

**The following are comments we received and the Department's responses regarding the proposed rule for implementing the Electronic Temporary Registration (ETR) system.**

#### **Auto Data Direct**

**Comment:** The rule should clarify and elaborate on the statutory language of "encryption..... to the license plate printer". If the Department intends that decryption be accomplished inside the printer, the rule should be specific in this interpretation of the statute. We request the Department adopt the following language:

**The definition of "using higher levels of commercially accepted data encryption methods from the point of department connectivity to the license plate printer" shall be satisfied as follows: Standard 128 bit SSL encryption over Hyper Text Transport Protocol (HTTPS) is a universally recognized secure means of data transport over insecure networks. Standard 128 bit SSL encryption or better should be used for data transmissions between the Department and the vendor/dealer. It is not required that the device used to produce the license plates have any internal decryption mechanisms.**

**Response:** The Department has researched this issue and determined that the current rule language is sufficient to meet legislative intent.

**Comment:** The rule should clarify and elaborate the process by which a dealer will comply with print-on-demand requirements when technical problems occur. Many potential points of failure exist and the rule should both indentify the points of failure and provide specific procedures to follow when such failures occur. In addition, these rules should cover the potential use of alternative tag stock, its production, and distribution. If the Department will continue the use of a limited supply of PRIDE tags purchased from the Tax collector, the rule should say so. If a dealer will be allowed to preprint on blank tag stock, the rules should specify how this can be done.

**Response:** These issues are procedural in nature and are addressed in the ETR procedures.

**Comment:** The rules should specify procedures on policy requirements for dealers to follow which are neither technology nor vendor specific. For example:

- \* Procedures regarding issuance of multiple temp tags on a single vehicle to a single registrant.

- \* Procedures regarding issuance of a temp tag with a “EFS pending title” record.
- \* Procedures regarding issuance of a temp tag on a VIN with multiple records in FRVIS.
- \* Procedures regarding the creation of a customer identification number in FRVIS.

**Response:** These issues are procedural in nature and are addressed in the ETR procedures.

### **Florida Independent Auto Dealers Association**

**Comment:** Referencing 15C-16.003 Exemptions, the current proposed language reads:

(1) Trailers less than 2,000 lbs. gross vehicle weight (GVW) do not require the seller to be licensed for commercial sale and are therefore exempt from electronic temporary registration requirements. The language should be changed to read:

**“trailers weighing less than 2,000 lbs. net weight.”**

**Response:** The Department agrees and revised the exemption rule to read:

(1) Trailers less than 2,000 lbs. ~~gross vehicle weight (GVW)~~ net weight do not require the seller to be licensed for commercial sale and are therefore exempt from electronic temporary registration requirements.

**Comment:** This paragraph (15C-16.003 Exemptions) does not permit any other exemptions, either by vehicle or by authorized issuer of temporary tags. There will be a significant financial impact on both small, independent dealers and consumers. Currently, dealers do not typically charge customers for temporary tags (\$2.00). This program, which requires temporary tags to be printed, will cost dealers up to \$10.50 per tag. This 400 plus percentage increase in the cost of a temporary tag will have to be passed on to the consumer. Low-income consumers typically have very little money to place a down payment. If they are being issued a temporary tag, chances are they must purchase a metal license plate and will be subject to the \$100 initial registration fee in addition to the newly imposed fee on temporary tags. As an illustration, let us study a transaction of a consumer purchasing a vehicle at a cost of \$1,000 (before taxes). The price of the temporary tag (\$10.50) equates to approximately one percent (1%) of the purchase price of the vehicle. This has the same effect of raising sales tax by at least one percent, while removing the benefit of a sales tax trade-in allowance. The increase in the temporary tag fee is not optional; therefore, the fee is mandated by law and must be appropriately labeled as a license plate “tax increase.”

Many dealers sell less than 15 vehicles per month. Most of those dealers are small mom-and-pop operations with modest offices, unpaved lots and no technology. This program will cause a significant impact on capital outlay and operating expenses because the

dealer must purchase a computer and printer; must obtain high-speed Internet access and pay a monthly fee, and must bear other expenses associated with this program (toner, vendor monthly fees and per transaction temporary tag fees). The problem is further compounded by the fact that the low-income consumer may not have the extra \$10.50 to add to the down payment, requiring the dealer to finance (float) the customer for that extra amount. Many of these small dealers have been in business for 20 to 30 years and the dealership is their only source of income. Good public policy would justify that such dealers be “grandfathered” and be exempted from the requirements of this law and rule.

The FIADA formally requests the department to prepare a Statement of Estimated Regulatory Costs as required by Section 120.541, F.S. This statement should be prepared for the consumer and the small dealer, both of whom are “substantially affected persons.”

The FIADA submits the following good-faith proposal for a lower cost regulatory alternative:

- \* Dealers who sell fewer than 15 vehicles per month are exempted from the requirements of print-on-demand.
- \* Exempted dealers will be given one business day to electronically enter the information pertaining to the issuance of the pre-printed temporary tag. This deferred electronic update enables the small dealer to use the computer and Internet access of a friend, family member or public facility such as a public library.
- \* Exempted dealers will be given direct electronic access to the department to enter the temporary tag information, eliminating any additional cost to the dealer or the consumer.
- \* All new dealers entering the market after this rule is promulgated, regardless of size, shall not be exempted from the requirements of Section 320.96, F.S.

**Response:** The Department is preparing and will provide to any interested parties a Statement of Estimated Regulatory costs as required by Section 120.541, Florida Statutes. However, the Department has determined exemptions proposed in this comment are contrary to the overall effectiveness of the requirements of Section 320.96, Florida Statutes.

**Comment:** Referencing 15C-16.003 Exemptions, the current proposed language reads:

(2) To ensure the continuation of operations with the least negative impact to temporary plate issuers when system outages occur, a backup issuance method using pre-assigned stock will be authorized by the department. The issuance of a plate using this method must be reported to the department within 24 hours of the issuance of the plate. Every issuer shall keep a record of any temporary tag issued by this method. The record will include, but is not limited to: date of issuance, tag number issued, the name and address

of the motor vehicle purchase, vehicle identification number, vehicle description, and reason for off-line issuance.

Since system outages may include but are not limited to DMV system down, vendor system down, dealer network down, dealer computer and/or printer malfunction, power outages, etc, the rule should include more detailed language to identify what constitutes “system outages.”

**Response:** The Department agrees and revised the exemption rule to read:

(2) To ensure the continuation of operations with the least negative impact to temporary plate issuers when ~~system outages occur~~ the Department is unable to authorize, or third party providers are unable to assign print on demand temporary license plates, a backup issuance method using pre-assigned stock will be authorized by the department. The issuance of a plate using this method must be reported to the department within ~~24 hours~~ one business day, not including weekends or state holidays, of the issuance of the plate. Every issuer shall keep a record of any temporary tag issued ~~by this method~~ in a form specified by the Department. The record will include, but is not limited to: date of issuance, tag number issued, the name and address of the motor vehicle purchase, vehicle identification number, vehicle description, and reason for off-line issuance.

**Comment:** The proposed language “**within 24 hours of the issuance of the plate**” should read as follows:

**“within one business day of the issuance of the plate”**

**Response:** The Department agrees, please see the rule revision for the previous comment.

**Comment:** To ensure that dealers are not subject to arbitrary disciplinary action by DMV Compliance Officers, the department should develop a specific form provided to each issuer to capture the necessary information when issuing a temporary tag during a system outage.

**Response:** The Department agrees and will develop the appropriate form.

**Comment:** When an off-premise sale is conducted by a third party on behalf of the dealer, how will the third party comply with this rule since the third party will not be authorized to access the ETR system? Will the Department exempt these transactions from this rule?

**Response:** The ETR third party providers should have the option of providing remote connectivity. These types of transactions are not exempt and are contrary to the overall effectiveness of the requirements of Section 320.131 and 320.96, Florida Statutes.

**Comment:** The current EFS process provides specific guidance regarding the fee that is authorized to be charged, how it appears on the bill of sale, etc. The current proposed rule does not. The proposed rule should address the issue for reporting fees on the bill of sale.

**Response:** The Department does not have authority to regulate fees beyond the \$2 fee established in Florida Statutes 320.131. Because sales tax has a direct bearing on where fees reside on the buyer's order (i.e. above or below the line) and the Department of Revenue is the agency delegated the regulatory authority over sales tax, this issue is not and should not be included in a Department of Highway Safety rule.

**Comment:** Currently, there is only one version of the temporary tag. The Department is proposing to set the guidelines for designing the print-on-demand tag, while allowing each vendor to design its own tag. This could lead to confusion by law enforcement officers, production of counterfeit tags, to name a few of the problems. The rule should include print-on-demand temporary tag design specifications.

**Response:** The ability for law enforcement to instantly verify print on demand license plates via a database inquiry minimizes the chance for use of counterfeit plates, or confusion by law enforcement officers.

**Lewis, Longman, and Walker, P.A, representing the Florida Automobile Dealers Association**

**Comments:** The Department stated that Department-authorized vendors of print-on-Demand temporary license plates are its "agents" appointed pursuant to the provisions of Section 320.131, F.S. Section 320.131, F.S., provides as follows:

The department is authorized to sell temporary tags...to their agents.... The fee shall be \$2 each. One dollar from each tag sold shall be deposited into the Brain and Spinal Cord Injury Rehabilitation Trust Fund, with the remaining Proceeds being deposited into the Highway Safety Operating Trust Fund. Agents of the department **shall** sell temporary tags for \$2 each and **shall** charge the service charge authorized by S. 320.04 per transaction, regardless of the quantity sold.

When it comes to implementing a temporary tag program, section 320.13 establishes

the parameters for the Department's appointment of agents to issue temporary tags. Additionally, section 320.04, F.S., limits the cost for temporary tags to \$4.50, with \$2.00 going to the Department and \$2.50 to the agent.

Based on these statutory provisions, the Department should adopt the following rule or change current rule language to read as follows:

Every entity authorized by the department to act as its agent for the purpose of providing temporary tag issuance services to motor vehicle dealers shall charge for each temporary tag issued a fee of \$2, to be disbursed as provided in s. 320.131(2), plus the per transaction service charge authorized by s. 320.04, regardless of the total quantity of temporary tags issued. No other fees shall be charged for issuance of a temporary tag by the Department or its authorized agents.

**Response:** Based on an opinion provided by the Department's Legal Section, third party providers are neither buying temporary tags from the Department nor are they selling such tags. Rather, they are providing the connection between the Department and the dealers to allow the dealers to issue the temporary tags. Thus the third party providers are not governed by section 320.131(2). Therefore, section 320.131(2) would not limit the third party providers to charging the \$2 per-tag-fee and the service fee provided by section 320.04, and the Department will not impose any fee limitations.

**Comment:** Currently, the proposed rule imposes a mandatory record retention requirement on motor vehicle dealers that will be relying on department-appointed vendors for ETR and print-on-demand services. Therefore, the Department's rule should require Department approval of vendor recordkeeping procedures as follows with additional language added in bold print:

Any person or entity authorized **by the department to act as its agent** to issue electronic temporary **license plate** registrations **shall submit for department approval its process for retaining all records required by s. 320.131**, shall maintain all records relating to their issuance for a period of 5 years, and such records shall be open to inspection by the department or its agents during reasonable business hours, **and shall be readily available to each such authorized agent's motor vehicle dealer customers.**

**Response:** We agree that there should be method for issuers of temporary registrations to apply for an alternative method of record storage. However; the method is procedural in nature and is addressed in the ETR procedures. The method is the same process auto dealers use currently when requesting an alternate method of storage for other vehicle related documents they must maintain.