



GOVERNOR GREG ABBOTT

To: Charles Bacarisse, Chair  
Whitney Brewster, Executive Director  
Tracey Beaver, General Counsel  
Texas Department of Motor Vehicles

From: Erin Bennett, Director  
Regulatory Compliance Division, Office of the Governor

Date: January 25, 2022

Subject: Proposed Title 43 Texas Administrative Code Sections 215.152 and 215.158 (RCD Rule Review #2021-020) and Proposed Title 43 Texas Administrative Code Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 (RCD Rule Review #2021-021)

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**I. Syllabus**

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§215.150-215.155 and 215.158 and proposed new 43 TAC §215.505, which establish maximum allotments of temporary tags for dealers and converters, set up procedures for denying access to the temporary tag database for fraudulent activity, and make other changes relating to the management of the temporary tag database and the issuance of temporary tags.<sup>1</sup> The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on December 2, 2021. The division invited public comments on the proposed rules for a 30-day period ending January 5, 2022, and received several comments expressing concerns about the potential effect of the proposed temporary tag limits on dealers with substantial out-of-state sales or higher than average growth rates.<sup>2</sup> The department supplemented its submission to the division on January 14, 2022, January 19, 2022, and January 24, 2022, with amendments that adjust the formulas setting the initial temporary tag allotments, clarify the appeals process for

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<sup>1</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.152 and 215.158), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 46 Tex. Reg. 7757 (2021) (to be codified at 43 TAC §§215.152 and 215.158) (proposed Nov. 12, 2021) (Tex. Dep’t. Motor Vehicles); 46 Tex. Reg. 7752 (2021) (to be codified at 43 TAC §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505) (proposed Nov. 12, 2021) (Tex. Dep’t. Motor Vehicles).

<sup>2</sup> Public Comment from Representative Cody Harris (Jan. 3, 2022), at 1-2 (on file with the Regulatory Compliance Division of the Office of the Governor); Public Comment from Vroom (Jan. 5, 2022), at 3-7 (on file with the Regulatory Compliance Division of the Office of the Governor).

unfulfilled additional tag requests, and otherwise further the department's directive to maintain a secure temporary tag database.<sup>3</sup> The division has determined that the proposed rules, as supplemented, are consistent with state policy and combat fraud without overburdening licensees, and, thus, they are approved by the division for final adoption.

## **II. Analysis**

House Bill 3927, adopted during the 87th Regular Legislative Session, gave the department new authority to combat the fraudulent sale and use of temporary tags, which are often involved in the unlawful operation of uninsured and uninspected motor vehicles on Texas roadways and in the commission of criminal activity, including armed robbery, human trafficking, and assaults on law enforcement.<sup>4</sup> Most significantly, Chapter 503, Texas Transportation Code, now authorizes the board to establish the maximum number of temporary tags that a dealer or converter may obtain in a calendar year and to deny access to the temporary tag database on the discovery of the fraudulent procurement of tags from the database. The department submitted proposed §§215.150 - 215.155 and 215.158 and proposed new §215.505 to the division for review, because the proposed rules may preclude market participation, affect motor vehicle sales, and increase costs associated with use of the temporary tag database.<sup>5</sup> Accordingly, the proposed rules may affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code.

### **A. The provisions regarding the use of temporary tags and the temporary tag database in proposed §§215.150 and 215.151 are consistent with state policy.**

Proposed §§215.150 and 215.151 include amendments that clarify and explain the use of temporary tags and the temporary tag database in light of the passage of House Bill 3927. Proposed §215.150(a) clarifies that temporary tags may only be used for authorized purposes, in furtherance of Sections 503.062, 503.0625, and 503.067. Additionally, proposed §215.150(b) adds that a dealer's or converter's ability to issue temporary tags may be suspended if the department denies access to the temporary tag database, pursuant to Section 503.0632(f), or if the dealer or converter issues the maximum number of temporary tags authorized by the department, pursuant to Section 503.0632(a). Proposed

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<sup>3</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), "Draft HB 3927 Max Tag Draft Rule" and "Draft HB 3927 Adoption Denial of Access" (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 19, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 24, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>4</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.152 and 215.158), at 2; Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505), at 3.

<sup>5</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.152 and 215.158), at 3-4; Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505), at 4.

§215.150(d), as supplemented, explains the responsibility of a dealer or converter for all use of and access to the temporary tag database under the dealer's or converter's account and outlines actions dealers and converters should take to maintain system security, including establishing and following reasonable password policies, limiting access to the database, and securing database equipment and printed tags.<sup>6</sup> Although the department acknowledges that there may be a cost to dealers and converters for carrying out these duties, the department intentionally designed the requirements in proposed §215.150(d) to be flexible and to not necessitate the purchase of special equipment, the employment of additional persons, or the preparation of additional reports.<sup>7</sup> Ultimately, the requirements in proposed §215.150(d) are a reasonable exercise of the department's mandate under Sections 503.0626(a) and 503.0631(a) to maintain the security of the temporary tag database. Finally, proposed §215.151 clarifies that converters must secure temporary tags to a vehicle to ensure their clear display, in the same manner as dealers, as required by Section 503.0625(e)(3). Because the proposed amendments to §§215.150 and 215.151 support statute, they are consistent with state policy.

**B. The department's approach to establishing temporary tag maximums in proposed §215.152 is consistent with state policy.**

Section 503.0632(a) gives the department broad authority to determine the maximum number of temporary tags that a dealer or converter may obtain in a calendar year, subject to certain considerations. As such, proposed §215.152(c) establishes a formula to calculate the maximum number of buyer's temporary tags each dealer is authorized to issue during a calendar year based on the factors found in Section 503.0632(b), including time in operation, sales data, anticipated growth, and other market conditions. As supplemented, the proposed rule allocates tags with fair consideration to both intrastate and interstate sales, using each dealer's time in operation and the greater of either individualized or statewide growth rates as multipliers, and thus maximizes the initial allotment of buyer's temporary tags based on each dealer's unique circumstances.<sup>8</sup> Importantly, proposed §215.152(c)(4) also allows the department to increase the allotment for dealers in the state, in a geographic or population area, or in a county based on changes in the market, temporary conditions, and other information. This affords the department flexibility to quickly make adjustments to allotments based on sudden

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<sup>6</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), "Draft HB 3927 Adoption Denial of Access" at 2.

<sup>7</sup> 46 Tex. Reg. at 7753-7754 (public benefit and cost note and economic impact statement and regulatory flexibility analysis for proposed 43 TAC §§215.150, 215.151, 215.153, 215.154, 215.155, and 215.505).

<sup>8</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), "Draft HB 3927 Max Tag Draft Rule" at 1-3; Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 24, 2022). The department supplemented its initial supplement to the division by capping the individualized actual growth rate multiplier at 200 percent in proposed §215.152(c)(3)(A), (d)(3)(A), and (e)(3)(A) to avoid having unusual factors result in excessively large growth rates. This cap only applies to the multiplier for the growth rate and does not impact a dealer's or converter's ability to request additional tags as provided for in proposed §215.152(i).

changes in the market.<sup>9</sup> Proposed §215.152(d) and (e), as supplemented, apply a similar formula to determine the annual allocations of dealer’s temporary tags — both agent temporary tags and vehicle specific temporary tags — and converter’s temporary tags, respectively, and also allow the department to increase those allotments in response to additional information.<sup>10</sup>

Proposed §215.152(f) sets a base allotment of temporary tags for new dealers and converters, as the department does not yet have the data necessary to perform the individualized calculations discussed above. However, as supplemented, a dealer or converter may provide information indicating a greater number of temporary tags is warranted based on anticipated sales.<sup>11</sup> Although the base number of temporary tags differs between franchised and nonfranchised dealers, the department asserts that nonfranchised dealers usually sell fewer vehicles than franchised dealers based on internal data and input from its Motor Vehicle Industry Regulatory Advisory Committee.<sup>12</sup> Moreover, given all new dealers’ ability to provide information to receive a higher initial allotment, this distinction is unlikely to impair nonfranchised dealers’ ability to obtain a sufficient number of temporary tags.

Proposed §215.152(g), as supplemented, provides that, when dealers or converters move or open a new location, the new location’s allotment of temporary tags will be based on that for the original location, ensuring fair application of the formula to businesses undergoing changes or expansion.<sup>13</sup> Proposed §215.152(h), as supplemented, creates another avenue for new dealers and converters to submit evidence to support a request for additional temporary tags, based on various factors including sales expectations and changes in licensure or ownership.<sup>14</sup> This supplemental provision provides additional assurance that the special situations of individual new dealers and converters will not be overlooked in the allocation of temporary tags. And, proposed §215.152(i), as supplemented, permits any dealer or converter to request additional temporary tags after using half of their allotted maximum number, in accordance with Section 503.0632(c), if the dealer or converter can demonstrate a need resulting from business operations.<sup>15</sup> The supplement clarifies that a dealer or converter’s ability to request additional temporary tags is virtually unlimited if supported by evidence, even if the dealer or converter has

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<sup>9</sup> 46 Tex. Reg. at 7758 (explanation for proposed 43 TAC §§215.152 and 215.158).

<sup>10</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), “Draft HB 3927 Max Tag Draft Rule” at 3-5; Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 24, 2022); *and supra* note 8.

<sup>11</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), “Draft HB 3927 Max Tag Draft Rule” at 5-6.

<sup>12</sup> Agency Response to Request for Additional Information (Jan. 4, 2022), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>13</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), “Draft HB 3927 Max Tag Draft Rule” at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6-8.

already received additional temporary tags, and establishes an appeals process for dealers and converters who are denied additional temporary tags, as envisioned in Section 503.0632(d).<sup>16</sup> Finally, proposed §215.152(j), (k), and (l) make administrative clarifications regarding the new allotment-setting process in the proposed rule. These provisions establish that the receipt of additional temporary tags does not affect the department's underlying formula to be used in subsequent years, that the department may initiate enforcement actions for fraud relating to or misuse of temporary tags, and that unused allotments do not roll over to subsequent years.

Ultimately, the provisions of proposed §215.152, as supplemented, provide clear notice to dealers and converters of their temporary tag allotments in a given calendar year using fair, consistent methods that do not unduly burden legitimate business operations and that still allow the department to combat fraud. Moreover, the proposed amendments, particularly as supplemented, ensure that the unique circumstances of each dealer and converter will be considered by the department in making allocations and that all dealers and converters have ample opportunities to request additional tags and appeal denials of such requests. Thus, as supplemented, the proposed amendments to §215.152 are a reasonable exercise of the department's broad authority in Section 503.0632(a) and are consistent with state policy.

**C. The provisions regarding the specifications and use of temporary tags in proposed §§215.153, 215.154, 215.155, and 215.158 are consistent with state policy.**

Proposed §§215.153, 215.154, and 215.155 contain minor amendments that support the department's mission to prevent fraud in the motor vehicle industry and implement other provisions from House Bill 3927. In proposed §215.153, sample images of temporary tags are removed from rule, which will prevent unauthorized reproduction or falsification of temporary tags in support of Section 503.067. Proposed §215.154(d)(1) requires the display of a dealer's temporary tag on a vehicle in compliance with Section 503.062. And, proposed §215.155(a) clarifies that a vehicle must have been in the seller's inventory in order to display a temporary tag, in furtherance of Section 503.063. Additionally, proposed §215.155(b) adds an exemption to inspection requirements for certain vehicles, pursuant to Section 503.063(i) and (j), which alleviates some burdens for interstate sales and public auctions. Other amendments to proposed §§215.153, 215.154, as supplemented, and 215.155, as supplemented, are nonsubstantive changes that conform the rules' language to existing statute and rules.<sup>17</sup> Because the proposed amendments to §§215.153, 215.154, and 215.155 support and implement the department's authority to regulate temporary tag use and combat fraud, they are consistent with state policy.

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<sup>16</sup> *Id.*; Agency Response to Request for Additional Information (Jan. 4, 2022), at 1-2.

<sup>17</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), "Draft HB 3927 Adoption Denial of Access" at 5; Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 19, 2022).

Next, proposed §215.158 addresses the use of preprinted Internet-down temporary tags, which are physically printed and kept by dealers in the event they are unable to use the Internet during an emergency, pursuant to Section 503.063(f). Proposed §215.158(d) shifts the responsibility for approving additional allotments of Internet-down temporary tags from the director of the Vehicle Titles and Registration Division to the director of the Motor Vehicle Division, as authorized by House Bill 3927's changes to Sections 503.0626(a) and 503.0631(a). And, proposed §215.158(e) clarifies that Internet-down temporary tags are counted towards the maximum allotment issued under proposed §215.152 when entered into the temporary tag database as a sale, ensuring that dealers' allotments of traditional temporary tags are neither inflated nor reduced as a result of preprinting or using Internet-down tags. Because the proposed amendments to §215.158 align with the department's statutory authority to oversee temporary tags, they are also consistent with state policy.

**D. The department's procedures for denying access to the temporary tag database in proposed new §215.505 are consistent with state policy.**

Section 502.0632(f) authorizes the department to deny a dealer or converter access to the temporary tag database if evidence indicates that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. Proposed new §215.505(a) defines fraudulent obtainment of temporary tags to capture behaviors that the department has clearly linked to fraudulent activity involving temporary tags, including obtaining excess tags relative to sales, obtaining tags for vehicles not listed in inventory records, and obtaining tags using false identities. Under proposed new §215.505(b), as supplemented, on the determination that a dealer or converter has fraudulently obtained temporary tags, the department will immediately deny access to the temporary tag database following the provision of notice electronically and by certified mail, as required by Section 502.0632(f).<sup>18</sup> While the supplement eliminates the 10-day period before the suspension of access, it retains the right of a dealer or converter to seek a negotiated resolution with the department and regain access to the database by providing evidence of corrective actions or that the department's determination was incorrect.<sup>19</sup> Proposed new §215.505(d), as supplemented, also allows a dealer or converter to request a formal hearing on a denial using established contested case procedures, as required by Section 502.0632(f).<sup>20</sup> Finally, proposed new §215.505(e) and (f) clarify the department's authority to issue a notice of administrative violations concurrently with a notice of denial of access to the temporary tag database and the finality of a denial that is not contested. Ultimately, the provisions of proposed new §215.505, as supplemented, allow the department to swiftly take action to curtail fraudulent use of the temporary tag

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<sup>18</sup> Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), "Draft HB 3927 Adoption Denial of Access" at 9.

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

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

database, while still ensuring the due process rights of those dealers and converters who are denied access to the database. Thus, as supplemented, proposed new §215.505 is a reasonable exercise of the department's authority in Section 503.0632(f) and is consistent with state policy.

### **III. Determination**

Based on the above analysis, proposed amended 43 TAC §§215.150-215.155 and 215.158 and proposed new 43 TAC §215.505 are approved by the division and may be finally adopted.



GOVERNOR GREG ABBOTT

To: Charles Bacarisse, Chair  
Daniel Avitia, Acting Executive Director  
Aline Aucoin, Acting General Counsel  
Texas Department of Motor Vehicles

From: Erin Bennett, Director  
Regulatory Compliance Division, Office of the Governor

Date: February 14, 2022

Subject: Proposed Title 43 Texas Administrative Code Sections 215.152 and 215.158  
(RCD Rule Review #2021-020)

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**Addendum**

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§215.152 and 215.158, which establish the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database.<sup>1</sup> The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on December 2, 2021, and supplemented its submission on January 14, 2022 and January 24, 2022.<sup>2</sup> On January 25, 2022, the division approved the proposed rules, as supplemented, for final adoption.<sup>3</sup> Subsequently, the department provided the division with additional amendments to the proposed rules on February 2, 2022 and February 11, 2022, which adjust the temporary tag allocations for newly licensed franchised dealers as well as for dealers and converters opening additional locations and purchasing or inheriting existing locations (“supplemented version”).<sup>4</sup>

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<sup>1</sup> 46 Tex. Reg. 7757 (2021) (to be codified at 43 TAC §§215.152 and 215.158) (proposed Nov. 12, 2021) (Tex. Dep’t. Motor Vehicles).

<sup>2</sup> Rule Submission Memorandum from the Texas Department of Motor Vehicles (Dec. 2, 2021) (43 TAC §§215.152 and 215.158) (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 14, 2022), “Draft HB 3927 Max Tag Draft Rule” (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Rule Submission Memorandum from the Texas Department of Motor Vehicles (Jan. 24, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>3</sup> Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 215.152 and 215.158 (RCD Rule Review #2021-020) and Proposed Title 43 Texas Administrative Code Sections 215.150, 215.151, 215.153, 215.154, 215.155, and 215.505 (RCD Rule Review #2021-021) (Jan. 25, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>4</sup> Agency Supplement to Approved Rule Language from the Texas Department of Motor Vehicles (Feb. 2, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Supplement to Approved Rule



The supplemented version amends proposed §215.152(f) to allow new franchised dealers to provide credible evidence of both anticipated sales and growth for new and used vehicle sales in order to demonstrate a need for a greater number of temporary tags than the 600 tags they would otherwise be allocated. If a new franchised dealer does demonstrate a need for more than 600 temporary tags, the supplemented version provides for the dealer to receive double the number of tags that the dealer demonstrates is warranted. The inclusion of anticipated growth data better reflects the varied reasons why new franchised dealers may need a larger allocation of temporary tags and affords them more options to make such a showing, especially as they often have access to extensive manufacturer and distributor research and projections.<sup>5</sup> The mention of used vehicle sales data clarifies that franchised dealers may sell both new and used cars.<sup>6</sup> And, the addition of the doubling multiplier for new franchised dealers is similar to the multipliers in the formula for existing dealers and is intended to account for the fact that the average franchised dealer sells more than 600 vehicles per year.<sup>7</sup> Section 503.0632(a), Texas Transportation Code, gives the department broad authority to determine the maximum number of temporary tags that a dealer or converter may issue in a calendar year. And, in determining that number, Section 503.0632(b) directs the department to consider several factors, including expected growth, in its efforts to align allocations with anticipated need. The proposed amendments enable the department to better provide a sufficient number of temporary tags to new franchised dealers and reduce the likelihood that legitimate business operations will be interrupted by a need for more tags. As such, the supplemented version of proposed §215.152(f) is a reasonable exercise of the department's authority in Section 503.0632(a) and is consistent with state policy.

The supplemented version also amends proposed §215.152(g) to allow a dealer or converter opening a new location to receive an allocation of temporary tags that is the greater of the number allocated for existing locations, or the number that would be allocated to a new dealer or converter under proposed §215.152(f). Other amendments to that section and proposed §215.152(h) provide for a dealer or converter purchasing or inheriting a location to receive the previously calculated allocation of temporary tags for that location rather than an allocation as a new dealer or converter under proposed §215.152(f). These amendments are intended to better align allocations of temporary tags with existing sales data where available.<sup>8</sup> These efforts are in line with the department's statutory directive to consider sales data when allocating temporary tags in Section 503.0632(b)(1)(B) and will lead to the more accurate allocation of tags. Thus, the supplemented version of proposed §§215.152(g) and (h) is also consistent with state policy.

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Language from the Texas Department of Motor Vehicles (Feb. 11, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>5</sup> Administrative Record for Agency Supplement to Approved Rule Language from the Texas Department of Motor Vehicles, Transcript of January 27, 2022 Board Meeting, at 106 (submitted Feb. 7, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor); Agency Response to Request for Additional Information (Feb. 7, 2022) (on file with the Regulatory Compliance Division of the Office of the Governor).

<sup>6</sup> Administrative Record for Agency Supplement to Approved Rule Language from the Texas Department of Motor Vehicles, Transcript of January 27, 2022 Board Meeting, at 106.

<sup>7</sup> *Id.* at 106-109; Agency Response to Request for Additional Information (Feb. 7, 2022).

<sup>8</sup> Administrative Record for Agency Supplement to Approved Rule Language from the Texas Department of Motor Vehicles, Transcript of January 27, 2022 Board Meeting, at 104-105.

In addition to the reasons for previously approving the proposed rules, and based on the reasoning above, proposed amended §§215.152 and 215.158, with the changes submitted to the division in the supplemented version, are consistent with the department's statutory authority to establish the maximum number of temporary tags that a dealer or converter may issue from the temporary tag database. As such, the proposed rules, as supplemented, are approved by the division and may be finally adopted.