



GOVERNOR GREG ABBOTT

To: Charles Bacarisse, Chair  
Daniel Avitia, Executive Director  
Laura Moriaty, General Counsel  
Texas Department of Motor Vehicles

From: Caleb Gunnels, Assistant General Counsel  
Office of the Governor

Date: October 10, 2024

Subject: Proposed Title 43 Texas Administrative Code Sections 215.102, 215.120, 215.122, 215.124, 215.133, 215.138, 215.140, 215.143, 215.150, 215.151, 215.152, 215.154, 215.155, 215.156, 215.157, 215.158, 215.162, 217.5, 217.8, 217.74, and 217.86 (RCD Rule Review #2024-006)

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**I. Syllabus**

As part of a comprehensive rule review, the Texas Department of Motor Vehicles (“department”) proposed amendments, repeals, and new rules within 43 Texas Administrative Code Chapters 215 and 217, and submitted the following rules to the Regulatory Compliance Division (“division”) for review: 43 TAC §§215.102, 215.120, 215.122, 215.124, 215.133, 215.138, 215.140, 215.143, 215.150, 215.151, 215.152, 215.154, 215.155, 215.156, 215.157, 215.158, 215.162, 217.5, 217.8, 217.74, and 217.86, as published in the June 12, 2024, issue of the *Texas Register*.<sup>1</sup> The proposed rules under Chapter 215 are primarily intended to implement House Bill 718 and Senate Bill 224, as passed by the 88th Legislature, Regular Session, clarify when dealers may offer mobile warranty or recall services, and account for the use of records and electronic systems.<sup>2</sup> Similarly, the proposed rules under Chapter 217 are generally intended to implement House Bill 718 and House Bill 3297, as passed by the 88th Legislature, Regular Session, ensure consistency with statutory language and other department rules, and account for the use of

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<sup>1</sup> 49 Tex. Reg. 5030 (2024) (to be codified at 43 TAC §§215.102, 215.120, 215.122, 215.133, 215.138, 215.140, 215.143, 215.150, 215.151, 215.152, 215.154, 215.155, 215.156, 215.157, 215.158, and 215.162) (proposed July 12, 2024) (Tex. Dep’t Motor Vehicles); 49 Tex. Reg. 5065 (2024) (to be codified at 43 TAC §215.124) (proposed July 12, 2024) (Tex. Dep’t Motor Vehicles); 49 Tex. Reg. 5066 (2024) (to be codified at 43 TAC §§217.5, 217.8, 217.74, and 217.86) (proposed July 12, 2024) (Tex. Dep’t Motor Vehicles); Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 1 and 8 (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>2</sup> Acts of 2023, 88th Leg., R.S., ch. 668 (H.B. 718), and ch. 269 (S.B. 224); Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 2.

records and electronic systems.<sup>3</sup> The department submitted the proposed rules to the division for review on July 12, 2024.<sup>4</sup> The division invited public comments on the proposed rules for a 30-day period ending on August 16, 2024. The division received three comments, one of which indicated general support, and two of which raised concerns with proposed new §215.124, which pertains to mobile warranty or recall services.<sup>5</sup>

Based on the following analysis, the division has determined that the proposed rules are consistent with state policy, and thus, the proposed amended rules are approved by the division and may be finally adopted and implemented.

## **II. Analysis**

On January 5, 2024, in preparation for House Bill 718's elimination and replacement of department-issued temporary tags with department-issued license plates that dealers are to provide to buyers at the time of a vehicle sale, the department proposed a comprehensive package of repeals, amendments, and new rules under Texas Administrative Code Chapters 215 and 221. Generally, the rules were intended to update application and licensing requirements across the regulated industry.<sup>6</sup> In order to meet the department's December 1, 2024, rulemaking deadline imposed by House Bill 718, the department found it necessary to adopt rules implementing House Bill 718 in two stages.<sup>7</sup> On March 28, 2024, the division approved the department's first set of rules, and now reviews the proposed "implementation" rules.<sup>8</sup> Further, as Senate Bill 224 created new recordkeeping and record inspection requirements to detect and prevent catalytic converter theft and fraud, and became effective on May 29, 2023, the department now intends to inform license holders of the related recordkeeping and record inspection requirements.<sup>9</sup> The department also intends to implement regulatory changes in anticipation of the elimination of certain vehicle safety inspections in Texas, as mandated by House Bill 3297, which becomes effective on January 1, 2025.<sup>10</sup> Lastly, the department notes

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<sup>3</sup> Acts of 2023, 88th Leg., R.S., ch. 851 (H.B. 3297); Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 9.

<sup>4</sup> *Id.* at 1 and 8.

<sup>5</sup> Public Comment from General Motors (Aug. 12, 2024), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from Gulf States Toyota, Inc. (Aug. 13, 2024), at 1-8 (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from Texas Automobile Dealers Association (Aug. 16, 2024), at 1-7 (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>6</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 1, 2, 9, and 10 (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>7</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 2 and 10.

<sup>8</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001) (Mar. 28, 2024) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>9</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 2.

<sup>10</sup> *Id.* at 9.

that Chapter 217 has not undergone a rule review since 2015, and since then, the department's statutory authority and procedural practices have changed.<sup>11</sup>

Leading up to the rulemaking, the department received and reviewed industry rulemaking requests, incorporated feedback from the Texas-Assessor Collector Association, the Vehicle Titles and Registration Advisory Committee, the Motor Vehicle Industry Regulation Advisory Committee, and the Customer Service and Protection Advisory Committee. The department also hosted an open meeting where it received stakeholder comments.<sup>12</sup> In drafting the rules, the department intends to add flexibility for the regulated community while staying consistent with its statutory authority and protecting the public from fraud and abuse, such as crimes related to license plate, motor vehicle titling, or catalytic converter theft and fraud.<sup>13</sup>

Given that conditions for licensure, including requirements for renewal, limitations on eligibility, and new administrative requirements can create barriers to ongoing market participation and may increase the cost of compliance for licensees accordingly, the proposed amended rules may affect competition pursuant to Section 57.105(d)(1) and (2), Occupations Code.

**A. The requirement for license applications, renewals, and amendments in proposed amended §215.102 is consistent with state policy.**

When the department proposed now current §215.102, which was subsequently reviewed and approved by the division on March 28, 2024, it generally consolidated and updated license application requirements for franchised dealers, manufacturers, distributors, and converter licenses.<sup>14</sup> To account for changes made by Senate Bill 224, which, in part, creates recordkeeping requirements to prevent catalytic converter fraud and theft, proposed amended §215.102(e)(1)(K)(iv) would require an applicant for a manufacturer's, distributor's, or converter's license to inform the department whether the applicant repairs a motor vehicle with a catalytic converter in Texas, and if so, the physical address at which the applicant performs the repair. The provision of this information will allow the department to obtain the information necessary to carry out its responsibilities to inspect license holders' records of catalytic converter repair under Senate Bill 224.<sup>15</sup>

Section 2301.151, Occupations Code, broadly grants the department exclusive jurisdiction to regulate the distribution, sale, or lease of motor vehicles, including the original jurisdiction to determine its own jurisdiction, and to take any action, designated or implied, that is necessary or convenient to the exercise of the power and jurisdiction granted. Additionally, Section 2301.152,

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<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 5 and 12.

<sup>13</sup> *Id.*

<sup>14</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 4.

<sup>15</sup> 49 Tex. Reg. 5031 (2024) (preamble to proposed §215.102) (July 12, 2024) (Tex. Dep't Motor Vehicles).

in part, tasks the department with establishing the qualifications of license holders, ensuring that the distribution, sale, and lease of motor vehicles is conducted as required by statute and department rules, preventing fraud, unfair practices, and other abuses, and enforcing and administering Chapter 503, Transportation Code. Section 2301.155 reiterates that the department shall adopt rules as necessary and convenient to administer the chapter and to govern the practice and procedure before it. Next, Section 2305.153, Occupations Code, generally imposes recordkeeping requirements for the sale or transfer of catalytic converters that are removed from a motor vehicle. And, Section 2305.155, generally authorizes the department to inspect a licensee's records maintained under Section 2305.153.

Proposed amended §215.102(e)(1)(K)(iv) requires prospective licensees to notify the department during the application process of whether the licensee will perform catalytic converter repairs and at what location. In order to fulfill its statutory duties, which include protecting the public from fraud and other abuses, securing such information on the front end of the licensing process will better help the department in monitoring and deterring catalytic converter theft. As such, proposed amended §215.102(e)(1)(K)(iv) is a reasonable exercise of the department's statutory authority and is consistent with state policy.

**B. The recordkeeping requirements regarding department-issued license plates in proposed amended §215.120 are consistent with state policy.**

Current §215.120, which was also previously reviewed and approved by the division, generally outlines the requirements for manufacturers, distributors, and converters using license plates issued by the department, as the industry moves away from temporary tags which were eliminated by House Bill 718.<sup>16</sup> Proposed amended §215.120(d) and (e) would require the aforementioned licensees to maintain a record of the license plates assigned for the licensees' use in the designated electronic system that the department will use to manage industry license plates, and the proposed repeal of §215.120(g) would remove the requirement that these license holders keep such records locally. Likewise, proposed amended §215.120(f) simply encourages license holders to immediately report stolen license plates to local law enforcement. While not a requirement, the department reasonably believes that giving local law enforcement earlier notice of license plate theft may aid law enforcement in identifying and stopping subsequent criminal activity rather than such information being solely reported in the department's electronic database.<sup>17</sup>

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<sup>16</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 6.

<sup>17</sup> 49 Tex. Reg. 5031 (2024) (preamble to proposed §215.120) (July 12, 2024) (Tex. Dep't Motor Vehicles).

As previously stated, the division already approved recordkeeping requirements for department-issued license plates.<sup>18</sup> The division analyzed the department's authority to require applications for license plates, the criteria utilized to evaluate applicants in order to issue license plates, and the reasonable requirements for recordkeeping in order to deter fraud, protect the public from misuse, and to aid the department in administering and monitoring the issuance of such license plates.<sup>19</sup> The proposed changes to §215.120 simplify the recordkeeping process, remove the burden from licensees in having to maintain license plate records locally, and encourage reasonable communication with local law enforcement. Thus, following the division's analysis in its determination letter issued to the department on March 28, 2024, and the above analysis, proposed amended §215.120 is a reasonable exercise of the department's statutory authority and is consistent with state policy.<sup>20</sup>

**C. The catalytic converter record requirements in proposed new §§215.122 and 215.162 are consistent with state policy.**

Proposed new §§215.122 and 215.162 require licensed manufacturers, distributors, converters, or dealers that repair a motor vehicle with a catalytic converter to comply with the recordkeeping requirements in Chapter 2305, Subchapter D, Occupations Code, and allow the department to inspect such records during normal business hours. The department states that such records will allow law enforcement to investigate related criminal activity, such as catalytic converter theft.<sup>21</sup> Section 2305.152, Occupations Code, generally states that Subchapter D applies to a person described by Section 1956.123(1)(A)-(G), Occupations Code. Section 1956.123(1)(C) lists a manufacturer, distributor, converter, or dealer licensed under Chapter 2301, Occupations Code, including any department of a dealer or converter that repairs or services motor vehicles. Section 2305.153(a) generally requires such a person to maintain accurate records for each transaction in which the person sells or transfers to another person a catalytic converter that is removed from a motor vehicle. And, Section 2305.155(b), in part, requires such a person who is licensed by the department, to allow the department, at a reasonable time, to enter the licensee's premises and to inspect catalytic converter-related records. Given that proposed new §§215.122 and 215.162 closely align with statute, they are a reasonable exercise of the department's statutory authority and are consistent with state policy.

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<sup>18</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 6.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 49 Tex. Reg. 5032 (2024) (preamble to proposed §215.122) (July 12, 2024) (Tex. Dep't Motor Vehicles).

**D. The requirements for mobile warranty and recall repair services in proposed new §215.124 are consistent with state policy.**

The division previously reviewed and approved amendments to §215.103, which were proposed in response to industry stakeholder inquiries, generally clarified that franchised dealer service-only facilities may perform warranty repair services, removed regulation of non-warranty repair, made clear that such facilities may not engage in new motor vehicle sales, and removed the requirement that warranty repair services could be performed only at licensed dealer locations.<sup>22</sup> Now, proposed new §215.124 is intended to clarify when the department will consider a franchised dealer providing mobile warranty and recall repairs to be engaged in the business of servicing or repairing motor vehicles under a manufacturer's warranty at an established, permanent, and licensed place of business to provide guidance to dealers who wish to offer or expand these services.<sup>23</sup>

Proposed new §215.124(a) generally permits franchised dealers to offer mobile warranty and recall repair services under a manufacturer's or distributor's warranty if the services are managed from a licensed location, which may be either a licensed sales and service location or a licensed service-only facility as described in current §215.103. Proposed new §215.124(b) generally clarifies when the department considers mobile warranty or recall repair services to be managed from a licensed location and is intended to provide a franchised dealer flexibility to determine how the mobile warranty or recall services may be delivered.<sup>24</sup> Consistent with current §215.103(d), proposed new §215.124(c) would generally allow a franchised dealer to subcontract mobile warranty or recall repair services with a manufacturer's or distributor's prior written approval, which may not be unreasonably withheld, and would require the franchised dealer to pay a subcontractor directly for such a service. And, consistent with current §215.103(e), proposed new §215.124(d) clarifies that a person with whom a franchised dealer subcontracts the performance of mobile warranty or recall repair services is not eligible to obtain a service-only facility license and may not advertise the performance of warranty or recall repairs to the public.

When the department proposed amendments to now current §215.103, it intended to offer licensees additional opportunities to expand their services, which were previously prohibited by rule.<sup>25</sup> The department's intent in proposing new §215.124 is the same. While the rule is generally consistent with current §215.103, the department now intends to provide additional clarity and guidance to dealers who are considering offering such services.<sup>26</sup> Notably, the department asserts that mobile warranty and recall repair services benefit the public, as such

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<sup>22</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 4-5.

<sup>23</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 2-3.

<sup>24</sup> 49 Tex. Reg. 5065 (2024) (preamble to proposed §215.124) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>25</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3.

<sup>26</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 3.

services are more convenient, timely, and reduce the burden placed upon consumers when a repair can be performed remotely or at a potentially damaged vehicle's location.<sup>27</sup>

Section 2301.002(16)(B), Occupations Code, generally defines a franchised dealer as a person who, among other requirements, holds a franchised dealer's license under Chapter 2301 and a General Distinguishing Number ("GDN") under Chapter 503, Transportation Code, and "is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established place of business under a franchise in effect with a manufacturer or distributor." The department previously urged, as it does here, that as long as the licensee is engaged in a licensed activity under Section 2301.002(16)(B) at an established and permanent place of business, mobile warranty or recall repair services may be managed by the licensee from that licensed location.<sup>28</sup> Section 2301.151, Occupations Code, in part, also authorizes the department to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by Chapter 2301, and to take any action that is specifically designated or implied under Chapter 2301 or that is necessary or convenient to the exercise of its power or jurisdiction. And, Section 2301.152, in part, grants the department authority to establish the qualifications for license holders, to ensure that the distribution, sale, and lease of motor vehicles is conducted as required by Chapter 2301 and department rules, and to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

Ultimately, proposed new §215.124 provides helpful clarity to current §215.103, which was previously approved by the division. The division determined, and the same is true today, that permitting licensed franchised dealers to perform warranty repair services offers additional opportunity to compete within the marketplace and provides consumers with added options as they seek to obtain repair services.<sup>29</sup> Therefore, following the division's analysis in its determination letter issued to the department on March 28, 2024, and the above analysis, proposed new §215.124 is a reasonable exercise of the department's statutory authority, and, thus, is consistent with state policy.<sup>30</sup>

**E. The General Distinguishing Number application requirements in proposed amended §215.133 are consistent with state policy.**

The division previously reviewed and approved amendments to §215.133, which generally consolidated General Distinguishing Number application requirements for a dealer or a

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<sup>27</sup> *Id.* at 6.

<sup>28</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 5, 2024), at 3; 49 Tex. Reg. 5065 (2024) (preamble to proposed §215.124) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>29</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 5.

<sup>30</sup> *Id.*

wholesale motor vehicle auction.<sup>31</sup> Now, the department intends to provide amendments which implement House Bill 718.<sup>32</sup> Current §215.133(c)(1)(I) generally requires dealers, during the GDN application process, to provide the name, telephone number, and business email address of the temporary tag database account administrator designated by the applicant. A proposed amendment to this provision simply adds a reference to the license plate system, implemented by House Bill 718, which will become effective on or after July 1, 2025.<sup>33</sup>

Similar to proposed amended §215.102, proposed new §215.133(c)(1)(P) would require a dealer, during the GDN application process, to indicate whether it repairs a motor vehicle with a catalytic converter in Texas, and if so, to provide the physical address where the repair is performed. Proposed new §215.133(c)(1)(P) follows the same analysis pertaining to proposed amended §215.102(e)(1)(K)(iv).

Proposed new §215.133(c)(2)(J) would require GDN applicants to provide the department with proof of completion of webDEALER training conducted by the department. WebDEALER is the system through which dealers submit to the county tax-assessor-collector title and registration applications for purchasers, which is required by the addition of Section 520.0055, Transportation Code by enactment of House Bill 718.<sup>34</sup> Section 520.021 authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system. Section 520.023 requires the department to implement a training program providing information on the automated registration and titling system and the identification of fraudulent activity related to vehicle registration and titling, and requires a person performing registration or titling services to complete the training. Ensuring that license holders are proficient in webDEALER, which is required by statute, is a reasonable qualification for licensure.

The remaining provisions in proposed amended §215.133 enhances clarity and ensures consistency regarding the usage of certain terms defined in §215.132. Ultimately, proposed amended §215.133 aids the department in fulfilling its statutory duties in monitoring and deterring catalytic converter theft, ensures licensee proficiency in the department's webDEALER system, and enhances clarity. For the aforementioned reasons, proposed amended §215.133 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

**F. The requirements related to the use and allocation of dealer's license plates in proposed amended §215.138 are consistent with state policy.**

Proposed amended §215.138 is, in part, intended to add certain dealer's plates as subject to the department's rules, clarify exceptions to the license plate requirements, and add recordkeeping

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<sup>31</sup> *Id.* at 7-9.

<sup>32</sup> 49 Tex. Reg. 5032 (2024) (preamble to proposed §215.133) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>33</sup> Acts of 2023, 88th Leg., R.S., ch. 668 (H.B. 718).

<sup>34</sup> *Id.* at Sec. 29.



and reporting requirements to prevent fraud and theft.<sup>35</sup> For example, pursuant to the requirements for personalized prestige license plates and temporary license plates in Sections 503.0615 and 503.062, Transportation Code, the department adds references to such plates as subject to its rules in proposed amended §215.138(a)-(c), (f), and (j). Notably, proposed new §215.138(c)(3) and (4) adds golf carts and off-highway vehicles to the list of vehicles that dealer's plates may not be displayed on. Sections 551.402 and 551A.052, Transportation Code, in part, authorize the department to establish a procedure to issue license plates specific to golf carts and off-highway vehicles, and the department reasonably clarifies that these procedures do not include the utilization or display of dealer's plates for such vehicles.

Next, proposed amended §215.138(h) would require a dealer to maintain records of each dealer's plate in the department's designated electronic plate system rather than having to retain such records locally. And, proposed amended §215.138(h)(4) clarifies that the name of the person in control of a license plate must be entered into the department's system. The department notes that this reasonable clarification allows law enforcement and the department to investigate and prevent fraud and allows easy access to a licensee's records, while also allowing flexibility for dealers to assign a license plate to a vehicle or a driver.<sup>36</sup> The department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b), Occupations Code. The department is also required to manage and maintain a real-time database of information on buyers to whom dealers issue a license plate or set of license plates and to adopt rules and prescribe the procedures necessary to maintain the database pursuant to Section 503.0631, Transportation Code. The department also has the authority to inspect the books and records of license holders under Section 2301.153(b). Such requirements are reasonable measures to deter fraud, protect the public from misuse, and will aid the department in administering and monitoring the issuance of dealer's license plates.

Similar to proposed amended §215.120(f), proposed amended §215.138(j) would encourage a dealer to immediately alert law enforcement if a license plate is stolen. While a dealer is not required to do so, providing immediate notice of a crime to local law enforcement will aid in the prevention of future or continued crime by bad actors. Lastly, consistent with Section 503.062, Transportation Code, proposed new §215.138(l) is intended to clarify that a wholesale motor vehicle auction GDN holder that holds a dealer's GDN may display a dealer's temporary license plate assigned to their dealer GDN on a vehicle that is being transported to or from the licensed auction location. Proposed amended §215.138 provides meaningful clarity to licensees, grants additional flexibility to licensees, and aids the department and law enforcement in deterring and preventing fraud. For the aforementioned reasons, proposed amended §215.138 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

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<sup>35</sup> 49 Tex. Reg. 5032 (2024) (preamble to proposed §215.138) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>36</sup> *Id.*

**G. The established and permanent place of business premises requirements for GDN holders in proposed amended §215.140 are consistent with state policy.**

On two separate occasions, the division previously reviewed and approved amendments to §215.140 regarding permanent place of business requirements for dealers and wholesale motor vehicle auction GDN holders.<sup>37</sup> After conducting numerous investigations, which revealed that noncompliance with business premises requirements contributed significantly to the commission of criminal activity, the department proposed, and the division approved, amendments to §215.140 in 2022, to reduce fraud, improve public health and safety, and to aid applicants in understanding safe premises requirements.<sup>38</sup> Subsequently, the department proposed, and the division approved on March 28, 2024, additional amendments clarifying which premises requirements applied to GDN dealers and which requirements applied to wholesale motor vehicle auctions and added additional clarifying language to the existing rule's requirements.<sup>39</sup> Now, the department intends for proposed amended §215.140, generally, to add requirements regarding the delivery of buyer's license plates and the safe and secure storage of department-issued license plates to implement House Bill 718.<sup>40</sup>

First, proposed amended §215.140(a)(5)(F) would add buyer's license plates to the types of license plates that the department will not mail to an out-of-state address, which will only be delivered or mailed to a dealer's physical location. The department notes that House Bill 718, through its elimination of temporary tags, creates the need to deliver buyer's plates to dealers so that they may be issued to a buyer upon a vehicle purchase.<sup>41</sup> This practice also ensures that the department is delivering license plates to a licensee at a licensed location that is regulated by the department, which aids in deterring license plate theft and fraud and promotes the same reasonable recordkeeping practices in proposed amended §215.120. Again, the department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b), Occupations Code. The department is also required to manage and maintain a real-time database of information on buyers to whom dealers issue a license plate or set of license plates and to adopt rules and prescribe the procedures necessary to maintain the database pursuant to Section 503.0631, Transportation Code. As such, proposed amended §215.140(a)(5)(F) is a valid exercise of the department's statutory authority.

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<sup>37</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012) (Dec. 5, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor), at 5-6; Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 12.

<sup>38</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012), at 5-6.

<sup>39</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 12.

<sup>40</sup> 49 Tex. Reg. 5033 (2024) (preamble to proposed §215.140) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>41</sup> *Id.*

The same is true for proposed new §215.140(a)(6)(E) and (b)(5)(E), which require dealers and wholesale motor vehicle auction GDN holders to store all department-issued license plates in the licensee's possession in a locked or secured room or closet or in at least one securely locked, substantially constructed safe or steel cabinet bolted or affixed to the floor in such a way that it cannot be readily removed. This provision is intended to deter theft and fraudulent misuse of license plates.<sup>42</sup> The proposed rule provides flexibility to licensees in determining a reasonable method of safekeeping department-issued license plates. The division has approved similar business premises requirements on two separate occasions. In addition to the division's prior analyses, Section 503.063(d) and (e), Transportation Code, as amended by House Bill 718, generally state that a dealer is responsible for the safekeeping and distribution of department-issued license plates and is liable for missing or misused license plates, authorize the department to conduct a review of the dealer's compliance with their use and safekeeping, and authorize the department to establish rules for the provision of such plates. Proposed amended §215.140(a)(6)(E) and (b)(5)(E) ultimately establish reasonable safekeeping requirements for department-issued license plates, aid the department and licensees in tracking the issuance and location of such plates, and reasonably fall within the department's regulatory authority to prevent fraud and abuse pursuant to Section 2301.152(a)(5) and (b), Occupations Code. Following the analyses in the division's prior determination letters regarding business premises requirements, and the reasoning above, proposed amended §215.140 is a reasonable exercise of the department's statutory authority, and is consistent with state policy.<sup>43</sup>

**H. The requirements for drive-a-way operator in-transit license plates in proposed new §215.143 are consistent with state policy.**

The division recently reviewed and approved new requirements for drive-a-way operator in-transit license plates in now current §215.143.<sup>44</sup> The proposed amendments are generally consistent with the requirements found in proposed new §215.120 pertaining to manufacturers, distributors, and converters, and proposed amended §215.138 pertaining to dealers. Like those rules, the department intends to streamline license plate recordkeeping for in-transit license plates by requiring drive-a-way operators to maintain required license plate data in the department-designated system instead of having to retain such records locally.<sup>45</sup> The proposed rule also encourages drive-away-operators to immediately alert law enforcement by reporting a stolen license plate to a local law enforcement agency.

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<sup>42</sup> *Id.*

<sup>43</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012), at 5-6; Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 12-15.

<sup>44</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 15-16.

<sup>45</sup> 49 Tex. Reg. 5033 (2024) (preamble to proposed §215.143) (July 12, 2024) (Tex. Dep't Motor Vehicles).

The division already approved recordkeeping requirements for department-issued license plates.<sup>46</sup> Consistent with the division's previous determination letter and analysis approving reasonable recordkeeping requirements for drive-a-way operator in-transit license plates, and the analyses to proposed amended §§215.120 and 215.138, proposed amended §215.143 is a reasonable exercise of the department's statutory authority and is consistent with state policy.<sup>47</sup>

**I. The requirements for dealers' authorization to issue license plates in proposed amended §215.150 are consistent with state policy.**

Proposed amended §215.150 is intended to implement House Bill 718, by removing temporary tag requirements and replacing such requirements with those specific to the issuance of license plates.<sup>48</sup> Proposed amended §215.150(a) generally requires a dealer to issue a general issue license plate or set of license plates for a vehicle type the dealer is authorized to sell to a buyer of a new vehicle, unless the buyer has an authorized plate or set of plates which may be assigned to the vehicle, and a buyer of a used vehicle if a license plate or set of plates did not come with the vehicle or if the buyer does not have authorized plates that can be assigned to the vehicle. Section 503.026, Transportation Code, requires a dealer to obtain a dealer GDN for each type of vehicle the dealer intends to sell. Section 503.038(a)(5), also prohibits a dealer holding a GDN from using or permitting the use of a dealer's license plate on a vehicle that the dealer does not own, control, or that is not in stock and offered for sale. The remaining proposed changes in this subsection remove references to temporary tags, which were eliminated by House Bill 718.<sup>49</sup>

Proposed new §215.150(b) adds an exception to the requirements in §215.150(a) for vehicles sold to commercial fleet buyers authorized by a county tax assessor-collector as a dealer deputy under §217.166, because such commercial fleet buyers are authorized as dealer deputies to assign license plates to vehicles purchased from a dealer. The proposed rule is consistent with Section 520.0071, Transportation Code, which generally requires the department to prescribe rules pertaining to the classification types of deputies performing titling and registration duties, the duties and obligations of the deputies, the type and amount of any bonds that may be required by a county assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies. Proposed new §215.150(c) would require a dealer that holds a GDN to issue a buyer's temporary license plate to an out-of-state buyer for a vehicle that is to be registered in another state. Due to statutory changes made by House Bill 718, Section 503.063(i), Transportation Code will authorize temporary license plates to be issued and displayed if the buyer of the vehicle is not a resident of this state and if the vehicle is not located or required to be titled or registered in the state and will be titled, registered and inspected, if

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<sup>46</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.83, 215.102, 215.103, 215.112, 215.120, 215.133, 215.134, 215.138, 215.139, 215.140, 215.143, 215.160, 215.174, 215.177, 215.178, 221.11, 221.13, 221.14, 221.15, 221.16, 221.41, 221.43, 221.44, 221.45, 221.51, 221.54, and 221.73 (RCD Rule Review #2024-001), at 15-16.

<sup>47</sup> *Id.*

<sup>48</sup> 49 Tex. Reg. 5034 (2024) (preamble to proposed §215.150) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>49</sup> Acts of 2023, 88th Leg., R.S., ch. 668 (H.B. 718).

applicable, in accordance with the laws of the buyer's state of residence. Thus, proposed new §215.150(c) is a reasonable exercise of statute in accommodating out-of-state buyers.

Proposed amended §215.150(d) generally replaces the term “license holder” with “dealer” to maintain consistency throughout the rule, removes references to temporary tags to implement House Bill 718 and replaces such references with a cite to license plates and references to pertinent statutory citations. Given that these proposed amendments are intended to maintain clarity, consistency, and update statutory references, they are a reasonable exercise of the department's statutory authority. Similarly, the department generally proposed amended §215.150(e) to remove unnecessary language, remove references to buyer's temporary tags and internet down tags, update statutory and rule citations, and as is consistent with Sections 503.024(a)(2) and 503.063(h), Transportation Code, to clarify that a governmental agency may issue either a general issue license plate or a buyer's temporary license plate unless the buyer has a qualifying license plate to place on the vehicle.<sup>50</sup>

Lastly, proposed amended §215.150(f) also removes references to temporary tags and replaces such language with references to license plates to implement House Bill 718. Notably, similar to proposed new §215.140(a)(6)(E) and (b)(5)(E), pertaining to the safe storage of license plates for dealers and wholesale motor vehicle auction GDN holders, proposed new §215.150(f)(4) requires dealers to store all department-issued license plates in the licensees' possession in a locked or secured room or closet or in at least one securely locked, substantially constructed safe or steel cabinet bolted or affixed to the floor in such a way that it cannot be readily removed, and separately, to properly mark and destroy, recycle, or return all void license plates as required under §215.158. Again, Section 503.063(d) and (e), Transportation Code, as amended by House Bill 718, generally state that a dealer is responsible for the safekeeping and distribution of department-issued license plates and is liable for missing or misused license plates, authorize the department to conduct a review of the dealer's compliance with their use and safekeeping, and authorize the department to establish rules for the provision of such plates. Proposed amended §215.150(f)(4) establishes reasonable safekeeping requirements for department-issued license plates, aids the department and licensees in tracking the issuance and location of such plates, and reasonably falls within the department's regulatory authority to prevent fraud and abuse pursuant to Section 2301.152(a)(5) and (b), Occupations Code. For the aforementioned reasons, proposed amended §215.150 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

**J. The license plate general use requirements in proposed new §215.151 are consistent with state policy.**

As noted, House Bill 718 eliminated the department's temporary tag system and requires the provision of department-issued license plates.<sup>51</sup> As amended by House Bill 718, Section 503.061(b), Transportation Code, requires the department to adopt rules regulating the issuance

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<sup>50</sup> 49 Tex. Reg. 5034 (2024) (preamble to proposed §215.150) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>51</sup> Acts of 2023, 88th Leg., R.S., ch. 668 (H.B. 718).

and use of dealer's license plates. Section 503.063 lays out the requirements for dealer-issued license plates to buyers and includes requirements for governmental agencies. Section 503.0631, in part, requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates. The department also has the general authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority pursuant to Section 2301.151, Occupations Code.

In accordance with the department's aforementioned statutory duties, proposed new §215.151 generally sets out the requirements for a dealer or governmental agency to issue or secure a license plate or set of license plates for a purchased vehicle, and specifies which type of license plates may be issued or secured depending on the residency of the buyer or whether the buyer provides a qualified license plate. In both aiding the department's management of its database of dealer-issued license plates and to prevent fraud, the proposed new rule also requires dealers to mark as void, destroy, recycle, or return unqualified license plates to the department, and to update the department's license plate database. Proposed new §215.151 provides helpful clarity and guidance to licensees, aids the department in monitoring the usage of license plates, prevents fraud and protects public safety, and better enables the department to fulfill its statutory duties. Thus, proposed new §215.151 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

**K. The requirements for obtaining dealer-issued buyer's license plates in proposed amended §215.152 are consistent with state policy.**

Proposed amended §215.152 is intended to implement House Bill 718, by removing references to the issuance of temporary tags, and replacing those references with information on how the department intends to issue license plates, including how the department calculates the allotment of plates to be provided to dealers, requirements for dealers to issue or reassign a license plate or set of license plates to most vehicle buyers, and requirements for entering license plate information into the department's license plate system.<sup>52</sup> Proposed amended §215.152(a) and (b) generally require dealers and government agencies that issue license plates to be able to connect to webDEALER and the department's license plate system, require verification of the receipt of department-issued license plates in the license system, and require entering information about the vehicle, buyer, and license plate number to be issued or secured on a vehicle in the license plate system. Section 520.021 authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system. The department is also required to manage and maintain a real-time database of information on buyers to whom dealers issue a license plate or set of license plates and to adopt rules and prescribe the procedures necessary to maintain the database pursuant to Section 503.0631, Transportation Code. Likewise, the department also has the authority to inspect the books and records of license holders pursuant to Section 2301.153(b), Occupations Code, and the

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<sup>52</sup> 49 Tex. Reg. 5034 (2024) (preamble to proposed §215.152) (July 12, 2024) (Tex. Dep't Motor Vehicles).

department is tasked, in part, with preventing fraud and abuse and enforcing and administering Chapter 503 pursuant to Section 2301.152(a)(5) and (b). Such requirements are reasonable measures to ensure the department can fulfill its statutory duties to maintain a real-time database to track the issuance of license plates, and aid in deterring fraud and protecting the public from misuse.

Proposed amended §215.152(c) generally requires the department to inform each dealer of the annual maximum number of buyer's license plates the dealer is authorized to obtain and describes two types of license plates dealers may receive from the department, which include an allotment of unassigned general issue license plates or sets of license plates for vehicles to be titled and registered in Texas and a separate allotment of buyer's temporary license plates for non-resident buyers. Proposed amended §215.152(d) generally provides that a dealer's allotment of plates will be based on vehicle title transfers, sales, or license plate issuance data as determined from the department's systems from the previous fiscal year, as well as previously used multipliers based on time in operation or actual in-state and out-of-state transactions. Proposed amended §215.152(e) and (h) would allow a new franchised dealer to be issued 200 general issue license plates and 100 buyer's temporary plates annually and new non-franchised dealers may be issued 100 general issue license plates and 48 buyer's temporary license plates annually. The department will issue license plates in batches and on a quarterly basis, and both categories of dealers would be entitled to receive additional plates by providing credible information indicating that a greater number of license plates is needed. The department asserts that the proposed license plate allocations are based on historical data, and it intends to issue license plates on a quarterly basis so dealers have enough inventory on hand to conduct business, but will not have to store the entirety of the annual plate allotment at once.<sup>53</sup> Lastly, proposed new §215.152(i)-(k) generally explain when and how a dealer may submit a request for additional plates, which must be submitted through the department's license plate system, and is intended to provide licensees ample time to receive license plates in advance of their need.<sup>54</sup>

Section 503.0633, Transportation Code authorizes the department to establish the maximum number of license plates that a dealer may obtain in a calendar year under Sections 503.063 and 503.065, which pertain to dealer-issued license plates to buyers and temporary buyer's license plates, respectively. The department is also required to monitor the number of license plates obtained by a dealer pursuant to Section 503.0633(e), and is required to develop, manage, and maintain a secure, real-time database regarding the issuance of dealer-issued license plates pursuant to Section 503.0631. Given the broad authority granted to the department to establish standards for the issuance of dealer license plates, the aforementioned proposed rules are a reasonable exercise of the department's statutory authority and are consistent with state policy.

The remaining proposed amendments to §215.152 generally implement House Bill 718 by removing references to temporary tags, updating statutory citations, adding language for

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

consistent use of terms and for clarity, and re-lettering sections as necessary. These are also a reasonable exercise of the department's regulatory authority and are consistent with state policy.

**L. The rules pertaining to a dealer's temporary license plate allocation in proposed new §215.154 are consistent with state policy.**

Proposed new §215.154 is intended to implement House Bill 718 by addressing the allocation of a new license plate type.<sup>55</sup> Section 503.062, Transportation Code, generally allows a dealer to issue a temporary license plate for use on an unregistered vehicle by the dealer or the dealer's employees to demonstrate to a prospective buyer the vehicle for sale, to convey the vehicle from a dealer's place of business to another location of that dealer or another dealer, to be repaired, from any location in the state to be unloaded or purchased and driven to the dealer's location, to road test the vehicle, or to allow the vehicle to be used by a charitable organization. Similar to proposed amended §215.152, proposed new §215.154 details how the department will allocate dealer's temporary license plate allocations.

Proposed new §215.154(a) would allow a dealer to order a number of dealer's temporary license plates based on the type of license for which the dealer applied and the number of vehicles the dealer sold during the previous year, to deter theft and fraudulent misuse of temporary plates by limiting supply.<sup>56</sup> Proposed new §215.154(b) generally details the maximum number of dealer's temporary license plates issued to new license applicants during the applicant's first license term. Proposed new §215.154(c) would provide all dealers licensed on July 1, 2025, with the opportunity to obtain the number of dealer's temporary plates that a new dealer of the same license type is eligible for on that date as defined in §215.154(b), and an additional number based on dealer sales in the previous year as defined in §215.154(e), and proposed new §215.154(d) lists exceptions for which a dealer would not be subject to the initial allotment so that certain dealers who previously qualified for more license plates may continue using their current allocation. The department intends to ensure that existing dealers have access to enough dealer's temporary plates during the transition from using agent and vehicle temporary tags to using dealer's temporary plates.<sup>57</sup> Proposed new §215.154(e) would allow a dealer to obtain more than the maximum initial allotment limits for dealer's temporary plates by providing sales numbers from the prior year that justify an increased allocation. The department intends to allow for flexibility and business continuity for those dealers who have a documented need for additional plates.<sup>58</sup> Proposed new §215.154(f) proposed a similar allowance for wholesale motor vehicle dealers. The department also provides flexibility to these allocation requirements by allowing a waiver of the allocation limits if it is provided data that demonstrates the business needs of license holders with appropriate allocations pursuant to proposed new §215.154(g). The department asserts that proposed new §215.154 creates an allocation system for dealer's temporary license plates that balances the need to limit allocations to avoid excess inventory

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<sup>55</sup> 49 Tex. Reg. 5035 (2024) (preamble to proposed §215.154) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 5036.

<sup>58</sup> *Id.*



creating an increased risk of license plate fraud or theft, with the need to provide license holders with enough dealer temporary license plates to meet business needs.<sup>59</sup>

Section 2301.151, Occupations Code, in part, grants the department exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by Chapter 2301, and to take any action necessary or convenient to the exercise of the power and jurisdiction granted to the department. Section 2301.152, tasks the department with establishing the qualifications of license holders, ensuring that the lease of motor vehicles is conducted according to department rules, and preventing fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles. Section 503.061, Transportation Code, authorizes the department to adopt rules regulating the issuance of the use of dealer's license plates, and the department, as mentioned must manage and maintain a secure, real-time database regarding the issuance of dealer-issued license plates pursuant to Section 503.0631. Given the broad statutory authority afforded to the department, proposed new §215.154 is a reasonable exercise of such authority and is consistent with state policy.

**M. The buyer's license plate and receipt requirements in proposed amended §§215.155, 215.156, and 215.157 are consistent with state policy.**

Proposed amended §§215.155, 215.156, and 215.157, replace all references to buyer's temporary tags with references to license plates and insert specific plate requirements to implement House Bill 718. Of note, proposed amended §215.155(c) requires that for a wholesale transaction, a dealer may not issue a buyer's plate. Instead, the purchasing dealer must use its own dealer's plate to display on a purchased vehicle. However, if a general-issue plate is already assigned to the vehicle, the selling dealer must provide the general issue plate to the purchasing dealer. This requirement is intended to ensure that an assigned license plate stays with the vehicle to which the license plate was originally assigned.<sup>60</sup> Proposed amended §215.155(e) and (f) generally prescribe a \$10 fee that must be charged by dealers, or may be charged by governmental agencies, for buyer's plates that are issued or assigned to a buyer upon purchase of a vehicle. As amended by House Bill 718, Section 503.063(g), Transportation Code, authorizes the department to prescribe fees for the issuance of license plates to buyers, and the department has determined that a \$10 fee will be sufficient to cover the expected costs associated with registering and processing a new license plate.<sup>61</sup>

Proposed amended §215.156 is purposed to require dealers to provide a vehicle buyer with a buyer's license plate receipt, and generally follows the requirements of Section 503.0631(c)-(d-2), Transportation Code, as amended by House Bill 718.<sup>62</sup> Likewise, pursuant to Section 503.0631(e), the department is authorized to adopt rules and prescribe the procedures as

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<sup>59</sup> *Id.*

<sup>60</sup> 49 Tex. Reg. 5036 (2024) (preamble to proposed §215.155) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>61</sup> *Id.*

<sup>62</sup> 49 Tex. Reg. 5036 (2024) (preamble to proposed §215.156) (July 12, 2024) (Tex. Dep't Motor Vehicles).

necessary to implement that section. The proposed requirements ensure that consumers are provided proper documentation, and that the department's electronic system is updated by licensees as intended.

Proposed amended §215.157 describes the process for a dealer or governmental agency to issue a license plate and a license plate receipt when internet access is unavailable by requiring the dealer or governmental agency to document the issuance of a license plate on a receipt form prescribed by the department, which must be entered into the department's electronic system no later than the next business day. Maintaining the accuracy of the data in the license plate database is a reasonable exercise of the department's authority, as Section 503.0631, Transportation Code, as amended by House Bill 718, requires a dealer to complete a form prescribed by the department under such circumstances, and to update the department's database not later than the next day after the time of the sale.<sup>63</sup> And, Section 503.063(h)(1), subjects certain governmental agencies to the same provisions of Section 503.0631, which are applicable to a dealer.

The remaining proposed amendments to §§215.155, 215.156, and 215.157 generally re-letter provisions, remove redundant or unnecessary language or punctuation, and provide reasonable clarity and guidance to licensees. For the aforementioned reasons, proposed amended §§215.155, 215.156, and 215.157 are a reasonable exercise of the department's statutory authority, and are consistent with state policy.

**N. The general requirements for buyer's license plates in proposed amended §215.158 are consistent with state policy.**

Proposed amended §215.158 generally removes references to temporary tag requirements, deletes redundant or unnecessary language, and inserts license plate safekeeping and recordkeeping requirements to prevent potential theft or fraud relating to plates that have been removed from a vehicle.<sup>64</sup> Of note, proposed amended §215.158(b) would require dealers, if a license plate must be removed from a vehicle, to mark the plates as void and destroy, recycle the void license plates with a metal recycler registered under Chapter 1956, Occupations Code, or return the void license plates to the department or a county tax assessor-collector. Section 503.063(d) and (e), Transportation Code, as amended by House Bill 718, generally state that a dealer is responsible for the safekeeping and distribution of department-issued license plates and is liable for missing or misused license plates, authorizes the department to conduct a review of the dealer's compliance with their use and safekeeping, and authorizes the department to establish rules for the provision of such plates. Consistent with Section 503.038, as amended by House Bill 718, proposed amended §215.158(c) would require a dealer to return all buyer's license plates in its possession to the department within 10 days of closing the associated license or department revocation, closure, or cancellation of the associated license. Proposed amended §215.158 is a reasonable exercise of the department's authority to safeguard and monitor the

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<sup>63</sup> 49 Tex. Reg. 5036 (2024) (preamble to proposed §215.157) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>64</sup> 49 Tex. Reg. 5036 (2024) (preamble to proposed §215.158) (July 12, 2024) (Tex. Dep't Motor Vehicles).

issuance of license plates, to prevent and deter fraud, and to implement the license plate system created by House Bill 718. Thus, it is consistent with state policy.

**O. The evidence of motor vehicle ownership requirements in proposed amended §217.5 are consistent with state policy.**

The department's rules in Chapter 217 generally govern the titling and registration of motor vehicles, license plates, the department's registration and titling electronic systems, title liens and claims, motor vehicle records, inspections of motor vehicles, use of deputies by tax assessor collectors, fees and exclusions from fees related to the registration of motor vehicles, and the issuance of titles and registrations for assembled vehicles. Current §217.5 generally lays out the evidence of motor vehicle ownership that must accompany a title application.

First, proposed amended §217.5(a)(1)(A) would require a manufacturer's full name be listed on a manufacturer's certificate of origin ("MCO"). The department asserts that this provision would eliminate confusion as to the name of a manufacturer rather than using abbreviations on an MCO, which will ensure greater accuracy in the titling of new motor vehicles and further the purpose of Chapter 501, Transportation Code, to prevent the theft of motor vehicles.<sup>65</sup> Proposed amended §217.5(a)(1)(A)(vi) would require an MCO to provide, if the vehicle is a motor bus, the seating capacity of the vehicle to help the department quickly and accurately determine whether the vehicle should be registered or titled as a bus based on the seating capacity listed on the MCO.<sup>66</sup> And, proposed amended 217.5(a)(2) updates the requirements for the evidence of motor vehicle ownership that must accompany an application for title on a used motor vehicle, where applicants must provide at least one of the documents listed in proposed amended §217.5(a)(2)(A)-(E). Section 501.023, Transportation Code, in part, authorizes the department to prescribe the process and procedures for applying for a motor vehicle title. Section 501.025, in part, requires an MCO to be in a manner prescribed by the department, before a title can issue on first sale. The aforementioned proposed amendments aid the department in fulfilling its statutory duties, provide reasonable clarifications to applicants, and aid in deterring theft and fraud.

The remaining proposed amendments to §217.5 generally re-letter provisions, delete unnecessary language, make non-substantive grammatical changes, and update statutory citations. For the reasons listed above, proposed amended §217.5 is a reasonable exercise of the department's statutory authority and is consistent with state policy.

**P. The requirements for second-hand vehicle transfers in proposed amended §217.8 are consistent with state policy.**

Proposed amendments to §217.8 are intended to implement House Bill 718, which amended Section 501.147, Transportation Code, to mandate that dealers holding a GDN must submit

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<sup>65</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 9.

<sup>66</sup> *Id.*; 49 Tex. Reg. 5068 (2024) (preamble to proposed §217.5) (July 12, 2024) (Tex. Dep't Motor Vehicles).

notifications to the department of sales or transfers of motor vehicles to the dealer.<sup>67</sup> Notably, proposed amended §217.8(b) generally follows Section 501.147(b), as amended by House Bill 718, by requiring dealers with a GDN to submit notifications to the department of sales or transfers of motor vehicles to the dealer, but offers flexibility to dealers on the method utilized to submit such information. Given that the proposed amendments generally follow statute, proposed amended §217.8 is a reasonable exercise of the department's authority and is consistent with state policy.

**Q. The rules pertaining to webDEALER access, use, and training in proposed amended §217.74 are consistent with state policy.**

As amended by House Bill 718, Section 520.005, Transportation Code, requires a motor vehicle dealer to use the electronic system designed by the department and made available by a county assessor-collector under Section 520.005 to submit a title and registration application in the name of the purchaser of a motor vehicle. Proposed amended §217.74 is intended to implement these requirements by mandating that motor vehicle dealers use the webDEALER system to submit title and registration applications for purchasers after July 1, 2025.<sup>68</sup> Notably, proposed §217.74(g) would require existing webDEALER users who process title and registration transactions through webDEALER to complete system training by April 30, 2025, and that all new webDEALER users created on or after April 30, 2025, complete system training before being given webDEALER permissions. New proposed §217.74(g)(1) provides that the required system training will include, at a minimum, training regarding transactions performed in webDEALER and proper use of the system. Proposed amendments to new §217.74(g)(2) provide for an exemption from webDEALER training for holders who have had access to webDEALER for more than six months and who have submitted more than 100 transactions within the system as of October 1, 2024. The proposed amendments to new §217.74(g)(3) provide that the failure of holders and users to complete the required webDEALER training shall result in denial of access to webDEALER. Section 520.021 authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system. Section 520.023 requires the department to implement a training program providing information on the automated registration and titling system and the identification of fraudulent activity related to vehicle registration and titling, and persons performing registration or titling services are required to complete the training. Ensuring that license holders are proficient in webDEALER, which is required by statute, is a reasonable exercise of the department's statutory authority. Thus, proposed amended §217.74 is consistent with state policy.

**R. The requirements for dismantling, scrapping, or destruction of motor vehicles in proposed amended §217.86 are consistent with state policy.**

Proposed amended §217.86(d) creates a new requirement that the department must receive receipt evidencing the surrender of ownership documents for a vehicle transferred to a metal

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<sup>67</sup> 49 Tex. Reg. 5069 (2024) (preamble to proposed §217.8) (July 12, 2024) (Tex. Dep't Motor Vehicles).

<sup>68</sup> 49 Tex. Reg. 5074 (2024) (preamble to proposed §217.74) (July 12, 2024) (Tex. Dep't Motor Vehicles).

recycler as specified in §217.86(c) and receive receipt of a department-prescribed form detailing the transfer. The department asserts that the proposed amendment would ensure that individuals, including salvage dealers, follow the requirements set out in §217.86(a)-(c) when delivering motor vehicles to metal recyclers as a prerequisite to the dismantling, scrapping, or destruction of a vehicle.<sup>69</sup> Likewise, the proposed rule is intended to prevent nonrepairable and salvage vehicles from recirculating back into the used motor vehicle market, which could potentially harm the public as such vehicles pose a safety risk when operated on the roads.<sup>70</sup> Section 501.107, Transportation Code, generally prescribes the responsibility of metal recyclers to submit to the department evidence of ownership the recycler receives after purchasing a vehicle. Section 501.1003 describes the responsibilities of salvage dealers when dismantling, scrapping, or destroying a motor vehicle, and also authorizes the department to prescribe rules relating to notices that must be submitted to the department. Given that proposed amended §217.86 generally follows the aforementioned statutory requirements, it is a reasonable exercise of the department's regulatory authority and is consistent with state policy.

### **III. Determination**

Based on the above analysis, the proposed rules are approved by the division and may proceed to final adoption and implementation.

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<sup>69</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (July 12, 2024), at 10.

<sup>70</sup> *Id.*