

who has successfully completed an appropriate training program as determined by department rule and who is one of the listed categories of persons authorized to conduct such inspections. The purpose of this new section is to ensure properly trained auto theft investigators currently authorized to conduct identification number inspections are able to continue doing so and identify the training available to individuals authorized to conduct identification number inspections in Senate Bill 2076. Section 217.144 specifies that a person is qualified to perform an identification number inspection if the person has completed (1) Intermediate or Advanced Motor Vehicle Burglary and Theft Investigator Training provided by the Texas Auto Burglary and Theft Prevention Authority; (2) Auto Theft School (Parts 1 and 2) provided by the Texas Department of Public Safety; or (3) the Auto Theft Course provided by the National Insurance Crime Bureau.

SB 2076 also created an alternative identification number inspection to be established by department rule. The department intends to work with stakeholders to establish this process and identify transactions subject to this inspection type prior to proposing a new rule.

COMMENTS

The department received comments from W. (Bill) Smith, Chief, Special Investigations Unit, Tax Assessor-Collector and Voter Registrar Office, Harris County; Doug Clements, Commander, South Plains Auto Theft Task Force; Stan Davis; Fred Lohmann, National Insurance Crime Bureau (NICB); Ricardo Porras, Jr., Auto Theft Task Force, Program Director/Unit Commander, El Paso Police Department; Scott Ellis, DPS-CID (Legacy MVTS); and Ismael Gomez, Auto Theft Unit, Reserve Investigator, San Patricio County Sheriff's Office.

COMMENTS: Several commenters expressed concerns that the department's proposed rule §217.144 allows inexperienced non-law enforcement employees and/or department personnel to perform VIN inspections pursuant to §501.032, Transportation Code. The commenters believe that only experienced auto theft investigator taskforce members, Texas Department of Public Safety (DPS), and NICB agents are qualified to conduct the VIN inspections, and therefore, the department by rule should not expand the types of persons who may conduct VIN inspections.

RESPONSE: The department agrees with the commenters that only properly trained individuals should be authorized to conduct VIN inspections. However, no changes have been made to the rule since the rule does not expand who is authorized to conduct VIN inspections. In enacting SB 2076, 85th Texas Legislature, Regular Session, the Texas Legislature amended Chapter 501, Transportation Code, by adding new §501.0321(c)(1-4) which sets forth the persons who the Legislature believes, if qualified, may perform the VIN inspections pursuant to §501.032, Transportation Code.

In subsection §501.0321(c), the Legislature provided that an inspection under this section may be performed only by a person who has successfully completed an appropriate training program as determined by department rule. Those persons who successfully complete one of the appropriate training programs would be considered as qualified to conduct VIN inspections in Texas.

Thus, in furtherance of §501.0321(c), the department's sole purpose in proposing new rule §217.144 is to establish the appropriate training programs contemplated by statute. The new statute, not the department's proposed new rule, sets forth those persons who, if qualified, may conduct VIN inspections.

It is not the department's intent to erode the integrity of current VIN inspection processes, and the language of the proposed rule will not affect that existing system. Currently, the department does not have commissioned auto theft investigators, nor are there plans to provide training for department employees to conduct VIN inspections at this time. The department appreciates the concerns expressed by its law enforcement stakeholders. The department will continue to work with all stakeholders before expanding training to ensure that those persons contemplated under the statute are appropriately trained and that proper safeguards are in place to maintain the integrity of VIN inspections in Texas.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.0321.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.030, 501.032, 501.0322, and 501.033.

§217.141. Purpose and Scope.

This subchapter prescribes the policies and procedures necessary to protect the public by requiring inspection of street rods and custom vehicles, accurately identify the identity of a motor vehicle, and provides department approved training programs which if successfully completed qualify a person to conduct vehicle identification number inspections.

§217.144. Identification Number Inspection.

In addition to any other requirement specified by Transportation Code, §501.0321, a person is qualified to perform an inspection under §501.0321, Transportation Code, if that person has completed one of the following training programs:

- (1) Intermediate or Advanced Motor Vehicle Burglary and Theft Investigator Training provided by the Texas Automobile Burglary and Theft Prevention Authority;
- (2) Auto Theft School (Parts 1 and 2) provided by the Texas Department of Public Safety; or
- (3) Auto Theft Course provided by the National Insurance Crime Bureau.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2017.

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CHAPTER 218. MOTOR CARRIERS

SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §218.61

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 218, Motor Carriers, Subchapter E, Consumer Protection, §218.61, Claims, without changes to the proposed text as published in the June 23, 2017, issue of the *Texas Register* (42 TexReg 3262). The rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §218.61 increase the protection for consumers and modify the language for consistency and clarity.

An amendment eliminates one of the two exceptions to the requirement for a household goods carrier to issue an acknowledgment letter to its consumer who files a claim. The acknowledgment letter includes important information to educate the consumer about the consumer's rights, the department's toll-free consumer helpline, the claims process, and deadlines regarding the claims process. The current exceptions to the requirement for the household goods carrier to issue the acknowledgment letter within 20 days after receipt of a claim are: 1) the claim has been resolved; and 2) the household goods carrier has initiated communication with the claimant regarding the claim. An amendment eliminates the exception for initiating communication. What constitutes "initiating communication" is often difficult to define and does not ensure that the consumer receives necessary information to protect the consumer's rights. For example, if the household goods carrier "initiates communication" by leaving a voice mail that says it called about the claim, this action provides no protection for the consumer and should not excuse providing the acknowledgment letter to the consumer.

COMMENT

The department received one comment from the Southwest Movers Association, stating that any amendments to §218.61 should have input from the Household Goods Rules Advisory Committee before moving forward.

RESPONSE TO COMMENT

Transportation Code, §643.155 states the Household Goods Rules Advisory Committee shall examine the rules adopted by

the department under Transportation Code, §643.153(a) and (b) to make recommendations on modernizing and streamlining the rules. The proposed amendments to §218.61 primarily deal with the issue of consumer protection. Also, the department spoke to the executive director of the Southwest Movers Association about the amendments to §218.61, which the association was able to discuss at a recent meeting held by the association.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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