitted in the adoption order that was published in the February 11, 2022, issue
5 of the *Texas Register* (47 TexReg 662). Another amendment to §215.505(a)(2) changes the word "and" to
6 "or" in the list of activities that constitute "fraudulently obtained temporary tags from the temporary tag
7 database" under §215.505. Together, these clarifying amendments will close any perceived loopholes that
8 criminals might otherwise try to exploit.

9 **SUMMARY OF COMMENTS.**

10 No comments on the proposed amendments were received.

11 **STATUTORY AUTHORITY.** The department adopts amendments to §215.505 under Transportation Code
12 §§503.002, 503.0626, 503.0631, and 1002.001.

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

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

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

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

21 **CROSS REFERENCE TO STATUTE.** Transportation Code §§503.0626, 503.0631, 503.0632, and 503.067.

22 **TEXT.**

23 **Subchapter J. Administrative Sanctions**

1 **43 TAC §215.505**

2 §215.505. Denial of Dealer or Converter Access to Temporary Tag System.

3 (a) In this section "fraudulently obtained temporary tags from the temporary tag database "means
4 a dealer or converter account user misusing the temporary tag database authorized under Transportation
5 Code §503.0626 or §503.0631 to obtain:

6 (1) an excessive number of temporary tags relative to dealer sales;

7 (2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a
8 [a] vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the
9 relevant monthly Vehicle Inventory Tax Statement); or

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

12 (b) The department shall deny a dealer or converter access to the temporary tag database
13 effective on the date the department sends notice electronically and by certified mail to the dealer or
14 converter that the department has determined, directly or through an account user, the dealer or
15 converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or
16 converter may seek a negotiated resolution with the department by demonstrating corrective actions
17 taken or that the department's determination was incorrect.

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

20 (d) A dealer or converter may request a hearing on the denial as provided by Subchapter O,
21 Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under
22 this section. The department must receive a written request for a hearing within 26 days of the date of
23 the notice denying access to the database. The request for a hearing does not stay the denial of access

1 under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the
2 department after a request for hearing has been submitted under this subsection by demonstrating
3 corrective actions taken or that the department's determination was incorrect.

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

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

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

14 Issued at Austin, Texas, on July 1, 2022.

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/s/ Elizabeth Brown Fore
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