



GOVERNOR GREG ABBOTT

To: Charles Bacarisse, Chair
Daniel Avitia, Executive Director
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Texas Department of Motor Vehicles

From: Caleb Gunnels, Counsel
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Date: December 5, 2022

Subject: Proposed Title 43 Texas Administrative Code Sections 215.133 and 215.140 (RCD Rule Review #2022-012)

I. Syllabus

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§215.133 and 215.140, which amend pre-licensing requirements for General Distinguishing Number (“GDN”) dealers.¹ The proposed amendments affect new and renewal dealer applicants and include updates to application requirements and business premises requirements for a dealer to establish a permanent place of business.² The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on October 28, 2022. The division invited public comments on the proposed rules for a 30-day period ending December 2, 2022, and received one comment in favor of the proposed rules.³ As explained below, the division has determined that the proposed rules are consistent with state policy, and, thus, proposed amended §§215.133 and 215.140 are approved by the division and may be finally adopted and implemented.

II. Analysis

A GDN is the basic dealer license that allows a person to buy, sell, or exchange the type of vehicle for which the GDN is issued; a person may not engage in business as a dealer without

¹ 47 Tex. Reg. 7256 (2022) (to be codified at 43 TAC §§215.133 and 215.140) (proposed Oct. 28, 2022) (Tex. Dep’t. Motor Vehicles); Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

² Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 1-2.

³ Public Comment from Steve Dye (Nov. 22, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

one.⁴ In August 2012, the department sought to simplify and streamline the license application process by amending §§215.133 and 215.140 to eliminate and modify certain licensing requirements.⁵ Since then, the department has experienced a significant increase in fraudulent applications, leading to a wide range of criminal activity.⁶ Criminals employ numerous tactics to receive a GDN license, such as providing the department false information and documents, including fictitious lease agreements, stolen identities, and fake photographs of business premises, in order to gain access to the department's temporary tag database for the purpose of printing fraudulent temporary tags.⁷ These fraudulent temporary tags enable criminals to operate stolen vehicles and to commit crimes such as human, gun, and drug trafficking.⁸ Further, once a dealer GDN is obtained, bad actors frequently abandon a licensed business location or post signs stating that the business is open by appointment only, which hinders department and law enforcement investigations and also allows bad actors to operate hidden lots for other purposes, such as Vehicle Identification Number ("VIN") switching or cloning.⁹ According to the department, identity fraud and business-premises fraud are the two major categories of fraud that occur in GDN licensing, and are the impetus for proposed amended §§215.133 and 215.140.¹⁰

In an effort to combat the distribution of fraudulent temporary tags, the department recently enacted new 43 TAC §211.6, which the division reviewed and approved, requiring a GDN applicant and certain representatives of the applicant to submit a complete set of fingerprints to the Texas Department of Public Safety ("DPS") for the purpose of verifying the applicant's identity and obtaining criminal history record information.¹¹ The fingerprint-based background check now necessitates that an applicant submit proof of identification in-person and allows the department to access the applicant's criminal history record information maintained by both DPS and the Federal Bureau of Investigation ("FBI"), which includes federal crimes and crimes committed in other states.¹² Likewise, it also enables the department to subscribe to DPS and FBI "rap back" services in order to receive updates about an individual's criminal history record.¹³

In furtherance of the effort to deter and prevent fraud in the GDN application process, the department now proposes to update §215.133 to require additional information on the GDN

⁴ Texas Department of Motor Vehicles, *Dealer License Application Process*, <https://www.txdmv.gov/dealer-license-application-process> (last visited Nov. 4, 2022); Section 503.021, Texas Transportation Code.

⁵ 47 Tex. Reg. 7256 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

⁶ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 2.

⁷ *Id.* at 2 and 3.

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 3; Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-003) (June 24, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

¹² Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-003) (June 24, 2022), at 2.

¹³ *Id.* at 2.

application and to reflect §211.6's new fingerprint requirement.¹⁴ It also proposes to update the permanent business premises requirements an applicant must demonstrate under §215.140 before receiving a GDN license.¹⁵ Because the proposed rules require GDN dealer applicants to provide more information on the application, resulting in more time to complete the application, and because the proposed business premises requirements may result in a higher cost to obtain or maintain a dealer GDN, the department identified proposed amended §§215.133 and 215.140 as affecting market competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code, and, consequently, submitted the proposed rules to the division for review.¹⁶

A. The division finds that proposed amended §215.133 is consistent with state policy.

To begin, proposed amended §215.133(c) specifies the general requirements for new, renewal, and amended dealer GDN applications. According to the department, the proposed amendments are consistent with current dealer application requirements and clarify that a dealer renewing or amending a GDN must review current GDN information, update information that has changed, and provide related supporting information or documents for any change or new requirement.¹⁷ Section 503.029(a)(2), Texas Transportation Code, grants the department broad authority to specify the information that must be included on an application for an original or renewal GDN, and Section 2301.257(a)(2), Texas Occupations Code, directs the department to require the inclusion of any information that it finds necessary to assess an applicant's qualifications for service to the public. Moreover, Section 2301.257(b) requires dealers to notify the department of any material change that occurs in the information included in an application within a reasonable time of such change.

Of note, the proposed amendments to §215.133(c)(1)(D), (E), (G), and (H) and (c)(2)(D) require an applicant or license holder to provide information and an identity document for each owner, representative, or other employee required to be listed on the application. The division recently approved a similar provision in §211.6 that requires persons who act in a representative capacity for a GDN applicant or license holder and who are required to be listed on a GDN application to submit a complete set of fingerprints to DPS.¹⁸ The division noted, and the same analysis applies here, that Section 503.029(a)(2), Texas Transportation Code, and Section 2301.257(a)(2), Texas Occupations Code, grant the department broad authority to specify what must be included on a GDN licensing application, including any information that the department finds necessary to

¹⁴ 47 Tex. Reg. 7256-7257 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

¹⁵ *Id.*

¹⁶ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 4, 5, and 8.

¹⁷ 47 Tex. Reg. 7258 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

¹⁸ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-003) (June 24, 2022), at 5-6; 43 TAC §211.6(c) (2022) (Tex. Dep't. Motor Vehicles).

assess an applicant's qualifications for service to the public.¹⁹ Importantly, Section 2301.651(b), Texas Occupations Code, authorizes the department to take action against a GDN applicant or license holder for an act or omission by a person acting in a representative capacity for the applicant or license holder if the person's conduct would be cause for denying, revoking, or suspending a GDN, including in Section 53.021(a)(1), Texas Occupations Code, the commission and conviction of an offense that relates to the duties and responsibilities of the licensed occupation. The department has determined that both holders of a GDN dealer license and their representatives provide services that involve access to confidential information, the conveyance, titling, and registration of private property, and the possession of monies belonging to or owed to private individuals, creditors, and governmental entities.²⁰ The position of trust created by a license issued by the department has increasingly been abused by criminals to facilitate fraud, theft, money laundering, and assaultive or sexual crimes.²¹ As such, enabling the department to verify the identity and criminal history of applicants and other individuals required to be listed on the application will help the agency better fulfill its statutory obligations under Sections 2301.651 and 53.021, Texas Occupations Code, and deter fraud and abuse of GDN licenses.

Next, proposed amended §215.133(h) specifies that the department may, during the application process, require a site visit of the applicant's business location, and also requires an applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements in §215.140 are met and will be maintained during the license period. This provision aligns with Section 503.029(a)(3), Texas Transportation Code, which requires an application for an original or renewal GDN to contain information showing that the applicant has complied with the business location requirements in Section 503.032, Texas Transportation Code. Furthermore, according to the department, this proposed amendment will enhance its ability to evaluate applications and to investigate instances of fraud or noncompliance during the application process, as well as the misuse of a license to perpetuate crimes.²² Section 503.034(a)(1), Texas Transportation Code, directs the department to deny an application for an original or renewal GDN on the discovery of the inclusion of untrue information on the application, and Section 503.038(b) directs the cancellation of a GDN obtained by the submission of false or misleading information. And Section 2301.651(a), Texas Occupations Code, permits the department to deny, suspend, or revoke a GDN or reprimand an applicant or license holder for a material misrepresentation in any application or other information filed with the department. In order to carry out these statutory duties, the department must be able to verify the information submitted by each applicant for an original GDN, amended GDN, or GDN renewal, including the existence of a compliant business premises under Chapter 503, Texas Transportation Code.

¹⁹ Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Section 211.6 (RCD Rule Review #2022-003) (June 24, 2022), at 5.

²⁰ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 5.

²¹ *Id.*

²² 47 Tex. Reg. 7258 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

Finally, in addition to numerous nonsubstantive changes that modernize and clarify the rule language, the remaining provisions in proposed amended §215.133 specify general information that must be included or updated in new, renewal, and amended dealer GDN applications to better facilitate the department's evaluation and verification of applicants and license holders. To ease the administrative burden on applicants, the department has also published, and will continue to update, a step-by-step application guide for applicants and license holders on the department's website.²³ Because each of the proposed provisions will facilitate the department's administration of the GDN application process and provide clarification to applicants and license holders of the department's expectations and practices regarding information required to be listed in new, renewal, and amended dealer GDN applications, they all support the department's authority in Section 503.029(a)(2), Texas Transportation Code, and Section 2301.257(a)(2), Texas Occupations Code, and are, thus, consistent with state policy.

B. The division finds that proposed amended §215.140 is consistent with state policy.

Proposed amended §215.140 updates business premises requirements for applicants for a GDN to establish a permanent place of business. Section 503.032, Texas Transportation Code, requires an applicant for a dealer GDN or wholesale motor vehicle auction GDN to demonstrate an established and permanent place of business for the location for which the license is sought. And the premises must be maintained during the duration of the license because Section 503.029(a)(3) and (4), Texas Transportation Code, require both original and renewal GDN applicants to demonstrate compliance with the business premises requirements under Section 503.032 as well as all other applicable state laws and municipal ordinances. Further, Section 503.038(a)(7), Texas Transportation Code, authorizes the department to cancel a dealer's GDN if the dealer fails to maintain the qualifications for a GDN, which includes business premises compliance under statute.

After conducting hundreds of investigations, the department has found that noncompliance with business premises requirements contributes significantly to the commission of criminal activity, while also posing a threat to public safety and welfare.²⁴ As mentioned above, bad actors have provided false information and documents to the department, including fictitious lease agreements and fake photographs of a business location, or operate virtually or out of an existing, unrelated business, such as a restaurant, gas station, or convenience store.²⁵ Even when a business location does exist, after receipt of a license, bad actors frequently abandon the licensed business location, post a sign stating that the business is open for appointment only, or operate hidden storage lots to facilitate criminal acts such as VIN switching or cloning to hinder department investigations and impede law enforcement activities.²⁶ In updating the requirements for applicants and holders of a GDN to establish and maintain a permanent business location, the

²³ *Id.*

²⁴ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 3 and 5.

²⁵ *Id.* at 2.

²⁶ *Id.*

department seeks to aid GDN dealers and applicants in understanding safe premises requirements, to reduce fraud, and to improve public health and safety.²⁷

To begin, proposed amended §215.140(1) and (2) prohibit retail dealers and wholesale motor vehicle dealers from being open only by appointment and clarify that a caller must be able to speak to a natural person or leave a message during business hours. Section 503.032(c)(2), Texas Transportation Code, requires an applicant or bona fide employee to be at the licensed location and available to the public or the department during reasonable and lawful hours. Because the proposed requirements generally follow statute, they are consistent with state policy.

Proposed amended §215.140(3) and (4) clarify department criteria for determining whether an exterior business sign is conspicuous, permanent, and permanently mounted for retail dealers and wholesale motor vehicle dealers. Section 503.032(a)(2)(B), Texas Transportation Code, requires an applicant to demonstrate an established and permanent place of business and to maintain, on the location, a conspicuous sign with letters at least six inches high showing the name of the applicant's business. The proposed amendments specify that a sign is conspicuous if it is easily visible to the public within 100 feet of the main entrance to the office, and that it is considered permanent if it is made of durable, weather-resistant material and permanently mounted to an exterior building wall or dedicated sign pole. The proposal also allows wholesale motor vehicle dealers to utilize an interior sign if an external sign is not permitted by the property owner. Lastly, the proposal requires wholesale motor vehicle dealers to add additional text notifying consumers that purchasers must be licensed dealers. The department asserts that such a requirement is necessary to eliminate confusion as to whether wholesale motor vehicle dealers may exchange or sell vehicles to retail purchasers and informs and protects retail buyers from making unlawful purchases.²⁸ Given that a conspicuous sign is already required by Section 503.032(a)(2)(B), Texas Transportation Code, the department reasonably proposes clarifying sign specifications that assure signs are visible to the public. And, the department seeks to ease any burden on new or renewal applicants by allowing new and renewal applicants to use a temporary sign if a permanent sign has been ordered and will be installed upon delivery, and by delaying the compliance effective date for the new content requirement for wholesale motor vehicle dealer signs until September 1, 2023.²⁹ Because proposed §215.140(3) and (4) make practical clarifications regarding sign visibility and better protect the public, they are a reasonable exercise of the department's statutory authority and are consistent with state policy.

Proposed amended §215.140(5) updates requirements for a dealer's office space at the licensed location. Specifically, proposed amended §215.140(5)(C) and (E) require that a dealer's office be open for in-person visits from the public. Given that Sections 503.032(a)(2)(A) and (c)(2)(B), Texas Transportation Code, require applicants to operate from a permanent furnished office that is open to both the public and the department during reasonable and lawful business hours, the

²⁷ *Id.* at 4-5.

²⁸ 47 Tex. Reg. 7259 (2022) (preamble to proposed at 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

²⁹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 5.

department's requirement for a dealer's office to be open for in-person visits is a reasonable exercise of statute. Proposed amended §215.140(5)(D) prohibits a dealer's office from being located in a restaurant, gas station, or convenience store, unless the office has a separate entrance that does not require a dealer's customer to pass through the non-licensed business. The department relies on law enforcement's experience that such locations are utilized more frequently in the commission of fraud and crime, including trafficking drugs, guns, and people, and the commission of temporary tag fraud.³⁰ While Section 503.032(a)(2)(A), Texas Transportation Code, already grants the department broad authority to determine the specifications of a dealer's required office space, it has granted flexibility for dealers to operate from a shared business location, so long as the dealer's office is separate from the other business space. Because proposed amended §215.140(5)(D) will aid the department in evaluating an applicant's established and permanent business location, will enhance public health and safety, and generally follows statute, it is a reasonable exercise of the department's authority, and is thus, consistent with state policy.

Similarly, proposed amended §215.140(5)(H) specifies that a dealer's office space must follow certain minimum size requirements that allow a dealer and customer to safely access the office and conduct business in private while seated. Recent department investigations have identified applicants who utilize closet space as an "office" to house required office equipment, yet customers were unable to enter to privately conduct business, including to engage in confidential discussions related to financing.³¹ The department reasons that most bona fide dealers already comply with the proposed amended requirements, and that the cost per square foot of space, if required, for office space compliance varies from \$20-\$30.³² As mentioned above, statute grants the department broad authority to determine the requirements for a dealer's office space. The minimum size requirements were set to allow the practical operation of business and to protect customer confidentiality while minimizing the cost of compliance. Thus, proposed amended §215.140(5)(H) is a reasonable exercise of the department's authority and is consistent with state policy.

Proposed amended §215.140(11)(B) updates requirements for dealer display areas and storage lots, namely, that display areas and storage lots must be separate, display areas may not be used for customer parking, employee parking, general storage, or intermingled with another dealer's display area, and must not be part of a parking area for fuel or charging station customers nor interfere with access to or from gasoline pumps, fuels tanks, charging stations, or fire prevention equipment. Again, Section 503.032(a)(3) and (c)(1), Texas Transportation Code, require applicants to demonstrate an established and permanent place of business that has sufficient space on the location to display at least five vehicles of the type specified in the application and to remain regularly and actively engaged in buying, selling, leasing, or exchanging vehicles at the location specified in the application. Ensuring that license holders engage in business at a

³⁰ 47 Tex. Reg. 7259 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).

³¹ *Id.* at 7260.

³² Rule Submission Memorandum from the Texas Department of Motor Vehicles (Oct. 28, 2022), at 5.

licensed location, rather than one that was neither identified nor evaluated by the department during the application process, is a reasonable exercise of the department's statutory authority. The department's requirement that display area vehicles not commingle with other vehicles which are not for sale at the display area makes practical sense, so as not to confuse or mislead the public, nor interfere with department evaluations or law enforcement investigations. The department also cites that, according to National Fire Protection Association research, local fire departments annually respond to over 4,000 fires at gas station properties which have resulted in serious injuries, including death, and property damage of more than thirty million dollars per year.³³ As such, the requirement that display areas not interfere with activity at refueling or recharging stations is purposed to protect the public from danger as they approach and leave the display area. This also is a reasonable and practical exercise of the department's statutory authority.

Next, proposed amended §215.140(11)(C) prohibits public access and sales activity at storage lots, requires a posted sign of the dealer's information outside of a lot, and requires such lots to be included on a new application or an amended application for a dealer GDN. While a storage lot is not required for licensure, under the broad authority granted by Section 503.029(a)(2), Texas Transportation Code, and Section 2301.257(a)(2), Texas Occupations Code, the department may specify the information that must be included on an application for an original or renewal GDN, and the department may consider any information that it finds necessary to assess an applicant's qualifications for service to the public. As mentioned above, storage lots have frequently been used by bad actors to facilitate a broad swathe of criminal activities related to the misuse of a dealer GDN and the temporary tag system. The department intends to protect public safety while curbing the misuse of GDN licenses to ensure that business is conducted on the premises identified in the application for the department's evaluation. Thus, proposed amended §215.140(11)(C) is also a reasonable exercise of the department's authority, and is consistent with state policy.

Lastly, the remaining proposed amended provisions of §215.140 relate to administrative requirements which aid the department in evaluating and investigating applicants and license holders, as well as informing the public of certain dealer information. Because the outstanding provisions will facilitate the department's administration of its responsibilities under Chapter 503, Texas Transportation Code, and Chapter 2301, Texas Occupations Code, will provide notice to applicants and license holders of the department's expectations and practices, and better serve consumers to protect public safety and welfare, they support the department's authority, and are, thus, consistent with state policy.

III. Determination

Based on the above analysis, proposed amended §§215.133 and 215.140 are approved by the division and may proceed to final adoption and implementation.

³³ 47 Tex. Reg. 7260 (2022) (preamble to proposed 43 TAC §§215.133 and 215.140) (Oct. 28, 2022) (Tex. Dep't. Motor Vehicles).