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ADOPTION OF
CHAPTER 215. MOTOR VEHICLE DISTRIBUTION
SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS
43 TAC §§215.150, 215.151, 215.153, 215.154, AND 215.155
SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

43 TAC §215.505

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC §§215.150, 215.151, 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. The amendments and new section are necessary to implement amended Transportation Code §§503.0626, 503.063, 503.0631, and 503.067, and new §503.0632(f) concerning denial of access to the temporary tag database, management of the temporary tag database, requirements related to the issuance of certain temporary tags without an inspection, and prohibits the display and issuance of unauthorized temporary tags under House Bill (HB) 3927, 87th Legislature, Regular Session (2021).

The department adopts §§215.151, 215.153, and 215.155 without changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); §§215.151, 215.153, and 215.155 will not be republished. The department adopts §§215.150, 215.154, and 215.505 with changes to the proposed text as published in the November 12, 2021, issue of the *Texas Register* (46 TexReg 7752); §§215.150, 215.154, and 215.505 will be republished. Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 have been adopted for immediate effect. The department has also adopted amendments to 43 TAC §215.152 and §215.158 concerning maximum temporary tag limits in this issue of the *Texas Register*.

1 **REASONED JUSTIFICATION.** House Bill 3927 amended Transportation Code §503.0626 and §503.0631 and
2 adds §503.0632 to provide the department with tools to limit the fraudulent misuse of the temporary tag
3 database. The tools include the authority to deny access to the temporary tag database without having to
4 first revoke the dealer's or converter's license and to establish the maximum number of temporary tags
5 that a dealer or converter may issue. New §215.505 addresses the process for denial of access to the
6 temporary tag database.

7 In addition, HB 3927 amended Transportation Code §503.0626 and §503.0631 to direct the
8 department to manage the temporary tag database and amended Transportation Code §503.067 to
9 prohibit the display and issuance of unauthorized temporary tags. Amendments to §§215.150, 215.151,
10 215.153, 215.154, and 215.155 address managing the database and limiting the ability of unauthorized
11 users to obtain and display temporary tags.

12 Finally, HB 3927 amended Transportation Code §503.063 concerning requirements related to the
13 issuance of buyer's temporary tags to certain vehicles sold out-of-state or at auction without an
14 inspection, which is addressed in amendments to §215.155.

15 The department met twice with the Motor Vehicle Industry Regulatory Advisory Committee in
16 considering this adoption. The department appreciates the committee member's serious consideration of
17 the issues presented by HB 3927 and the member's comments.

18 The department published the proposal for comment in the *Texas Register* on November 12,
19 2021. The department also published proposals for amendments to §215.152 and §215.158 concerning
20 maximum temporary tag limits and 43 TAC §§217.2, 217.4, 217.23, 217.28, 217.36, 217.45, 217.46, and
21 217.89 concerning the implementation of SB 876. Some commenters chose to make comments on more
22 than one proposal in one submission or not specify the proposal that they were commenting on. The
23 department has considered all timely received comments in respect to the proposal the commenter
24 stated that they were commenting on or to which the comment could apply. The department has not

1 excluded any comments because the submission included, referred to, or could apply to multiple
2 proposals.

3 The following paragraphs address the amendments and new section.

4 The amendments to §215.150(a) conform to the amendment requirement in Transportation Code
5 §503.067 that temporary tags must be for an authorized purpose. The amendments to §215.150(b)
6 reference that a dealer's or converter's ability to obtain temporary tags is limited by new Transportation
7 Code §503.0632(a-e) concerning maximum tag limits and §503.0632(f) concerning denial of access to the
8 temporary tag database.

9 New §215.150(d) establishes requirements to manage access to the temporary tag database. The
10 requirements are consistent with Transportation Code §503.0626 and §503.0631 which, as amended,
11 require the department to manage a secure database and support preventing unauthorized access to the
12 database necessary to implement §503.067. The department has amended §215.150(d)(4) in response to
13 comments. The department agrees with the comment that the preprinted tags should be securely stored
14 and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited
15 numbers under §215.158. Consistent with the commenters suggestions, the department has changed the
16 text to add to §215.150(d)(4) "securing printed tags and destroying expired tags, by means such as storing
17 printed tags in locked areas and shredding or defacing expired tags;" as examples of securing and
18 destroying the preprinted tags. Establishing a requirement for a separate secure office space or shredding
19 equipment would be inconsistent with the minimal premises requirements set forth in §215.140(5) and
20 (6), which has not been proposed for amendment.

21 The amendment to §215.151 adds converters to the procedure for displaying a temporary tag as
22 required by Transportation Code §503.0625.

23 The amendments to §215.153 are necessary to prevent unauthorized access to temporary tags necessary
24 to implement §503.067. The amendments remove the sample copies of temporary tags from display,

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1 because the department is concerned that unauthorized persons may be able to use computer software
2 to manipulate the sample to create a high-quality tag, or at least a better-quality copy of a temporary tag
3 than could be obtained by photography or scanning. Further, having the tags online limit the
4 department's ability to change the design even if requested by law enforcement. As such, the department
5 proposes not to display the design. Law enforcement would be informed of the design and any design
6 changes, and dealers and converters using the database will print the current design for their customers
7 and own needs.

8 The amendments to §215.154 clarify the use of dealer's tags and support preventing unauthorized
9 access to the database necessary to implement §503.067. The amendment to §215.154(d)(1) adds that
10 designation and informs the reader that Transportation Code §503.062 states the authorized uses of a
11 dealer temporary tag. This avoids the potential incorrect inference that a dealer's tag could be used for
12 any purpose not prohibited in redesignated §215.154(d)(2). The amendments to redesignated
13 §215.154(d)(2)(D) clarify that a dealer's tag cannot be issued for an off-highway vehicle, which are now
14 defined in Transportation Code §551A.001, because off-highway vehicles are not eligible for registration
15 under Transportation Code §502.140. Section 551A.001 defines an off-highway vehicle as an "all-terrain
16 vehicle or recreational off-highway vehicle," a "sand rail," or a "utility vehicle."

17 The amendments to §215.154(e)(3) update the limitation on use of courtesy cars to the current
18 allowed use. As addressed in the comments, the department has changed the reference to correct a
19 typographical error and conform §215.154(e)(3) with the limitation on metal dealer plates under
20 §215.138(d)(3). Transportation Code §503.068(b)(1) provides that "A person may not use a metal
21 dealer's license plate or dealer's temporary tag on: (1) service or work vehicle, except as provided by
22 Subsection (b-1)." The department has defined "a dealer's service or work vehicle" in §215.138(d)(3) as
23 "a courtesy car on which a courtesy car sign is displayed;" and in §215.154(e)(3) as "a courtesy car,"
24 despite the source of the prohibition being the same statute.

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1 As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a
2 dealer's temporary tag on a vehicle used by a prospective buyer to operate while the vehicle is being
3 demonstrated, or on a vehicle for a customer to operate while the customer's vehicle is being repaired.
4 These are commonly called "courtesy vehicles," although the actual term is not defined in rule. Thus,
5 §215.15(e)(3) is changed to read "a courtesy car on which a courtesy car sign is displayed," which is
6 consistent with §215.138(d)(3). The change is intended to clarify that a "courtesy car" operating under
7 Transportation Code §503.062(b) may have a dealer's temporary tag. The change does not add additional
8 costs or requirements or affect persons not on notice of the proposal.

9 Based of questions from the Regulatory Compliance Division of the Office of the Governor, the
10 department removed the proposed amendment to the reference to §215.153(d)(3) or (4) in §215.155(f).
11 The existing reference to §215.153(d)(3) or (4) was stuck because it is a typographical error. The
12 Regulatory Compliance Division requested why the sentence was not parallel to the statement in the
13 preceding sentence. The change is not intended to authorize the issuance of buyer's tags for golf carts or
14 all-terrain vehicles. The matter may be reconsidered in future rulemaking. The change does not add
15 additional costs or requirements or affect persons not on notice of the proposal.

16 New §215.505 establishes the process for denial of access to the temporary tag database under
17 new Transportation Code §503.0632(f), as added by HB 3927. New §215.505(a) describes the conduct
18 that constitutes "fraudulently obtained temporary tags from the temporary tag database," and is grounds
19 under §503.0632(f), for denial of access to the temporary tag database.

20 New §215.505(b) has been revised based on comments to remove the 10-day period and begin
21 the denial of access immediately upon sending notice to the license holder. In making this decision, the
22 department has considered that the determination will follow an investigation of the license holder
23 engaging in fraudulently obtaining temporary tags from the database. The investigation will vary
24 depending on the activity involved, if the activity is ongoing, the response of the license holder to

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1 department inquiries, and information the license holder has provided the department. The dealer or
2 converter may negotiate with the department during this period. New §215.505(c) provides that the
3 notices will be sent to the dealer's or converter's last known address on the department's records.

4 New §215.505(d) establishes the appeal process under Subchapter O, Chapter 2301, Occupations
5 Code as required by new §503.0632(f) and HB 3927. The appeal process requires the dealer to submit a
6 request for hearing with the department within 26 days from the date the initial notice is sent to the
7 dealer or converter. Further, as proposed, requesting a hearing will not stay the denial of access.

8 New §215.505(e) provides that the department may also issue a Notice of Department Decision
9 stating administrative violations as provided in §215.500 concurrently with the notice of denial of access.
10 The subsection is to clarify that the denial of access process based on the department's determination
11 that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database
12 is separate from any administrative action the department may bring against the dealer or converter,
13 even though they may be based on the same facts. New §215.505(f) provides that the denial
14 determination will become final if the dealer or converter does not request a hearing or enter into a
15 settlement agreement with the department within 26 days of the date of the notice denying access to a
16 database.

17 The department adopts §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 for
18 immediate effect to act against continuing temporary tag fraud.

19

20 **SUMMARY OF COMMENTS.**

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

24 **General**

1 **Comment:**

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

4 **Agency Response:**

5 That department agrees with the commenters and has endeavored to implement HB 3927 in
6 that respect to aid law enforcement and the department to work together in stopping the fraud without
7 being onerous to legitimate dealers, including the:

8 (1) adoption of:

9 (a) security requirements for managing user access to the temporary tag database in
10 §215.150 as authorized in Transportation Code §503.063;

11 (b) a denial of access process in §215.505 as authorized under Transportation Code
12 §503.0632(f);

13 (2) in a separate adoption submitted on this day, the adoption of maximum tag limits in
14 §215.152 in this adoption as authorized under Transportation Code §503.0632(a)-(e) that sets out a
15 formula designed to provide dealers with more tags than they have used in prior fiscal years and not
16 require any additional reporting on behalf of dealers, while preventing criminals from accessing
17 unlimited numbers of tags.

18

19 **Section 215.150(d)**

20 **Comment:**

21 A commenter suggests that each person who has access to the temporary tag database must
22 have and use a unique identification code and password and that a list of all authorized users, including
23 their identification information, be made available to the department.

24 **Agency Response:**

1 The department agrees with the comment and has designed the temporary tag database system
2 to require each person who has access to the temporary tag database to have and use a unique
3 identification code and password and that a list of all authorized users, including their identification
4 information, be made available to the department.

5 Under law prior to HB 3927, the department was not authorized to deny a dealer of converter
6 access to the temporary tag database. The individuals with access to the temporary database are
7 authorized as sub-users by a license holder. The new denial of access authority under new
8 Transportation Code §503.0362(f) and as implemented in §215.505 will allow the department to take
9 action against criminals engaging in such practices.

10

11 **Section 215.150(d)**

12 **Comment:**

13 A commenter states that the proposed requirements for dealers and converter to securely store
14 and later fully destroy preprinted temporary tags is ambiguous. The commenter suggests adding means
15 to accomplish securing and destroying the tags.

16

17 **Agency Response:**

18 The department agrees with the comment that the preprinted tags should be securely stored
19 and later fully destroyed. The provision refers to internet down tags which dealers may obtain in limited
20 numbers under §215.158. Consistent with the commenters suggestions the department has changed
21 the text to add to §215.150(d)(4) "securing printed tags and destroying expired tags, by means such as
22 storing printed tags in locked areas and shredding or defacing expired tags;" as examples of securing and
23 destroying the preprinted tags. Establishing a requirement for a separate secure office space or

1 shredding equipment would be inconsistent with the minimal premises requirements set forth in
2 §215.140(5) and (6), which has not been proposed for amendment.

3

4 **Section 215.150(d)**

5 **Comment:**

6 A commenter suggests that the department have and maintain a secure real-time database of
7 information on vehicles which the dealer or converter has issued a temporary tag; and that the
8 department have and maintain a secure real-time database of information on persons whom temporary
9 buyer's tags are issued.

10 **Agency Response:**

11 The department agrees with the comment and has designed the temporary tag database system
12 as a secure real-time database for recording information on vehicles which the dealer or converter has
13 issued a temporary tag, and information on persons whom temporary buyer's tags are issued. The
14 information entered by criminals may, in some respects, be fictitious, including the location of the
15 vehicle, and the name or address of the owner. Transportation Code §503.0362(f) and as implemented
16 in §215.505 will allow the department to take action against criminals engaging in such practices.

17

18 **Section 215.150(d)**

19 **Comment:**

20 A commenter asserts that the department should require license holders to maintain a record of
21 any unauthorized access to the temporary tag database, the details of the issuance of the unauthorized
22 temporary tags, and report such access to the department on a weekly or on occurrence basis, including
23 providing details of immediate corrective actions, and providing information of such activities to the
24 department.

1 **Agency Response:**

2 The department agrees that the dealer has responsibility to monitor access and use of the data
3 base through the license holder's account. The department has authority to deny dealers access to the
4 database and enforcement authority. As such, dealers are encouraged to record any unauthorized
5 access to the database, take immediate action to stop the unauthorized access on their account to the
6 database, and report the activity to the department to reduce fraud and mitigate potential sanctions.
7 The department declines to add a reporting and record keeping requirement, because it could add
8 additional costs and burden legitimate dealers.

9
10 **Section 215.150(d)**

11 **Comment:**

12 A commenter asserts that it is inappropriate to make a dealer or converter responsible for all
13 access to the department's system by unauthorized users, including for breaches of the database that
14 are outside of the license holder's control such as attacks by hackers. The commenter suggests that the
15 department revise §215.150(d) to read (based on the proposed new text):

16 "A dealer or converter is responsible for ~~all~~ taking reasonable measures to safeguard the use
17 and access to the applicable temporary tag database under the dealer's or converter's account,
18 including access by any user or unauthorized person. Dealer and converter ~~duties~~ reasonable measures
19 include, but are not limited to monitoring temporary tag usage, managing account access, and taking
20 timely and appropriate actions to maintain system security, including:"

21 Alternatively, the commenter suggests just deleting the word "all" from first sentence from the
22 provision.

23 **Agency Response:**

1 The department agrees that internet hacking is a serious matter, and the department has
2 designed and maintains the temporary tag database system to limit that possibility. The department
3 declines to make either of the proposed change because the temporary tag database is a department
4 system and as such the department retains responsibility for overall system security. However, dealers
5 and converters must be responsible for all access to the system under their account as described in the
6 subsection. A dealer operating within its temporary tag allotment will likely be the first to spot excess
7 tag usage and be able to take corrective action by identifying a criminal and notifying the department of
8 a problem.

9

10 **Section 215.150(d)**

11 **Comment:**

12 A commenter suggests adding to §215.152(d)(2), a specific number of authorized sub-users that
13 would have access to the database.

14 **Agency Response:**

15 The department appreciates the comment. The department declines to make the requested
16 change because it was not proposed for comment and may vary based on the dealer or converter, by
17 size type, or another factor unknown to the department. The department will consider the matter for
18 future proposals.

19

20 **Section 215.150(d)**

21 **Comment:**

22 A commenter suggests adding a requirement for the license holder to submit their password
23 policy and provide employment documentation to support all bona fide employees upon the
24 department request.

1 **Agency Response:**

2 The department agrees with the commenters intent but declines to make the requested change.

3 The department will request the information as needed.

4

5 **Section 215.153**

6 **Comment:**

7 Two commenters stated that the department should make it harder to copy or recreate paper
8 temporary tags.

9 **Agency response:**

10 The department appreciates the comment. The department has worked with law enforcement
11 to implement design changes that make the temporary tags harder to copy and recreate. These rules
12 address efforts to stop actual temporary tags from being issued by a few criminals.

13

14 **Section 215.154 Courtesy Vehicle**

15 **Comment:**

16 Two commenters suggested that the department change or delete the reference to courtesy
17 vehicles because it is incorrect.

18 **Agency Response:**

19 The department agrees and has changed the reference to correct a typographical error and
20 conform §215.154(e)(3) with the limitation on metal dealer plates under §215.138(d)(3). Transportation
21 Code §503.068(b)(1) provides that “A person may not use a metal dealer’s license plate or dealer’s
22 temporary tag on: (1) service or work vehicle, except as provided by Subsection (b-1).” The department
23 has defined “a dealer's service or work vehicle” in §215.138(d)(3) as “a courtesy car on which a courtesy

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1 car sign is displayed;" and in §215.154(e)(3) as "a courtesy car," despite the source of the prohibition
2 being the same statute.

3 As indicated by the commenters, Transportation Code §503.062(b) allows a dealer to use a
4 dealer's temporary tag on vehicles used by a prospective buyer to operate while the vehicle is being
5 demonstrated, or on a vehicle for a customer to operate while the customer's vehicle is being repaired.
6 These are commonly called "courtesy vehicles," although the actual term is not defined in rule. Thus,
7 §215.15(e)(3) is changed to read "a courtesy car on which a courtesy car sign is displayed," which is
8 consistent with §215.138(d)(3). The change is intended to clarify that a "courtesy car" operating under
9 Transportation Code §503.062(b), may have a dealer's temporary tag. The change does not add
10 additional costs or requirements or affect persons not on notice of the proposal.

11

12 Section 215.155 Inspections of out of state vehicles.**13 Comment:**

14 A commenter stated that HB 3927 added Transportation Code §503.063(i) clarifying that
15 vehicles being sold out-of-state could be issued a temporary buyer's tag without a vehicle inspection.

16 Agency Response:

17 The department agrees with the comment. The department did not assert that vehicles being
18 sold out-of-state required an inspection; however, other states may have misinterpreted Texas law. To
19 aid in clarifying the issue the department proposed §215.155(b)(1) to reference the inspection
20 exemption under Transportation Code §503.063(i).

21

22 Section 215.505(a)**23 Comment:**

1 Two commenters raise concerns that the section provides no guidepost with respect to what is
2 an excessive number of temporary tags relative to a dealer's sales. The commenters ask
3 (1) is the benchmark twice the number of sales or ten percent;
4 (2) is the amount one tag or an amount that is "grossly" excessive;
5 (3) and what is an "excessive" number of buyer's temporary tags versus excessive agent's
6 temporary tags versus excessive vehicle specific temporary tags?

7 **Agency Response:**

8 The department appreciates the comments and considers that HB 3927 is meant to aid law
9 enforcement and the department to work together in stopping the fraud without being onerous to
10 legitimate dealers. The department declines to set a threshold number or percentage, because setting a
11 threshold could create a safe harbor for fraudulent activity. Further, denial of access will be based on a
12 department determination. The department will conduct an investigation to reach the determination
13 that the license holder, or sub-user of the license holder, has violated the rule and statute. The
14 investigation will vary depending on the activity involved, if the activity is ongoing, the response of the
15 license holder to department inquiries, and information the license holder has provided the department.

16

17 **Section 215.505(a)**

18 **Comment:**

19 A commenter states that in addition to other elements, fraud carries with it a material
20 misrepresentation that is known to be false or recklessly performed. If the agency infers fraud by an
21 excessive number of temporary tags relative to a dealer's sales, the investigators need markers as well
22 as a specific time period for inferring fraud by what is excessive and for what time period as well as
23 which type of temporary tag.

24 **Agency Response:**

1 The department appreciates the comments and repeats its response made to the prior
2 comment. House Bill 3927 is meant to aid law enforcement and the department to work together in
3 stopping temporary tag fraud without being onerous to legitimate dealers. The department declines to
4 set a number, percentage, or time period, because setting a threshold could create a safe harbor for
5 fraudulent activity. Again, a determination would follow a department investigation.

6

7 **Section 215.505(a)**

8 **Comment:**

9 A commenter is concerned that a vehicle may be in the dealer's inventory at the time the
10 temporary tag is printed; however, the sale may be rescinded or the vehicle may be dealer-traded so
11 that in neither scenario is the vehicle listed on the "Dealer's Motor Vehicle Inventory Tax Statement."

12 **Agency Response:**

13 The department appreciates the comment. The presumption that if a vehicle is not in a dealer's
14 inventory is rebuttable; if the dealer provides documentation of a sale to another dealer or other
15 evidence that the vehicle was otherwise in the dealer's inventory then the dealer would not be in
16 violation of the rule for that sale. Again, a determination would follow a department investigation.

17

18 **Section 215.505(a)**

19 **Comment:**

20 A commenter is concerned that with respect to a fictitious user or person using a false identity,
21 if a system is compromised by cyberattack or a virus, this scenario may be outside of the control of the
22 licensee and the licensee will not have made a material misrepresentation that is known to be false or
23 recklessly performed.

24 **Agency Response:**

1 The department appreciates the comment. The department disagrees with the commenters
2 reading of text which is “a dealer or converter account user misusing the temporary tag database
3 authorized under Transportation Code §503.0626 or §503.06321 to obtain: (3) access to the temporary
4 tag database for a fictitious user or person using a false identity.” In the case of a true hacker, the
5 license holder would not be using the account to obtain access for the fictitious user. Determining the
6 nature of the event though would be a question of fact, including how the fictitious user was authorized
7 to act under the license holder’s account to access the system and the license holder’s actions after
8 discovering the fictitious user. For example, did the license holder discontinue the fictitious user’s access
9 permissions, and when. Again, a determination would follow a department investigation.

10

11 **Section 215.505(c)**

12 **Comment:**

13 A commenter asserts that it should be the license holder’s responsibility to provide the
14 department with the license holder’s current contact information.

15 **Agency Response:**

16 The department appreciates the comment. Transportation Code §503.006 and §215.141(b)(7)
17 require a license holder to maintain a current address with the department.

18

19 **§215.505(b) and (d)**

20 **Comment:**

21 Two commenters assert that the department should immediately deny access to a dealer or
22 converter that has been determined to be inappropriately using the temporary tag database, and not
23 provide criminals the ability to continue to issue tags for an additional 10 days.

24 **Agency Response:**

1 The department agrees with the comment and has revised §215.505 to remove the 10-day
2 period and begin the denial of access immediately upon sending notice to the license holder. In making
3 this decision, the department has considered that the determination will follow an investigation of the
4 license holder engaging in fraudulently obtaining temporary tags from the database. The investigation
5 will vary depending on the activity involved, its continuing occurrence, the response of the license
6 holder to department inquiries, and information the license holder has provided the department.

7

8 **Section 215.505(d) and (f)**

9 **Comment:**

10 A commenter suggests decreasing the time for a license holder to file an appeal from 26 to 14
11 calendar days, because 14 days should be enough time for a dealer or converter to respond to an urgent
12 matter.

13 **Agency Response:**

14 The department appreciates the comment but declines to make a change based on the
15 comment. The 26-calendar day period is a standard time for filing an appeal with the State Office of
16 Administrative Hearings (SOAH) under other rules such as §.217.500 and allows the license holder and
17 department additional time to reach a solution, if possible, prior to engaging in the appeal process. The
18 license holder will continue to be denied access to the temporary tag database for the 26-day period
19 and a subsequent appeal.

20

21 **Section 215.505(g)**

22 **Comment:**

23 Three commenters stated that the department should do on-site visits of every dealer or
24 converter before issuing a license or allowing them access to the temporary tag system.

1 One of the commenters further suggested the following additional language be added to

2 §215.505:

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

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

8 (A) time in operation;

9 (B) sales data; and

10 (C) expected growth;

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

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

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

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

15 **Agency Response:**

16 The department appreciates the comment and has attempted to implement the statutory items
17 set out in the comment in this adoption. This comment has also been addressed in the department's
18 separate adoption of maximum temporary tag limit rules. The department is further evaluating the
19 benefit of site visits versus the cost and burden to the 20,000 legitimate dealers in this state and the
20 department. Because site visits were not addressed in the proposal for public comment, the department
21 declines to add them to this adoption; however, they may be considered in future proposals.

22
23 The following comments are not associated with a particular section of the proposal

24 **Comment:**

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

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 to denial of access for criminals that try to engage in selling temporary tags.

7
8 **Comment:**

9 Fifteen commenters stated that the issuance of fraudulent temporary tags harms this state and
10 drivers and law enforcement officers in Texas and other states. The commenters stated that vehicles in
11 violation of licensing and registration laws can result in numerous costs to the state and private citizens,
12 including risks to law enforcement at traffic stops with potential criminals, higher insurance rates,
13 accidents where losses aren't covered due to uninsured drivers, lost taxes and fees to the state, lost and
14 increasing toll fees, and higher pollution levels.

15 **Agency response:**

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

19
20 **Comment:**

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

23 **Agency response:**

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

4
5 **Comment:**

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

7 **Agency response:**

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

12

13 **Comment:**

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

16 **Agency response:**

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

19

20 **Comment:**

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

24 **Agency response:**

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

4
5 **Comment:**

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

9 **Agency response:**

10 The department appreciates the comment. The department is not a criminal law enforcement
11 agency.

12

13 **Comment:**

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

16 **Agency Response:**

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

20

21 **Comment:**

22 An individual commenter asserted that dealers should not be able to sell a vehicle until the
23 dealer possess the title.

24 **Agency response:**

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

5

6 **Comment:**

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

9 **Agency Response:**

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

17

18 **Comment:**

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

21 **Agency Response:**

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

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Comment:

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

Agency response:

The department appreciates the comment. The license term is set by statute and cannot be altered by rule.

Comment:

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

Agency response:

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

Comment:

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

Agency response:

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

1

2 **Comment:**

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

6 **Agency response:**

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

10

11 **Comment:**

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

14 **Agency response:**

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

19

20 **Comment:**

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

24 **Agency Response:**

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

4
5 **Comment:**

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

9 **Agency response:**

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

14

15 **Comment:**

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

19 **Agency Response:**

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

22

23 **Comment:**

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

3 **Agency Response:**

4 The department appreciates the comment. The department will consider the comment in future
5 updates to temporary tags.

6

7 **STATUTORY AUTHORITY.** The department adopts amendments to §§215.150, 215.151, 215.153, 215.154,
8 and 215.155, and new §215.505 under Occupations Code §2301.705 and Transportation Code §§503.002,
9 503.0626, 503.0631, and 1002.001.

10 Occupations Code §2301.705 provides that notice of a hearing involving a license holder must
11 be given in accordance with Chapter 2301 and board rules.

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

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

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

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

20 **CROSS REFERENCE TO STATUTE.** Transportation Code §§503.0626, 503.063, 503.0631, 503.0632, and
21 503.067.

22

23 **TEXT**

24

Subchapter E. General Distinguishing Numbers

1 **43 TAC §§215.150, 215.151, 215.153, 215.154 and 215.155**

2 §215.150. Authorization to Issue Temporary Tags.

3 (a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a
4 preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer
5 is licensed to sell. A converter that holds a converter's license under Occupations Code, Chapter 2301 may
6 issue a converter's temporary tag for authorized purposes only.

7 (b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or
8 converter's temporary tag until:

9 (1) the department denies access to the temporary tag database under Transportation
10 Code §503.0632(f) and §215.505 of this title (relating to Denial of Dealer or Converter Access to
11 Temporary Tag System);

12 (2) the license holder issues the maximum number of temporary tags authorized under
13 Transportation Code §503.0632(a)-(d); or

14 (3) the license is canceled, revoked, or suspended.

15 (c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the
16 requirement to obtain a dealer general distinguishing number may issue one temporary buyer's tag, or
17 one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A
18 governmental agency that issues a temporary buyer's tag, or preprinted Internet-down temporary tag,
19 under this subsection:

20 (1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable
21 to a dealer; and

22 (2) is not required to charge the registration fee under Transportation Code §503.063(g).

23 (d) A dealer or converter is responsible for all use of and access to the applicable temporary tag
24 database under the dealer's or converter's account, including access by any user or unauthorized person.

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1 Dealer and converter duties include monitoring temporary tag usage, managing account access, and

2 taking timely and appropriate actions to maintain system security, including:

3 (1) establishing and following reasonable password policies, including preventing the

4 sharing of passwords;

5 (2) limiting authorized users to owners and bona fide employees with a business need to

6 access the database;

7 (3) removing users who no longer have a legitimate business need to access the system;

8 (4) securing printed tags and destroying expired tags, by means such as storing printed

9 tags in locked areas and shredding or defacing expired tags; and

10 (5) securing equipment used to access the temporary tag database and print temporary

11 tags.

12

13 §215.151. Temporary Tags, General Use Requirements, and Prohibitions.

14 (a) A dealer or converter shall secure a temporary tag to a vehicle in the license plate display

15 area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times,

16 including when the vehicle is being operated.

17 (b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or

18 preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization

19 to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle,

20 so that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is

21 being operated.

22 (c) All printed information on a temporary tag must be visible and may not be covered or

23 obstructed by any plate holder or other device or material.

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1 (d) A motor vehicle that is being transported using the full mount method, the saddle mount
2 method, the tow bar method, or any combination of those methods in accordance with Transportation
3 Code, §503.068(d), must have a dealer's temporary tag, a converter's temporary tag, or a buyer's
4 temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

5

6 §215.153. Specifications for All Temporary Tags.

7 (a) Information printed or completed on a temporary tag must be in black ink on a white
8 background. Other than for a motorcycle, a completed buyer's, dealer's, converter's, or preprinted
9 Internet-down temporary tag shall be six inches high and at least eleven inches wide. For a motorcycle,
10 the completed buyer's, dealer's, converter's, or preprinted Internet-down temporary tag shall be four
11 inches high and at least seven inches wide.

12 (b) A temporary tag must be:

13 (1) composed of plastic or other durable, weather-resistant material; or

14 (2) sealed in a two mil clear poly bag that encloses the entire temporary tag.

15 (c) A temporary tag may only be issued and printed from the department's temporary tag
16 database as described in §215.152 of this title (relating to Obtaining Numbers for Issuance of Temporary
17 Tags) and §215.157 of this title (relating to Advance Numbers, Preprinted Internet-down Temporary Tags).

18

19 §215.154. Dealer's Temporary Tags.

20 (a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is
21 issued and for which the dealer is licensed by the department to sell.

22 (b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a
23 dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

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1 (c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the
2 selling dealer's temporary tag. The purchasing dealer may display its dealer temporary tag or its metal
3 dealer's license plate on the vehicle.

4 (d) A dealer's temporary tag

5 (1) may be displayed on a vehicle only as authorized in Transportation Code §503.062;

6 and

7 (2) may not be displayed on:

8 (A) a laden commercial vehicle being operated or moved on the public streets or
9 highways;

10 (B) on the dealer's service or work vehicles;

11 (C) a golf cart as defined under Transportation Code Chapter 551; or

12 (D) an off-highway vehicle as defined under Transportation Code Chapter 551A.

13 (e) For purposes of this section, a dealer's service or work vehicle includes:

14 (1) a vehicle used for towing or transporting other vehicles;

15 (2) a vehicle, including a light truck, used in connection with the operation of the dealer's
16 shops or parts department;

17 (3) a courtesy car on which a courtesy car sign is displayed;

18 (4) a rental or lease vehicle; and

19 (5) any boat trailer owned by a dealer or manufacturer that is used to transport more
20 than one boat.

21 (f) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not
22 considered a laden commercial vehicle when the vehicle is:

23 (1) towing another vehicle bearing the same dealer's temporary tags; and

1 (2) both vehicles are being conveyed from the dealer's place of business to a licensed
2 wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place
3 of business.

4 (g) As used in this section, "light truck" has the meaning assigned by Transportation Code,
5 §541.201.

6 (h) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer
7 or a dealer's employee.

8 (i) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after
9 the date the temporary tag was issued.

10 (j) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's
11 inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

12 (k) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the
13 following information is placed on the temporary tag:

14 (1) the vehicle-specific number from the temporary tag database;

15 (2) the year and make of the vehicle;

16 (3) the VIN of the vehicle;

17 (4) the month, day, and year of the temporary tag's expiration; and

18 (5) the name of the dealer.

19 (l) A dealer that issues a dealer's temporary tag to an agent must ensure that the following
20 information is placed on the temporary tag:

21 (1) the specific number from the temporary tag database;

22 (2) the month, day, and year of the temporary tag's expiration; and

23 (3) the name of the dealer.

24

1 §215.155. Buyer's Temporary Tags.

2 (a) A buyer's temporary tag may be displayed only on a vehicle from the seller's inventory that
3 can be legally operated on the public streets and highways and for which a sale has been consummated.

4 (b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in
5 accordance with Transportation Code Chapter 548, unless:

6 (1) an inspection is not required under Transportation Code §503.063(i) or (j); or

7 (2) the vehicle is exempt from inspection under Chapter 548.

8 (c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

9 (1) dealer's temporary tag; or

10 (2) metal dealer's license plate.

11 (d) A buyer's temporary tag is valid until the earlier of:

12 (1) the date on which the vehicle is registered; or

13 (2) the 60th day after the date of purchase.

14 (e) The dealer, or federal, state, or local governmental agency, must ensure that the following
15 information is placed on a buyer's temporary tag that the dealer issues:

16 (1) the vehicle-specific number obtained from the temporary tag database;

17 (2) the year and make of the vehicle;

18 (3) the VIN of the vehicle;

19 (4) the month, day, and year of the expiration of the buyer's temporary tag; and

20 (5) the name of the dealer or federal, state, or local governmental agency.

21 (f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's
22 temporary tag issued, unless the vehicle is exempt from payment of registration fees under
23 Transportation Code, §502.453 or §502.456. A federal, state, or local governmental agency may charge a
24 buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the

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1 vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456.

2 The fee shall be remitted by a dealer to the county in conjunction with the title transfer, and, if collected,
3 by a federal, state, or local governmental agency, to the county, for deposit to the credit of the Texas
4 Department of Motor Vehicles fund, unless the vehicle is sold by a dealer to an out-of-state resident, in
5 which case:

6 (1) the dealer shall remit the entire fee to the department for deposit to the credit of the
7 Texas Department of Motor Vehicles fund if payment is made through the department's electronic title
8 system; or

9 (2) the dealer shall remit the fee to the county for deposit to the credit of the Texas
10 Department of Motor Vehicles fund.

11

12 **Subchapter J. Administrative Sanctions**

13 **43 TAC §215.505**

14 §215.505. Denial of Dealer or Converter Access to Temporary Tag System.

15 (a) In this section "fraudulently obtained temporary tags from the temporary tag database" means
16 a dealer or converter account user misusing the temporary tag database authorized under Transportation
17 Code §503.0626 or §503.06321 to obtain:

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

19 (2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory a
20 vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the
21 relevant monthly Vehicle Inventory Tax Statement; and

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

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

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

9 (d) A dealer or converter may request a hearing on the denial as provided by Subchapter O,
10 Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under
11 this section. The department must receive a written request for a hearing within 26 days of the date of
12 the notice denying access to the database. The request for a hearing does not stay the denial of access
13 under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the
14 department after a request for hearing has been submitted under this subsection by demonstrating
15 corrective actions taken or that the department's determination was incorrect.

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

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

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

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1 Issued at Austin, Texas, on January 27, 2022.

2

3

/s/ Tracey Beaver

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Tracey Beaver, General Counsel

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