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

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §215.152 and §215.158, concerning the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. The amendments are necessary to implement amended Transportation Code §503.0626 and §503.0631 and new §503.0632(a)-(e) under House Bill 3927, 87th Legislature, Regular Session (2021). The department adopts §215.152 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757); §215.152 will be republished. The department adopts §215.158 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7757); §215.158 will not be republished. Sections 215.152 and 215.158 have been adopted for immediate effect.

The department has also adopted amendments to 43 TAC §§215.150, 215.153, 215.154, and 215.155 concerning access to the temporary tag database and temporary tag requirements and new 43 TAC §215.505 concerning denial of access to the temporary tag database in -the February 11, 2022, issue of the *Texas Register*.

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

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

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

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

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

22 The department recognizes that implementing fraud prevention and detection mechanisms
23 should not adversely impact dealers or converters that are not fraudulently issuing temporary tags. The

1 model developed by the department is intended to provide dealers or converters with the number of
2 temporary tags they need to operate without having to request additional tags. Also, by using existing
3 department systems, the adopted amendments add no additional costs for a dealer or converter and
4 create no new required activities or reports for dealers.

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

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

16 The following paragraphs address the amendments in this adoption.

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

19 The amendments to §215.152 add new subsections (c)-(l) to establish the maximum number of
20 temporary tags that may be allotted to a dealer or converter. In summary, §215.152(c)-(e) implement
21 Transportation Code §503.0632(b) and establish the calculated number of temporary tags that a dealer
22 or converter past its initial license period will receive from the department with no dealer or converter
23 action. Section 215.152(f) establishes a maximum tag limit for newly licensed dealers and converters.

1 Section 215.152(i) creates the process for dealers to request additional tags. Section 215.152(g), (h), and
2 (j)-(l) address general matters related to the maximum number of temporary tags.

3 Section 215.152(c) establishes the calculation for determining the number of buyer's temporary
4 tags a dealer will receive.

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

12 To limit potential fraudulent action, the department will limit the number of in-state buyer's tags
13 issued in the calculation to twice the number of RTS transactions. The department then adds to the in-
14 state total the number of out-of-state temporary tags issued to set the base. The department revised
15 §215.152(c)(1) based on comments.

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

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

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

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

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

11 Section 215.152(c)(2) then multiplies the base total by a time in business factor to implement
12 §503.0632(b)(1)(A). The anticipated factor is based on the percentage of years the dealer has been in
13 business over the last 10 years. In response to comments the department has amended the text to clarify
14 that the factor will increase by 10% each year. For example, a dealer that has been in business for five
15 years would receive a 50% addition to the base. Thus, a hypothetical dealer that had a calculated base of
16 100 tags and was in business for five years would be allotted 150 buyer's tags. The change does not add
17 additional requirements or costs, or affect persons not on notice of the proposal.

18 Section 215.152(c)(3) then multiplies the base total after the addition of the time in business
19 factor by a determined market growth rate factor of not less than zero to implement §503.0632(b)(1)(C).
20 In response to comments, the department changed the calculation for determining a dealer's growth rate
21 for buyer's tags. The multiplier will be the greater of the dealer's actual growth rate or the actual statewide
22 growth rate. The growth rate for an individual dealer will be determined by calculating the growth rate of
23 the license holder's title transactions and adding that growth rate to the license holder's growth rate for

1 out-of-state buyer's tags issued. The statewide actual growth rate will be the growth rate in the number
2 of title transactions and out-of-state buyer's tags issued statewide. To avoid having unusual factors result
3 in excessively large growth rates, including new licensees being licensed for part of the prior fiscal year,
4 the department has limited the actual growth rate to 200 percent. The cap does not prevent a license
5 holder from requesting additional tags if necessary under §217.152(i). The changes do not add additional
6 requirements or costs, or affect persons not on notice of the proposal.

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

14 Section 215.152(d) and (e) apply to dealer and converter temporary tags. The subsections are
15 similar in construction to the §215.152(c) in that the subsections use prior temporary tag data to establish
16 a base and then increase the allotment with multipliers based on time in business and growth rate. Section
17 215.152(d)(2) and (e)(2) have been amended based on comments similarly to §215.152(c)(2) to state that
18 the time in business multiplier increases by 10 percent each year. Section 215.152(d)(3) and (e)(3) have
19 been amended similarly to 215.152(c)(3) to state that the growth rate multiplier is the greater of the
20 license holder's actual growth rate or the statewide actual growth rate. As in §217.152(c)(3), the license
21 holder's actual growth rate is limited to 200 percent. The changes do not add additional requirements or
22 costs, or affect persons not on notice of the proposal. Also, §215.152(d) and (e) have a similar provision
23 to §215.152(c)(4) to adjust allocations in a rapidly changing market.

1 Based on comments, the discussions of the MVIRAC, and board action, the department
2 has changed proposed §215.152(f), (g), and (h).

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

12 The department has changed §215.152(f) to confirm that the license holder may present
13 information to the department in the licensing process that the minimum number of temporary tags
14 allotted to the new license holder should be increased. First, the department has added the word
15 "initial" before the word "allocations" and after the word "The" in the second sentence. The statement
16 clarifies that a new dealer is not prohibited from requesting additional temporary tags under
17 §215.152(i).

18

19 Section 215.152(f)(1), which applies to franchised dealers is changed to add the statement
20 "unless:

21 (A) the dealer provides credible information indicating that a greater number of
22 tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales,
23 including information from the manufacturer or distributor, or as otherwise provided in this section; and

1 (B) if more than 600 temporary tags are determined to be needed based on
2 anticipated sales and growth, the total number of temporary tags needed, including the 600, will be
3 doubled;”

4 Section 215.152(f)(2), which applies to independent dealers, is modified by adding the
5 statement “unless the dealer provides credible information indicating that a greater number of tags is
6 warranted based on anticipated sales as otherwise provided in this section.” Section 215.152(f)(3),
7 which applies to converters, is modified by adding the statement “unless the converter provides credible
8 information indicating that a greater number of tags is warranted based on anticipated sales, including
9 information from the manufacturer or distributor, or as otherwise provided in this section.”

10 The reasons for increasing the number of temporary tags for a new dealer are addressed in
11 §215.152(g) and (h), as changed based on comments.

12 Proposed §215.152(g) and (h) have been combined and redesignated §215.152(g)(1) and (2).
13 Section 215.152(g)(1) is intended to avoid the situation under §215.152(f) in which an existing dealer or
14 converter could inflate the number of temporary tags they are allotted or be limited in its ability to
15 expand. Section 215.152(g)(1) provides that an existing dealer or converter that is moving its operations
16 from one location to a different location will continue with its allotment of temporary tags. The dealer or
17 converter will not be issued a block allotment under subsection (f). Thus, an existing dealer with less than
18 300 allowed buyer’s tags, cannot inflate its number, and conversely a dealer with more than 300 buyer’s
19 tags will not be penalized for making a business decision.

20
21 Section 215.152(g)(2) provides that an existing dealer or converter opening an additional
22 location will receive an allotment based on the allotment provided to existing locations. In addition to
23 being redesignated, §215.152(g)(2) has been changed to read “opening an additional location will
24 receive a maximum allotment of temporary tags based on the greater of the allotment provided to

1 existing locations, including franchised dealers opening additional locations for different line makes, or
2 the amount under subsection (f) of this section.” The change clarifies that §215.152(g)(2) includes
3 “franchised dealers opening additional locations for different line makes” and revises §215.152(g)(2) by
4 adding “of temporary tags” between “allotment” and “based,” and adding the statement “and not be
5 allocated temporary tags under subsection (f) of this section” to the end of the paragraph.

6 The department has also added §215.152(g)(3) and (4) to address two additional temporary tag
7 allocation situations. Section 215.152(g)(3) provides that a dealership “purchased as a buy-sell
8 ownership agreement will receive the maximum allotment of temporary tags provided to the location
9 being purchased and not be allocated temporary tags under subsection (f) of this section.” Section
10 215.152(g)(4) provides that a dealership “inherited by will or laws of descent will receive the maximum
11 allotment of temporary tags provided to the location being inherited and not be allocated temporary
12 tags under subsection (f) of this section.” License holders may provide information addressing licensing
13 situations otherwise involving retirement or death as allowed in § 215.152(h).

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

18 “(1) franchised dealer, manufacturer, or distributor sales expectations;

19 (2) a change in license required by death or retirement, *except as provided in subsection*
20 *(g) of this section;*

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

22 (4) other similar change of location or ownership that indicates some continuity in
23 existing operations that will result in increased sales.”

1 The changes to §215.152(f), (g), and (h) are consistent with the department’s intent to prevent
2 dealers or converters from having to request additional tags when established sales data is available to
3 the department. The rules contemplate licensees in these scenarios being able to provide additional
4 documentation to obtain an increase beyond the initial allotment. The changes will still allow licensees to
5 request an increase based on the criteria identified, but would not require them to do so and would
6 continue the allotment previously established for the licensee based on the current formula. The changes
7 do not add additional requirements or costs, or affect persons not on notice of the proposal. Further, the
8 changes in §215.152(f), (g), and (h) do not limit a dealer or converter from requesting additional
9 temporary tags under §215.152(i).

10 Section 215.152(i) establishes the process under which a dealer or converter may request
11 additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i)
12 establishes that the dealer or converter may request additional tags after 50 percent of the calendar year
13 allotment have been used. Also, requests will be made through the eLICENSING system. Just as the goal
14 in establishing the initial allotment of temporary tags is intended to carry the license holder through the
15 year without the need for requesting additional tags, an increase following a request for additional
16 temporary tags will be granted with the intent of providing sufficient additional tags for the remaining
17 calendar year. But should circumstances require, a dealer or converter can request additional tags.

18 Section 215.152(i)(1) establishes that the dealer or converter is required to demonstrate that the
19 need for additional temporary tags results from business operations, including anticipated needs, as
20 required by §503.0632(c), and lists some types of information that may be presented, including evidence
21 of factors under §503.0632(b) related to the individual license holder. The list is not exclusive. Section
22 215.152(i)(2) establishes that the department will consider the information provided but may also
23 consider any additional information that the department considers to be relevant to making a

1 determination. As in §215.152(i)(1), a non-exclusive list of information that the department may consider
2 is listed in §215.152(i)(2).

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

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

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

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

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

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

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

13

14 **SUMMARY OF COMMENTS.**

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

18

19 **General**

20 **Comment:**

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

23 **Agency Response:**

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

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

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

8 (a) security requirements for managing user access to the temporary tag database in
9 §215.150 as authorized in Transportation Code §503.0631;

10 (b) a denial of access process in §215.505 as authorized under Transportation Code
11 §503.0632(f).

12

13 **Comment:**

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

16 **Agency Response:**

17 The department agrees that the use of “may” in Transportation Code §503.07632(a) makes the
18 choice to adopt rules discretionary but declines to make a change based on the comment because the
19 statute does not make the application of those rules discretionary after the decision to adopt rules is
20 made. Statute states that the rules apply to dealers and converters. It does not authorize an exception
21 for franchised dealers or state that it only applies to independent dealers.

22

23 **Comment:**

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

7 **Agency response:**

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

11 As previously addressed, Transportation Code §503.0632(a) does not create an exception for
12 certain types of dealers or converters. Following on that Transportation Code §503.07632(b) requires
13 that “The maximum number of temporary tags that the department determines a dealer or converter
14 may obtain under this section must be based on the dealer’s or converter’s anticipated need for
15 temporary tags.” An exception based solely on the number of years the license holder has been in
16 business and the license holder’s administrative violations is not “based on the dealer’s or converter’s
17 anticipated need for temporary tags.”

18 The department also disagrees that the rules create burdensome requirements for dealers and
19 converters. As required by statute, the rules set a calendar year maximum tag limit that requires no
20 action, paperwork, or submissions at all on behalf of existing or new dealers. The formula incorporates
21 the factors laid out in statute by the legislature for existing dealers with a history and establishes a basis
22 for new dealers. Based on comments, the department has expanded and clarified that new licensees
23 may request additional tags at time of licensure if they believe more are needed. All license holders may

1 request additional tags after they have used 50 percent of their annual allocation, but a request is not
2 required. The request for additional temporary tags will be based on the licensee's business operations
3 and anticipated needs as required by statute. Dealers will need to monitor the use of temporary tags
4 and if necessary anticipate a need for additional temporary tags based on Transportation Code
5 §503.0632(c).

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

14 In addition, from a practical aspect the commenters suggestion of a time period to obtain
15 unlimited tags raises the concern of what the department has heard of what some are describing as
16 stealth dealers - a dealer that is part of a criminal enterprise of dealers waiting for one to be taken down
17 only to open and continue the criminal activity. A dealer only needs to sell five vehicles a year to
18 maintain its license. Yet under the commenters suggestion, such a dealer with no suspicion of
19 fraudulently obtaining temporary tags would have access to an unlimited number of tags, thousands of
20 which could be issued in a few days.

21 Also, the criminals to date, would have qualified as a small or micro-business and new entrants
22 to the market. A rule designed or intended to primarily affect these groups without specific legislative
23 authorization is inconsistent with statute. Government Code §2006.001, defines a "micro-business" as

1 having not more than 20 employees, and a "small business" as having fewer than 100 employees or less
2 than \$6 million in annual gross receipts (Emphasis added). This would include the majority of the
3 approximately 20,000 license holders affected by these rules. Government Code §2006.002 requires the
4 department to prepare a regulatory flexibility analysis if a proposed rule has an adverse effect on a small
5 or micro-business. The analysis studies ways to reduce the impact on a small or micro-business, most
6 often by exemption. In addition, the Regulatory Compliance Division of the Office of the Governor
7 reviews rules to ensure that they do not raise barriers to new market entrants.

8 Finally, the commenters' request to apply the rules to a license holder based on mere suspicion
9 of fraudulent activity is also not supported by statute. Transportation Code §503.0632 creates two tools
10 for identifying dealers selling temporary tags, by setting maximum tag limits, and denial of access to the
11 temporary tag database. As stated in this response, statute requires the maximum tag limits to be
12 established by rule, apply to a calendar year, and provides for no exemptions for license holder type,
13 size, or administrative history. The denial of access rule authorized under Transportation Code
14 §503.0632(f) is adopted in a separate proposal as §215.505. Statute and rule provide that the
15 department may deny access to the temporary tag database if the department determines that the
16 license holder has fraudulently obtained temporary tags. Neither statute nor rule allow for action based
17 on mere suspicion and the action is denial of access to the database, not imposition of maximum tag
18 limits. Further, establishing a criterion to implement maximum tag limits on a license holder at any point
19 in a calendar year based on mere suspicion could be both burdensome and disruptive to the license
20 holder.

21

22 **Section 215.152(c) General**

23 **Comment:**

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

3 **Agency response:**

4 The department appreciates the supportive comment.

5

6 **Section 215.152(c) General**

7 **Comment:**

8 A commenter recommends that the department set the minimum number of temporary tags at
9 300 for all small and micro-businesses, because 300 is the minimum used for new businesses, and the
10 complex calculations that are required for determining if the dealership has received the correct
11 number of temporary tags.

12 **Agency Response:**

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

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

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

4

5 **Section 215.152(c) General**

6 **Comment:**

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

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

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

17 (A) time in operation;

18 (B) sales data; and

19 (C) expected growth;

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

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

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

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

1 **Agency Response:**

2 The department appreciates the comment and has attempted to implement the statutory items
3 set out in the comment in this adoption. The department is further evaluating the benefit of site visits
4 versus the cost and burden to the 20,000 legitimate dealers in this state and the department. Because
5 site visits were not addressed in the proposal for public comment, the department declines to add them
6 to this adoption; however, they may be considered in future proposals.

7

8 **Section 215.152(c) Notice**

9 **Comment:**

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

13 **Agency Response:**

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

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

23

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

2 **Comment:**

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

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

10 **Agency Response:**

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

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

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

21 The department takes this action because for most dealers the number of temporary tags issued
22 for out-of-state sales is not the majority of the dealer's business. Also, while the limit analysis does
23 provide a tool to identify potential unauthorized use of buyer's temporary tag, the department does not

1 have access to a similar readily available tool for out-of-state sales. The department can require dealers
2 to present sales documentation and records; however, that would be burdensome for legitimate dealers
3 to present on an annual basis without any related issue of unauthorized use of temporary tags.

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

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

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

10 (A) the greater of:

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

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

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

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

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

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

23

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

2 **Comment:**

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

8 **Agency Response:**

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

19

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

21 **Comment:**

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

1 **Agency Response:**

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

6

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

8 **Comment:**

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

11 **Agency Response:**

12 The department agrees that many factors may affect sales; however, the department declines
13 to make the requested change because the time in business multiplier §§215.152(c)(3), 215.152(d)(3),
14 and 215.152(e)(3) is a general multiplier applicable to all license holders. To the extent that a license
15 holder's actual legitimate use of tags, be it related to an individual or other reason, does indicate the
16 need for temporary tags in excess of the annual allotment, a license holder could assert that in a request
17 for additional tags under §215.152(i)(1) or when being licensed under §215.152(f) as modified.

18 However, increased sales would normally be reflected in an increase in the base number and carried
19 through the formula for an increase in future years without the need for additional action by the license
20 holder.

21

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

23 **Comment:**

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

3 **Agency Response:**

4 The department agrees with the comment and has revised the rule text to state that the growth
5 rate multipliers in §215.152(c)(3), (d)(3) and (e)(3) will be the greater of the dealer's or converter's
6 actual growth rate or the statewide actual growth rate. Increased sales and a stellar growth rate would
7 normally be reflected in an increase in the base number and carried through the formula for future
8 years without the need for additional action by the license holder. To the extent that a license holder's
9 actual legitimate use of tags does indicate the need for temporary tags in excess of the annual
10 allotment, be it related to phenomenal growth or other reason, a license holder could assert that in a
11 request for additional tags and under §215.152(i)(1) or when being licensed under §215.152(f) as
12 modified. To avoid having unusual factors result in excessively large growth rates, including new
13 licensees being licensed for part of the prior fiscal year, the department has limited the actual growth
14 rate to 200 percent. The cap does not prevent a license holder from requesting additional tags if
15 necessary under §217.152(i). The changes do not impose new costs or requirements, or affect persons
16 not on notice of the proposal.

17

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

19 **Comment:**

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

23 **Agency Response:**

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

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

9 However, in some cases additional tags may be needed to maintain that cushion because of
10 circumstances unique to that dealer. As such, §215.152(i) authorizes the license holder to request
11 additional tags by providing information demonstrating the need for additional temporary tags based on
12 sales, anticipated need, or other factors listed in §503.0632(b), which would include a factor that the
13 department considered relevant based on the dealer's or converter's particular circumstance.

14

15 **Section 215.152(d)**

16 **Comment:**

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

19 **Agency Response:**

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

23

1 **Section 215.152(f) New Dealers**

2 **Comment:**

3 Multiple commenters raised concerns that the proposed limitations for new dealers and
4 converters in §215.152(f) and allowances for additional tags under §215.152(g) and (h) were inadequate
5 and failed to address many potential situations related to franchised dealers, buy-sell agreements,
6 change of license holder because of retirement or inheritance, and entry of existing out-of-state
7 operations in to the market. A commenter also requested that the department clarify that is the
8 minimum number that a license holder may obtain under §215.152(f) by inserting the word "initial"
9 before the word "allocations" and after the word "The" to make it clear that a dealer or converter can
10 obtain more temporary tags. A commenter also requests that §215.152(h) be changed to read like
11 215.152(g).

12 **Agency Response:**

13 The department agrees with the comments and based on comments, the discussions of the
14 MVIRAC, and board action, the department has changed proposed 215.152(f), (g), and (h). The changes
15 do not add new requirements or costs, or affect persons not on notice of the proposal.

16 The department has changed §215.152(f) to confirm that the license holder may present
17 information to the department in the licensing process that the minimum number of temporary tags
18 allotted to the new license holder should be increased. First, the department has added the word
19 "initial" before the word "allocations" and after the word "The" in the second sentence. The statement
20 clarifies that a new dealer is not prohibited from requesting additional temporary tags under
21 §215.152(i).

22
23 Section 215.152(f)(1), which applies to franchised dealers is changed to add the statement “unless:

1 (A) the dealer provides credible information indicating that a greater number of
2 tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales,
3 including information from the manufacturer or distributor, or as otherwise provided in this section; and

4 (B) if more than 600 temporary tags are determined to be needed based on
5 anticipated sales and growth, the total number of temporary tags needed, including the 600, will be
6 doubled;”

7

8 Section 215.152(f)(2), which applies to independent dealers, is modified by adding the statement
9 “unless the dealer provides credible information indicating that a greater number of tags is warranted
10 based on anticipated sales as otherwise provided in this section.” Section 215.152(f)(3), which applies to
11 converters, is modified by adding the statement “unless the converter provides credible information
12 indicating that a greater number of tags is warranted based on anticipated sales, including information
13 from the manufacturer or distributor, or as otherwise provided in this section.”

14 The reasons for increasing the number of temporary tags for a new dealer are addressed in
15 §215.152(g) and (h), as changed based on comments.

16 Proposed §215.152(g) and (h) have been combined and redesignated §215.152(g)(1) and (2).
17 Section 215.152(g)(1) is intended to avoid the situation under §215.152(f) in which an existing dealer or
18 converter could inflate the number of temporary tags they are allotted or be limited in its ability to
19 expand. Section 215.152(g)(1) provides that an existing dealer or converter that is moving its operations
20 from one location to a different location will continue with its allotment of temporary tags. The dealer or
21 converter will not be issued a block allotment under subsection (f). Thus, an existing dealer with less than
22 300 allowed buyer’s tags, cannot inflate its number, and conversely a dealer with more than 300 buyer’s
23 tags will not be penalized for making a business decision.

1 Section 215.152(g)(2) provides that an existing dealer or converter opening an additional location
2 will receive an allotment based on the allotment provided to existing locations. In addition to being
3 redesignated, §215.152(g)(2) has been changed to read “opening an additional location will receive a
4 maximum allotment of temporary tags based on the greater of the allotment provided to existing
5 locations, including franchised dealers opening additional locations for different line makes, or the
6 amount under subsection (f) of this section.” The change clarifies that §215.152(g)(2) includes “franchised
7 dealers opening additional locations for different line makes” and revises §215.152(g)(2) by adding “of
8 temporary tags” between “allotment” and “based,” and adding the statement “and not be allocated
9 temporary tags under subsection (f) of this section” to the end of the paragraph.

10 The department has also added §215.152(g)(3) and (4) to address two additional temporary tag
11 allocation situations. Section 215.152(g)(3) provides that a dealership “purchased as a buy-sell ownership
12 agreement will receive the maximum allotment of temporary tags provided to the location being
13 purchased and not be allocated temporary tags under subsection (f) of this section.” Section 215.152(g)(4)
14 provides that a dealership “inherited by will or laws of descent will receive the maximum allotment of
15 temporary tags provided to the location being inherited and not be allocated temporary tags under
16 subsection (f) of this section.” License holders may provide information addressing licensing situations
17 otherwise involving retirement or death as allowed in §215.152(h).

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

22 “(1) franchised dealer, manufacturer, or distributor sales expectations;

1 (2) a change in license required by death or retirement, *except as provided in subsection*
2 *(g) of this section;*

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

4 (4) other similar change of location or ownership that indicates some continuity in
5 existing operations that will result in increased sales.”

6 The changes to §215.152(f), (g), and (h) are consistent with the department's intent to prevent
7 dealers or converters from having to request additional tags when established sales data is available to
8 the department. The rule contemplates licensees in these scenarios being able to provide additional
9 documentation to obtain an increase beyond the initial allotment. The changes will still allow licensees to
10 request an increase based on the criteria identified, but would not require them to do so and would
11 continue the allotment previously established for the licensee based on the current formula. The changes
12 do not add additional requirements or costs, or affect persons not on notice of the proposal. Further, the
13 changes in §215.152(f), (g), and (h) do not limit a dealer or converter from requesting additional
14 temporary tags under §215.152(i).

15 Section 215.152(i) establishes the process under which a dealer or converter may request
16 additional temporary tags as required by new Transportation Code §503.0632(d). Section 215.152(i)
17 establishes that the dealer may request additional tags after 50 percent of the calendar allotment have
18 been used. Also, requests will be made through the eLICENSING system. Just as the goal in establishing
19 the initial allotment of temporary tags is intended to carry the license holder through the year without
20 the need for requesting additional tags, an increase following a request for additional temporary tags
21 will be granted with the intent of providing sufficient additional tags for the for the remaining calendar
22 year. But should circumstances require, a dealer or converter can request additional tags if necessary.

23

1 **Section 215.152(f)(1) New Franchised Dealers**

2 **Comment:**

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

7 **Agency Response:**

8 The department agrees with the comment; however, the department has resolved the issue
9 differently as addressed in other responses to comment. The department declines to make a change
10 based on this comment.

11

12 **Section 215.152(f)(1) and (2) Dealer tags for New Dealers**

13 **Comment:**

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

16 **Agency Response:**

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

22

23 **Section 215.152(f)(2)**

1 **Comment:**

2 Three commenters objected to allowing new independent dealers to have "900" temporary tags
3 as being excessive and failing to address the problem.

4 **Agency Response:**

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

9

10 **Section 215.152(g) and (h) Tags for Dealers or Converters with Existing Operations Relocating or**
11 **Opening New Operations**

12 **Comment:**

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

16 **Agency Response:**

17 The department appreciates the supportive comment.

18

19 **Section 215.152(i) Notice of 50 percent Level**

20 **Comment:**

21 A commenter requests that the department send a notice to a dealer or converter prior to the
22 license holder's 50 percent allotted use.

23 **Agency Response:**

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

5

6 **Section 215.152(i) Appeal after Using 50 percent of the Temporary Tag Allotment**

7 **Comment:**

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

11 **Agency Response:**

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

17

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

19 **Comment:**

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

23 **Agency Response:**

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

3 The department has tried to avoid an adversarial process in the allocation of calendar year
4 temporary tags and has developed a formula with the intent of providing legitimate license holders with
5 enough temporary tags to make the need to request additional temporary tags unnecessary for the
6 majority of license holders. Those that need additional tags may request them.

7

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

9

10 **Comment:**

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

13 **Agency response:**

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

17

18 **Comment:**

19 Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and
20 drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in
21 violation of licensing and registration laws can result in numerous costs to the state and private citizens,
22 including risks to law enforcement at traffic stops with potential criminals, higher insurance rates,

1 accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and
2 increasing toll fees, and higher pollution levels.

3 **Agency response:**

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

7

8 **Comment:**

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

11 **Agency response:**

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

15

16 **Comment:**

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

18 **Agency response:**

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

23

1 **Comment:**

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

4 **Agency response:**

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

7

8 **Comment:**

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

12 **Agency response:**

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

16

17 **Comment:**

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

21 **Agency response:**

22 The department appreciates the comment. The department is not a criminal law enforcement
23 agency. The department partners with law enforcement agencies to address the issue.

1

2 **Comment:**

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

5 **Agency Response:**

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

9

10 **Comment:**

11 An individual commenter asserted that dealers should not be able to sell a vehicle until the
12 dealer possesses the title.

13 **Agency response:**

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

18

19 **Comment:**

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

22 **Agency Response:**

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

8

9 **Comment:**

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

12 **Agency Response:**

13 The department appreciates the comment. The existing rule in Title 43 Texas Administrative
14 Code §215.151 requires the dealer to secure the temporary tag to the vehicle. This requirement is not
15 being removed by this adoption.

16

17 **Comment:**

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

20 **Agency response:**

21 The department appreciates the comment. License renewal is outside the scope of this rule
22 proposal.

23

1 **Comment:**

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

4 **Agency response:**

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

9

10 **Comment:**

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

13 **Agency response:**

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

17

18 **Comment:**

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

22 **Agency response:**

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

4

5 **Comment:**

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

8 **Agency response:**

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

13

14 **Comment:**

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

18 **Agency Response:**

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

22

23 **Comment:**

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

4 **Agency response:**

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

9

10 **Comment:**

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

14 **Agency Response:**

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

17

18 **Comment:**

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

21 **Agency Response:**

22 The department appreciates the comment. The department will consider the comment in future
23 updates to temporary tags.

1

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

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

6 Transportation Code §503.0632(a) provides that the department by rule may establish the
7 maximum number of temporary tags that a dealer or converter may obtain in a calendar year under
8 §§503.062, 503.0625, or 503.063.

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

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

13

14 **TEXT.**

15

Subchapter E. General Distinguishing Numbers

16

43 TAC §215.152 and 215.158

17

18 §215.152. Obtaining Numbers for Issuance of Temporary Tags.

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

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

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

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

4 (c) The department will inform each dealer annually of the maximum number of buyer's
5 temporary tags the dealer is authorized to issue during the calendar year under Transportation Code
6 §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be
7 determined based on the following formula:

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

10 (A) the greater number of:

11 (i) in-state buyer's temporary tags issued in one fiscal year during
12 the previous three fiscal years, or

13 (ii) title transactions processed through the Registration and Title
14 System in one fiscal year during the previous three fiscal years; but

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

17 (B) the addition of the greatest number of out-of-state buyer's
18 temporary tags issued in one fiscal year during the previous three fiscal years;

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

22 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier that
23 is the greater of:

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

5 (B) the statewide actual growth rate percentage identified from the preceding
6 two fiscal years, calculated by the growth of the number of title transactions processed through the
7 Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags
8 issued, not less than zero, to determine the buyer's temporary tag allotment; and

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

11 (A) changes in the market;

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

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

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

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

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

4 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier that
5 is the greater of:

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

9 (B) the statewide actual growth rate percentage identified from the preceding
10 two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, not less than
11 zero, to determine the dealer's temporary tag allotment; and

12 (4) the department may increase a dealer's allotment of agent temporary tags and vehicle
13 specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based
14 on:

15 (A) changes in the market;

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

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

18 (e) The department will inform each converter annually of the maximum number of temporary
19 tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632.

20 The number of temporary tags allocated to each converter by the department will be determined based
21 on the following formula:

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

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

7 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier that
8 is the greater of:

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

12 (B) the statewide actual growth rate percentage identified from the preceding
13 two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less
14 than zero, to determine the converter's temporary tag allotment; and

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

17 (A) changes in the market;

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

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

20 (f) A dealer or converter that is licensed after the commencement of a calendar year shall be
21 authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the
22 remaining months until the commencement of the calendar year after the dealer's or converter's initial

1 license expires. The initial allocations shall be as determined by the department in granting the license,
2 but not more than:

3 (1) 600 temporary tags for a franchised dealer per each tag type, buyer's temporary tags,
4 agent temporary tags, and vehicle specific tags, unless:

5 (A) the dealer provides credible information indicating that a greater number of
6 tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including
7 information from the manufacturer or distributor, or as otherwise provided in this section; and

8 (B) If more than 600 temporary tags are determined to be needed based on
9 anticipated sales and growth, the total number of temporary tags needed, including the 600, will be
10 doubled;

11 (2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary
12 tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information
13 indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in
14 this section; and

15 (3) A converter will be allocated 600 temporary tags, unless the converter provides
16 credible information indicating that a greater number of tags is warranted based on anticipated sales,
17 including information from the manufacturer or distributor, or as otherwise provided in this section.

18 (g) An existing dealer or converter that is:

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

21 (2) opening an additional location will receive a maximum allotment of temporary tags
22 based on the greater of the allotment provided to existing locations, including franchised dealers opening
23 additional locations for different line makes, or the amount under subsection (f) of this section;

1 (3) purchased as a buy-sell ownership agreement will receive the maximum allotment of
2 temporary tags provided to the location being purchased and not be allocated temporary tags under
3 subsection (f) of this section; and

4 (4) inherited by will or laws of descent will receive the maximum allotment of temporary
5 tags provided to the location being inherited and not be allocated temporary tags under subsection (f)
6 of this section.

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

9 (1) franchised dealer, manufacturer, or distributor sales expectations;

10 (2) a change in license required by death or retirement, except as provided in subsection
11 (g) of this section;

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

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

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

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

22 (2) The department shall consider the information presented and may consider
23 information not presented that may weigh for or against granting the request that the department in its

1 sole discretion determines to be relevant in making its determination. Other relevant information may
2 include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's
3 temporary tag activity.

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

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

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

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

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

17 (D) The Motor Vehicle Division Director will review the submission and any
18 additional statements concerning the information submitted in the original request and render an opinion
19 within 10 business days of receiving the appeal. The Motor Vehicle Division Director may decide to deny
20 the request and issue no additional tags, or award an amount of additional temporary tags that is lesser,
21 equal to, or greater than the request.

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

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

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

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

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

15 (k) The department may at any time initiate an enforcement action against a dealer or converter
16 if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code
17 §§503.038, 503.0632(f), or 503.067.

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

20
21 §215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.

22 (a) The dealer, or a federal, state, or local governmental agency, is responsible for the safekeeping
23 of preprinted Internet-down temporary tags and shall store them in a secure place, and promptly destroy

1 any expired tags. The dealer, or a federal, state, or local governmental agency shall report any loss, theft,
2 or destruction of preprinted Internet-down temporary tags to the department within 24 hours of
3 discovering the loss, theft, or destruction.

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

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

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

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

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

16 (2) 30; or

17 (3) 1/52 of the dealer's, or federal, state, or local governmental agency's, total annual
18 sales.

19 (d) For good cause shown, a dealer, or a federal, state, or local governmental agency, may obtain
20 more than the number of preprinted Internet-down temporary tags described in subsection (c) of this
21 section. The director of the Motor Vehicle Division of the department or that director's delegate may
22 approve, in accordance with this subsection, an additional allotment of preprinted Internet-down
23 temporary tags for a dealer, or a federal, state, or local governmental agency, if the additional allotment

1 is essential for the continuation of the dealer's, or a federal, state, or local governmental agency's,
2 business. The director of the Motor Vehicle Division of the department, or a federal, state, or local
3 governmental agency, or that director's delegate will base the determination of the additional allotment
4 of preprinted Internet-down temporary tags on the dealer's, or a federal, state, or local governmental
5 agency's, past sales, inventory, and any other factors that the director of the Motor Vehicle Division of
6 the department or that director's delegate determines pertinent, such as an emergency. A request for
7 additional preprinted Internet-down temporary tags must specifically state why the additional preprinted
8 Internet-down temporary tags are necessary for the continuation of the applicant's business.

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

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 February 25, 2022

15

16

17

/s/Aline Aucoin
Aline Aucoin, Acting General Counsel