



Texas Department *of* Motor Vehicles
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Motor Vehicle Industry Regulation Advisory Committee

9:00 A.M.
Wednesday, March 9, 2022

AGENDA
MOTOR VEHICLE INDUSTRY REGULATION ADVISORY COMMITTEE MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM
AUSTIN, TEXAS 78731
OPEN MEETING VIA
TELEPHONE CONFERENCE CALL*
PURSUANT TO GOVERNMENT CODE §551.125
WEDNESDAY, MARCH 9, 2022
9:00 A.M.

THIS MEETING WILL BE HELD REMOTELY VIA TELEPHONE CONFERENCE CALL*

THE PUBLIC PHYSICAL LOCATION FOR PUBLIC TO LISTEN TO THE MEETING:

Texas Department of Motor Vehicles
4000 Jackson Ave., Building 1, Lone Star Room
Austin, Texas 78731

Teleconference Instructions:

Phone number for accessing the meeting via phone:

United States Toll Free: 1-(844)-740-1264
Event number/Access code: 2454 042 7752
Event password: 030922

Link to March 9, 2022, TxDMV Motor Vehicle Industry Regulation Advisory Committee Meeting Documents: <https://www.txdmv.gov/about-us/txdmv-board-meetings>

*The public can listen to the meeting via the toll-free number listed above. If you have any technical questions about accessing the meeting, please send an email to Board.Tech.Help@txdmv.gov.

All agenda items are subject to possible discussion, questions, consideration, and action by the Motor Vehicle Industry Regulation Advisory Committee of the Texas Department of Motor Vehicles (Advisory Committee). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of consideration by the Advisory Committee. A quorum of the Board of the Texas Department of Motor Vehicles (board) may be present at this meeting for information-gathering purposes and discussion. However, board members will not vote on any Advisory Committee agenda items, nor will any board action be taken.

- 1. CALL TO ORDER**
Roll Call and Establishment of Quorum

2. DISCUSSION, BRIEFING, AND ACTION ITEMS

- A. Pre-Licensing Process for Motor Vehicle Dealers related to Applicant Verification Processes including Location Verification
 - i. [Presentation by TxDMV Staff regarding Pre-Licensing Process related to Applicant Verification Processes for Motor Vehicle Dealers \(BRIEFING\)](#)
 - ii. Recommendations of Advisory Committee to the Department regarding Pre-Licensing Process for Motor Vehicle Dealers related to Applicant Verification Processes including Location Verification (DISCUSSION AND ACTION ITEM)

- B. [General Motors Company's Petition for Rulemaking to Amend 43 TAC §215.245\(e\) \(BRIEFING AND DISCUSSION ITEM\)](#)

3. PUBLIC COMMENT

4. ADJOURNMENT

The Advisory Committee will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Advisory Committee. No action will be taken on matters that are not otherwise part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Advisory Committee members may respond in accordance with Government Code Section 551.042 and consider referring the matter to the board.

If you want to comment on any agenda item (including an open comment under the agenda Item for Public Comment), you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Advisory Committee or send an email to GCO_General@txdmv.gov to register by providing the required information prior to the agenda item being taken up by the Advisory Committee:

- 1. a completed [Public Comment Registration Form](#); or
- 2. the following information:
 - a. the agenda item you wish to comment on;
 - b. your name;
 - c. your address (optional), including your city, state, and zip code; and
 - d. who you are representing.

You must wait for the presiding officer to call on you before you verbally make your comment. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

Agenda items may be presented by the named presenters or other Advisory Committee members.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact David Richards by telephone at (512) 465-1423.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: Aline Aucoin, Interim General Counsel, (512) 465-5665.

Pre-Licensing Process and Enhancements

During their February 10, 2022 meeting the Texas Department of Motor Vehicle Board voted to initiate rulemaking for enhancements to the pre-licensing process. Proposed enhancements would be aimed at strengthening fraud deterrence, while also ensuring that legitimate applicants can meet licensure requirements without unnecessary burden or cost.

Overview

The Motor Vehicle Division's (MVD) eighteen-member licensing staff typically processes over 18,500 license applications per year on average, 20% of which are new General Distinguishing Number (GDN) applications. An overview of the current licensing review process for an Independent GDN is outlined in Appendix A, and three-year historical application data is included in Appendix B.

Premise Requirements

Texas Transportation Code § 503.032 and Title 43, Texas Administrative Code, § 215.140, require an applicant for a general distinguishing number (GDN) to demonstrate that its proposed physical location is an "established and permanent place of business." The Motor Vehicle Division requires an applicant to submit a lease or sublease in the applicant's name and photographs of the premises showing all physical location requirements are met. If fraud is suspected, MVD requests the Enforcement Division conduct a site visit to verify the location prior to issuing a license. Site visit referral data is included in Appendix B.

Enhancements

In 2021, MVD implemented several actions to improve pre-licensing procedures for independent GDN applicants and has identified additional options to further improve the process. These actions and potential recommendations are described below and summarized in Appendix C.

In a forthcoming rule proposal, MVD may recommend the Board consider adding the following additional requirements for independent GDN dealers in Chapter 215 to further deter fraud:

- Requiring identification for all owners and managers or other authorized representatives;
- Performing criminal background checks on all persons listed on the application, not just owners, president and managing partners;
- Requiring a notarized photo affidavit to be submitted with the identification;
- Requiring the eTAG administrator to be an owner or manager listed on the application; and
- Expanding premise requirements to lessen an applicant's ability to set up a fraudulent location for the sole purpose of meeting initial licensing requirements.

Attachments

Appendix A – GDN Pre-Licensing Process Overview and Most Common Application Deficiencies

Appendix B – Historical Application Data

Appendix C – Summary Chart: Pre-Licensing Process and Enhancements



MVIRAC Briefing - APPENDIX A

General Distinguishing Number (GDN) Pre-Licensing Overview

- A GDN application is submitted via eLICENSING and assigned to a Licensing Specialist for processing typically within one business day. The Licensing Specialist reviews the file in detail and completes a variety of identity, affiliation, and location checks to identify possible issues.
- The assigned Licensing Specialist complete the following checks for new GDN applications:
 - Reviews for other active applications, previously withdrawn applications, and previous MVD licenses;
 - Reviews for license conflicts related to the location including other dealers present at the same location (e.g., maximum occupancy of dealers reached, license conflicts due to type of dealers at location, etc.);
 - Verifies the name and date of birth for each applicant, owner, and manager listed on the application and runs a DPS criminal history report;
 - Checks each person listed on the application for possible affiliation with any other individual, business entity, or license that may have been deemed unfit to hold a license;
 - Reviews the proposed business location via Google Maps;
 - Reviews that the correct payment amount was received; and
 - Reviews for current or previous disciplinary history or concerns.
- Once the checks are complete, the Licensing Specialist then conducts a detailed analysis of the application information, including the applicant's responses to application questions and attachments received. This analysis includes:
 - Reviewing the business name and assumed names (DBAs) through the appropriate county or the Texas Secretary of State;
 - Reviewing the ownership breakdown of the business and confirming that the correct business type is listed;
 - Reviewing attachments provided by the applicant, which include but are not limited to the following:
 - Photos of the exterior and interior of the business;
 - Premise Affidavit for new GDN applications and amendment applications for relocation
 - Certificate of Responsibility;
 - Ownership or lease documentation;
 - Applicant Photo identification;
 - Assumed name or DBA certificates;
 - Surety bond;
 - Certificate of Occupancy and any other required building permits; and
 - A completion certificate from an approved dealer licensing education program.



- The Licensing Specialist sends a deficiency letter to the applicant if additional documentation or clarification is needed.
- If the application is complete and no other information is required, the Licensing Specialist approves the application, creates the license, and sends the license to the applicant.

Most Common GDN Application Deficiencies:

- **Premises Photos** – The initial photo(s) received are not sufficient to determine if the location meets the premises requirements.
- **Premises Compliance** - The applicant is unable to verify that the proposed business location meets all applicable state laws and municipal ordinances, including providing a certificate of occupancy, certificate of compliance, or other required building permits.
- **Surety Bond Deficiencies** – The bond received is incomplete or contains incorrect information and either requires a rider amendment or a new bond.



MVIRAC Briefing – APPENDIX B

Historical Application Processing Data, FY 2019 – FY 2021

I. Total Number of Applications Received in Fiscal Years 2019 – 2021 (New, Amendment, and Renewals)

License Type	FY 2019	FY 2020	FY 2021	Total
Manufacturer	181	155	175	511
Franchise	2,956	2,679	2,643	8,278
Lease Facilitator	52	24	41	117
Lessor	180	182	163	525
Salvage Dealer	9,613	1,982 ¹	1,221	12,816
In-transit	127	83	139	349
Distributor	80	80	81	241
GDN	13,676	13,006	14,033	40,715
Converter	108	133	123	364

II. Total Number of New GDN Applications Received in Fiscal Years 2019 - 2021

GDN Subtype	FY 2019	FY 2020	FY 2021	Total
Motor Vehicle	2,992	2993	2,916	8,901
Motorcycle	88	110	117	315
Towable Recreational Vehicle/ Travel Trailer	70	103	123	296
Wholesale Motor Vehicle Auction License	14	14	111	139
Utility Trailer/Semi-Trailer	310	294	382	986
Independent Mobility Motor Vehicle Dealer	1	2	11	14
Wholesale Dealer License	193	193	274	660

¹ The decrease in applications received is in direct relation to changes made during the 86th Legislative Session allowing a GDN holder to operate as a Salvage Vehicle Dealer without holding a separate Salvage Dealer License and eliminating salvage license endorsements (e.g., Salvage Pool Operator, Salvage Vehicle Dealer-New, Salvage Vehicle Dealer-Used, etc.) in favor of a comprehensive Salvage Vehicle Dealer License.



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III. Total number of New GDN Applications Received in Fiscal Years 2019, 2020, and 2021 with the Application Reason “Relocation”:

GDN Subtype	FY 2019	FY 2020	FY 2021	Total
Motor Vehicle	110	106	101	317
Motorcycle	2	1	1	4
Towable Recreational Vehicle/ Travel Trailer	0	0	2	2
Utility Trailer/Semi-Trailer	8	4	4	16
Wholesale Dealer License	4	3	10	17

IV. Total Number of New License Applications Received, Other Than GDN, Fiscal Years 2019-2021

License Type	FY 2019	FY 2020	FY 2021	Total
Manufacturer	28	30	30	88
Franchised Dealer	309	317	261	887
Lease Facilitator	21	6	8	35
Lessor	58	44	31	133
Salvage Dealer	1634	1834	609 ²	4,077
In-transit	50	38	67	155
Distributor	12	6	13	31
Converter	23	31	36	90

² The decrease in applications received is in direct relation to changes made during the 86th Legislative Session allowing a GDN holder to operate as a Salvage Vehicle Dealer without holding a separate Salvage Dealer License and eliminating salvage license endorsements (e.g., Salvage Pool Operator, Salvage Vehicle Dealer-New, Salvage Vehicle Dealer-Used, etc.) in favor of a comprehensive Salvage Vehicle Dealer License.



V. Average Days to Process Applications – TxDMV Board Key Performance Indicators

KPI#	Measure	FY 19 Average	FY 20 Average	FY 21 Average
1	Average # of days to process new franchise license applications	27	26	26
2	Average # of days to process franchise renewal applications	7	5	4
3	Average # of days to process franchise license amendments	6	5	6
4	Average # of days to process GDN license applications	12	14	14
5	Average # of days to process GDN renewals	5	5	4
6	Average # of days to process GDN license amendments	5	6	7

VI. Number of MVD-requested dealership site visits from Enforcement Division

Fiscal Year	Number of Site Visits Requested
FY 2019	393
FY 2020	251
FY 2021	270
FY 2022, first 7 months	269



MVIRAC Briefing – APPENDIX C

Pre-Licensing Checks and Enhancements

Checks	Recent Enhancements	Future Options
<p>The following checks were in place prior to 2021:</p> <ul style="list-style-type: none"> ▪ Verifying owners, officers, and managers identity through Driver’s License ▪ Checking criminal background history on owners and managers listed on the application in DPS and Lexis/Nexis if out of state ID or Passport provided ▪ Requiring lease or sublease in applicant’s name ▪ Requiring one or more location pictures to ensure premise is met ▪ Option to request ENF site visit if fraud concern ▪ Flagging individual accounts for review at renewal 	<p>The following enhancements were implemented in 2021:</p> <ul style="list-style-type: none"> ▪ Verifying property owner in County Appraisal District (CAD) records ▪ Requiring notarized statement from CAD property owner if property owner records conflict with lease ▪ Asking applicant if other businesses are at the same location ▪ Requesting verification that the proposed business location meets all applicable state laws and municipal ordinances (if applicable) ▪ Flagging all associated accounts and specific addresses for review on license renewal based on Licensing Committee concerns ▪ Requiring premise affidavit for new applicants and those who are relocating ▪ Requiring a premise affidavit when license is being renewed if relevant complaint history 	<p>Enhancements which could be included in future rule requests:</p> <ul style="list-style-type: none"> ▪ Add additional identification requirements: <ul style="list-style-type: none"> ▪ Require ID for all representatives listed in application ▪ Require ID format to be a notarized photo affidavit with recent photo ▪ Require eTAG administrator to be an owner or manager listed in the application ▪ Criminal background checks on all person listed on application ▪ Expanding premise requirements to lessen an applicant’s ability to set up a fraudulent location for the sole purpose of meeting initial licensing requirements. ▪ Fingerprinting (draft rule proposal is currently under executive review) ▪ Require site visits before licensing, with one owner or manager attending: <ul style="list-style-type: none"> ▪ all new applications ▪ all office relocations ▪ renewal applications with premise complaint history <p>(the department is currently researching the additional resources needed to implement this enhancement)</p>

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 43	TRANSPORTATION
PART 10	TEXAS DEPARTMENT OF MOTOR VEHICLES
CHAPTER 215	MOTOR VEHICLE DISTRIBUTION
SUBCHAPTER H	ADVERTISING
RULE §215.245	Availability of Motor Vehicles

(a) A dealer may advertise a specific new motor vehicle or line-make of vehicles for sale if the specific motor vehicle or line-make is in the possession of the dealer at the time the advertisement is placed.

(b) If the specific motor vehicle or line-make is not in the possession of the dealer at the time the advertisement is placed, the dealer must clearly and conspicuously disclose that fact in the advertisement and state that the motor vehicle may be obtained from the manufacturer, distributor, or some other source. The advertisement must set forth the number of motor vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed or the dealer can show that it has the number of motor vehicles available to meet the reasonable expectable public demand based on prior experience.

(c) If an advertised price pertains to only one specific motor vehicle, then the advertisement must also disclose the motor vehicle's stock number or VIN.

(d) This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer advertising association, or distributor, nor does it prohibit the inclusion of the names and addresses of the dealers selling such motor vehicles in the particular area.

(e) A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

(1) the specific used motor vehicle is in the possession of the dealer at the time the advertisement is placed; and

(2) the title certificate to the used motor vehicle has been assigned to the dealer.

Source Note: The provisions of this §215.245 adopted to be effective February 11, 2010, 35 TexReg 883; amended to be effective June 4, 2014, 39 TexReg 4271; amended to be effective February 13, 2017, 42 TexReg 571

[List of Titles](#)[Back to List](#)[HOME](#)[TEXAS REGISTER](#)[TEXAS ADMINISTRATIVE CODE](#)[OPEN MEETINGS](#)



General Motors Company
3501 Olympus Blvd
Suite 280
Coppell, TX 75019

Date: February 9, 2022

To: Shelly Mellott, Deputy Executive Director/ Interim Executive Director
Texas Department of Motor Vehicles
4000 Jackson Ave, Austin, TX 78731

Fm: Andrew Hager, Regional Manager Business Operations
General Motors Company
GM South Central Region, 3501 Olympus Blvd, Suite 280, Dallas, Texas 75019

Re: Petition for Proposed Rule Change – 43 TAC §215.245(e)

Introduction

General Motors (GM) is requesting the Texas Department of Motor Vehicles (Department) consideration for a proposed rule change regarding motor vehicle dealer advertising of used vehicles pursuant to 43 TAC §215.245(e). Over the last few months, General Motors has consulted with the Texas Automobile Dealers Association to discuss the need for the proposed changes and modernization of the regulation, while determining the most appropriate language to apply. The proposed revisions to the rule would allow motor vehicle dealers to advertise used vehicles that may not be physically in the dealer's possession at the time of the advertisement, provided the vehicle and title can be delivered to the dealer from the vehicle manufacturer or distributor, an affiliated financial institution, or a licensed vehicle auction within a reasonable period of time. Additionally, the proposed revisions would modernize the current advertising regulations within the state, make the advertising rules for new and used vehicles within the state more consistent, and align Texas vehicle advertising rules, for both new and used vehicles, with similar provisions in almost every other state.

Explanation

Since early 2021 the Covid-19 pandemic has had far reaching consequences, and local economies, including motor vehicle dealers, have not been spared. Shutdowns in motor vehicle manufacturing and supply chains has resulted in both new and used vehicle and parts inventory shortages. As a result, dealers are finding it necessary to sell deeper into their vehicle supply "pipeline" to satisfy customer demand while maintaining adequate cashflow to keep the door open.

Online shopping/purchasing of vehicles has also increased in popularity due to Covid-19. Customers are increasingly demanding online retailing because it offers more transparency, larger vehicle selection, and a low-pressure, socially distanced shopping environment. We believe these consumer behaviors are here to stay, even as the pandemic subsides.



GENERAL MOTORS

Unfortunately, the current advertising requirement for used vehicles under 43 TAC §215.245(e) does not allow a dealer to advertise a vehicle for sale if the vehicle is not physically on the dealer's inventory lot and the dealer is in possession of the vehicle title. These requirements fail to contemplate the current realities of the online vehicle shopping marketplace, and instead are based on an outdated assumption that consumers only shop for vehicles in-person at a dealer's physical real property location. Current requirements also fail to take into consideration the role of financial institutions and vehicle auctions in returning off-lease vehicles back to the marketplace to meet consumer demand, and the efficiencies of electronic titling. With the new vehicle inventory shortages created by raw material shortages worldwide, used vehicle demand has skyrocketed. In order for dealers to maintain the positive cashflow necessary to operate their dealerships, they must be able to advertise and make available as much new and used inventory as possible so they can continue to meet consumer demand, pay their employees, and cover other operating expenses.

GM respectfully proposes revisions to the Texas motor vehicle dealer advertising regulations to clarify the opportunity for dealers to advertise vehicles that may not be physically on their lot, allowing them, and their customers, to take full advantage of the emerging online retail marketplace.

By allowing dealers to advertise used vehicles prior to physical arrival on the dealers' lots, these revisions will:

- Update Texas' vehicle advertising regulations to account for and reflect modernized internet-based consumer shopping preferences.
- Allow for a robust online marketplace that consumers are demanding with greater selection, more transparency, and less shopping pressure.
- Provide for a better customer experience, since financing, accessories, etc. can be arranged while the vehicle is in transit. This is more efficient for the dealerships (they can "smooth out" workflows), and provides a more convenient, less stressful experience for the consumer.
- Allow dealers to sell deeper into their vehicle supply "pipeline" allowing them to turn inventory faster, thus saving dealers "floorplan" financing costs and creating more robust cashflow.
- Result in the availability and sale of "fresher" vehicles, thus decreasing the chance for lot damage or the need for lot maintenance while on the dealership lot.
- Align Texas' used vehicle advertising regulations with the existing new vehicle advertising regulations in the state.
- Make Texas vehicle advertising regulations more consistent with similar regulations in nearly every other state.

Conclusion

We hope you agree that this proposal has merits, not only for consumers, but also for motor vehicle dealers and their OEM partners. As such, we ask that the Department consider and ultimately approve and publish for adoption the requested changes articulated above.

We welcome the opportunity to discuss this request further; should you have questions or comments, please feel free to contact either Eric Henning (313/588-0152, [REDACTED]) or Jeff Perry (248/321-2246, [REDACTED]). Thank you for your consideration.



GENERAL MOTORS

Proposed Language Changes

TITLE 43. TRANSPORTATION

- PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES
- CHAPTER 215. MOTOR VEHICLE DISTRIBUTION
- SUBCHAPTER H. ADVERTISING

SECTION 215.245. Availability of Motor Vehicles

Latest version.

- (a) A dealer may advertise a specific new motor vehicle or line-make of vehicles for sale if the specific motor vehicle or line-make is in the possession of the dealer at the time the advertisement is placed.

(b1) If the specific new motor vehicle or line-make is not in the possession of the dealer at the time the advertisement is placed, the dealer must clearly and conspicuously disclose that fact in the advertisement and state that the motor vehicle may be obtained from the manufacturer, distributor, or some other source. The advertisement must set forth the number of motor vehicles available at the advertised price, if a price is advertised, at the time the advertisement is placed or the dealer can show that it has the number of motor vehicles available to meet the reasonable expectable public demand based on prior experience.

(c2) If an advertised price pertains to only one specific motor vehicle, then the advertisement must also disclose the motor vehicle's stock number or VIN.

(d3) This section does not prohibit general advertising of motor vehicles by a manufacturer, dealer advertising association, or distributor, nor does it prohibit the inclusion of the names and addresses of the dealers selling such motor vehicles in the particular area.

(e) A motor vehicle dealer may advertise a specific used motor vehicle for sale if:

(1) the specific used motor vehicle is in the possession of the dealer at the time the advertisement is placed; and

(2) the title certificate to the used motor vehicle has been assigned to the dealer; or

(3) If the specific used motor vehicle is not in the possession of the dealer at the time the advertisement is placed, the dealer must clearly and conspicuously disclose that fact in the advertisement and state that the motor vehicle may be obtained from the manufacturer, distributor, a manufacturer or distributor affiliated financial institution, or a licensed motor vehicle auction within a reasonable period of time. The advertisement must include the vehicle identification number of the specific motor vehicle available at the advertised price, if a price is advertised. A dealer may also include in the advertisement a statement indicating "Vehicles may be subject to prior sale. Contact dealer for availability and final pricing."