

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.052, which authorizes the department to enter into agreements for the provision of personnel, equipment, systems, facilities, and services necessary to operate a toll project or system; Transportation Code, §228.057, which authorizes the department to charge reasonable fees for administering electronic toll collection customer accounts; and Transportation Code §228.0547, which authorizes the department to assess an administrative fee under certain circumstances.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228, Subchapter B.

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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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §§217.122, 217.123, 217.125 - 217.130

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter F, §217.122, Definitions, §217.123, Access to Motor Vehicle Records. The department also adopts new §217.125, Additional Documentation Related to Certain Permitted Uses, §217.126, Limitations on Resale and Redislosure, §217.127, Records Maintained by Recipients Who Resell or Redisclose Personal Information, §217.128, Department Review of Recipient's Records of Resale or Redislosure, §217.129, Ineligibility to Receive Motor Vehicle Records, and §217.130, Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated. Section 217.129 is adopted without changes to the proposed text as published in the March 16, 2018, issue of the *Texas Register* (43 TexReg 1621) and will not be republished. Sections 217.122, 217.123, 217.125, 217.126, 217.127, 217.128, and 217.130 are adopted with changes to the published proposed text and will be republished.

While the recordkeeping provisions of Transportation Code Chapter 730 have been in place since its enactment, the enforcement of these rules will not take place until December 31, 2018.

Changes in the adopted amendments respond to public comments or otherwise reflect nonsubstantive variations from the proposed amendments to improve clarity and consistency, including renaming the subchapter title. The changes do not affect new persons, entities, or subjects other than those given notice under the original proposal. Compliance with the adopted sections will be less burdensome than under the proposed sections.

EXPLANATION OF AMENDMENTS

Transportation Code, §730.014 allows any agency that compiles or maintains motor vehicle records to adopt rules to implement and administer the Motor Vehicle Records Disclosure Act.

The amendments to §217.122 differentiate those who request and receive personal information contained in motor vehicle records directly from the department with those who receive records by resale or redisclosure.

The amendments to §217.123 allow the department to accept identification not enumerated but deemed acceptable when processing a request for motor vehicle records.

EXPLANATION OF NEW SECTIONS

New §217.125 states what additional documentation is needed when submitting a request for motor vehicle records to the department. Where applicable, professionals licensed out-of-state may be allowed to obtain motor vehicle records on a record-by-record basis.

New §217.126 limits the forms personal information contained in motor vehicle records may be resold or redisclosed and requires anyone reselling or redisclosing personal information to inform the recipient of their obligations under the Transportation Code.

New §217.127 states what records must be maintained by those who resell or redisclose personal information contained in motor vehicle records.

New §217.128 states the department's process in reviewing records kept by those who resell or redisclose personal information contained in motor vehicle records.

New §217.129 states when a requestor of motor vehicle records is ineligible to receive those records.

New §217.130 states how a requestor of motor vehicle records, whose access was previously revoked, may regain access to records.

COMMENTS AND RESPONSES

The department received comments from the following regarding the proposed rules: Steve Hayden, HDR; HS Hardy, QuickView Technologies (Quickview); Sean Wheatley, Experian Information Solutions, Inc. (Experian); Alice Miles, R.L. Polk & Co. (POLK); and Eric Ellman, Consumer Data Industry Association.

COMMENT

Polk and Experian requested the department clarify §217.122 to reduce the proposed definitions from three proposed to two -- one for those who request and receive motor vehicle records from the department, and one for every other person or entity who qualifies for motor vehicle records under Transportation Code, Chapter 730.

RESPONSE

The department agrees with the comments and has adjusted the definitions to differentiate between those who approach the department for motor vehicle records and those who may receive motor vehicle records under Transportation Code, Chapter 730.

COMMENT

QuickView commented adding "personal information" to the definition of motor vehicle record in §217.122 has the result of limiting non-personal information from disclosure.

RESPONSE

The department agrees with this comment and believes removing this provision better aligns with the statute, which differentiates how motor vehicles records with and without personal information may be resold or redisclosed.

COMMENT

Polk and Experian asked the department to clarify that the provisions of §217.123(a) and (b) do not apply to those seeking electronic access to records.

RESPONSE

Currently, customers under a service agreement in subsection (c) with the department for electronic access to motor vehicle records are vetted in accordance with that agreement. In entering into that service agreement with the department, customers complied with the provisions in §217.123(a) and (b). Following compliance with those two provisions, customers under a service agreement are only subject to §217.123(c) and that agreement.

No change is necessary.

COMMENT

HDR, Experian, and Polk asked the department to clarify how the additional documentation provisions of §217.125 apply to those who resell or redisclose department data.

RESPONSE

No change is necessary here, as §217.125 applies only to the department. This rule indicates the documentation the department will require in order to disclose personal information associated with a motor vehicle record. As mentioned, customers under a service agreement with the department are bound by the terms of that agreement and are not subject to the provisions in §217.125. The permitted uses of our service agreement customers are vetted according to that agreement and are continuously monitored by the recordkeeping provisions associated with Transportation Code Chapter 730.

COMMENT

QuickView asked the department to consider accepting out-of-state licenses for the additional documentation in §217.125, related to those who request personal information as insurance agents, tow truck operators, or private investigators.

RESPONSE

The department agrees with this comment and will accept out-of-state licenses as documentation required to prove a permitted use. The statute itself does not expressly limit disclosure to licensed professionals in Texas. However, under the department's authority to limit unlawful disclosure, these requests may only be submitted on a record-by-record basis.

COMMENT

Experian and Polk asked the department to modify §217.126 to reflect the recordkeeping provisions of §217.127 only apply to the resale and redisclosure of personal information.

RESPONSE

The department agrees that this modification is consistent with the Transportation Code and will require recordkeeping only on resold or redisclosed personal information.

COMMENT

Experian and Polk have asked the department to modify or delete recordkeeping provisions regarding the quantity of records disclosed due to the technical means by which the two consume and resell data.

RESPONSE

The department understands our customer's usage of data varies from person to person, and certainly reflected in those differences are varying technological abilities as well. This provision was not meant to grant the department control over our customers' data systems. Rather, this provision will be used to ensure that our customers are maintaining records and making them available to the department as required under 18 U.S.C. 2721 and Transportation Code Chapter 730. Lastly, when the department does ask our customers for records regarding resold or redisclosed personal information, this provision is satisfied by simply turning over those records to the department.

COMMENT

Experian and Polk asked the department to require language in resellers' contracts alerting their customers of the obligations of the Transportation Code. Additionally, the two asked the department to delete language holding resellers responsible for the misuse of data by downstream users.

RESPONSE

While the department greatly appreciates the inclusion of these provisions in the contracts of data resellers, we have always held those who receive our data responsible for the misuse of that particular data, regardless of misuse by the department's customers, or customers of our resellers. Our means of enforcement, however, is limited. Under the current statutory scheme and following a misuse of data, the department only has the authority to terminate access to the data and refer the misuse to law enforcement. The department does not have the authority to create a cause of action against any of our data customers.

On the other hand, since the enactment of DPPA, there has always been a federal cause of action for the person whose data was illegally disclosed.

No change is necessary.

COMMENT

Experian, Polk, and Quickview asked the department to change the mandatory termination provisions of §217.128 to discretionary provisions.

RESPONSE

The department agrees with this comment and will make termination of a service agreement discretionary. It has always been the department's goal to protect personal information while providing a service to our customers, that includes developing safeguards and remediation plans.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) 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; and more specifically, Transportation Code, §730.014, which provides that the department may adopt rules to implement and administer Transportation Code, Chapter 730, Motor Vehicle Records Disclosure Act.

CROSS REFERENCE TO STATUTE

Government Code, §552.130; Transportation Code, Chapter 730; and 18 U.S.C. §2721 et seq.

§217.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Authorized recipient--A person receiving motor vehicle records as defined by this subchapter, in a manner authorized by Transportation Code, Chapter 730.

(2) Department--Texas Department of Motor Vehicles.

(3) Motor vehicle records--Information regarding the titling or registration of motor vehicles, which may include the make, vehicle identification number, year, model, body style, license number of a motor vehicle, and the name, address, and social security number of an owner or lienholder.

(4) Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, telephone number, medical or disability information, license plate number, or address other than the postal routing code.

(5) Requestor--A person seeking personal information contained in motor vehicle records directly from the department.

(6) Service agreement--A contractual agreement that allows individuals, businesses or governmental entities or institutions to access the department's motor vehicle records.

(7) Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

§217.123. Access to Motor Vehicle Records.

(a) Request for records. A requestor shall submit a written request on the form required by the department. Information will be released only in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code, Chapter 730, Government Code, §552.130, and this subchapter. A completed and properly executed form must include, at a minimum:

(1) the name and address of the requestor;

(2) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) a photocopy of the requestor's identification;

(4) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for a permitted use as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Identification required. A requestor may not apply for receipt of personal information unless the requestor presents current photo identification containing a unique identification number. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;

(5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H; or

(6) copy of current law enforcement credentials if the requestor is a law enforcement officer.

(c) Electronic access. The department may make motor vehicle records available under the terms of a written service agreement.

(1) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records);

(C) termination and default provisions;

(D) the contractor's signature;

(E) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(F) the statements required by subsection (a) of this section.

(2) Agreements with Texas governmental entities.

(A) The written service agreement with a Texas governmental entity must contain:

(i) the specified purpose of the agreement;

(ii) a statement that the use of motor vehicle records obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

(iii) the statements required by subsection (a) of this section;

(iv) the signature of an authorized official; and

(v) an attached statement citing the entity's authority to obtain social security number information, if applicable.

(B) Texas governmental entities, as defined in Government Code, §2252.001, and including the Texas Law Enforcement Telecommunication System and toll project entities, as defined by

Transportation Code, §372.001, are exempt from the payment of fees, except as provided by §217.124(e) of this title.

(d) Ineligibility to receive personal information. The department may prohibit a person, business, or Texas governmental entity from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (c) of this section.

(e) Initial deposits and minimum balances. Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements on a case by case basis depending on customer usage.

§217.125. Additional Documentation Related to Certain Permitted Uses.

(a) The department may require a requestor to provide reasonable assurance as to the identity of the requestor and that the use of motor vehicle records is only as authorized under Transportation Code, §730.012(a). Where applicable, each requestor submitting a request for motor vehicle records shall provide documentation satisfactory to the department that they are authorized to request the information on behalf of the business or government entity authorized to receive the information.

(b) Disclosure under the following permitted uses requires additional documentation submitted to the department:

(1) Transportation Code, §730.007(2)(C) requires submitting the information the business is attempting to verify against the department's motor vehicle records.

(2) Transportation Code, §730.007(2)(D) requires submitting proof of legal proceeding, or if no proceeding has been initiated, proof in anticipation of proceeding.

(3) Transportation Code, §730.007(2)(E) requires submitting documentation sufficient to prove the requestor is employed in a researching occupation.

(4) Transportation Code, §730.007(2)(F) requires submitting a license number provided by the Texas Department of Insurance, a license number the insurance support organization is working under, or proof of self-insurance.

(5) Transportation Code, §730.007(2)(G) requires submitting a license number provided by the Texas Department of Licensing and Regulation.

(6) Transportation Code, §730.007(2)(H) requires submitting a license number provided by the Texas Department of Public Safety.

(7) Transportation Code, §730.007(2)(I) requires submitting a copy of the commercial driver's license.

(8) Transportation Code, §730.007(2)(J) requires submitting documentation to relate the requested personal information with operation of a private toll transportation facility.

(9) Transportation Code, §730.007(2)(K) requires a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), to submit documentation on official letterhead indicating a permitted use for personal information, as defined by that Act.

(c) Regarding §217.125(b)(4-6), the department may accept out-of-state licenses as documentation of a permitted use. Under this subsection, the department will limit access to a record-by-record basis.

§217.126. Limitations on Resale and Redisclosure.

(a) Authorized recipients may only resell or redisclose personal information to other authorized recipients and not in the identical or substantially identical format as provided by the department.

(b) Authorized recipients may not resell or redisclose the entire motor vehicle records database in its complete bulk format.

(c) Any authorized recipient reselling or redisclosing personal information must inform the person to whom they are reselling or redisclosing of their obligations under Transportation Code, Chapter 730 and this subchapter.

(d) Any authorized recipient is responsible for misuse of personal information by any person receiving their version of the information, regardless of whether the authorized recipient approved or was aware of subsequent transfers of the information.

§217.127. Records Maintained by Recipients Who Resell or Redisclose Personal Information.

(a) Authorized recipients who resell or redisclose personal information are required to maintain records of that transaction.

(b) Records must be maintained for not less than five years and must include:

(1) the name and contact information of any recipient of resold or redisclosed personal information contained in motor vehicle records;

(2) the permitted use for which the records were released, or documentation in accordance with 217.125(b);

(3) the quantity of records sold or disclosed to each subsequent person;

(4) a statement by the authorized recipient specifying what data was resold or redisclosed and in what format; and

(5) any other documentation of the agreement to resell or redisclose personal information contained in motor vehicle records.

§217.128. Department Review of Recipient's Records of Resale or Redisclosure.

(a) The department has the authority to request and review records kept by all authorized recipients who resell or redisclose personal information.

(b) This request will be made in writing.

(c) The requested records must be provided to the department within 30 days of the request.

(d) Failure to fully respond to the department's request may result in termination of access to motor vehicle records under Transportation Code, §730.007.

(e) Upon receipt of the requested records, the department will evaluate the records for compliance with the service agreement, applicable statutes, and rules.

(f) If it is determined that an authorized recipient is not in compliance with the service agreement, applicable statutes, and rules, the service agreement may be terminated.

§217.130. Approval for Persons Whose Access to Motor Vehicle Records Has Previously Been Terminated.

(a) A requestor whose service agreement was previously terminated, but who is not subject to Transportation Code, §730.016, shall submit a written request for reapproval on the form required by the department.

(b) In addition to the requirements of §217.123 of this title (relating to Access to Motor Vehicle Records), the request must contain:

(1) any documents indicating remedial efforts the requestor has undertaken to prevent the unlawful disclosure of motor vehicle records,

(2) any documents indicating agreements between the requestor and third parties receiving resold or redisclosed motor vehicle records, and

(3) a statement that the requestor will notify the department before reselling or redisclosing any motor vehicle records for the time period prescribed by the department, including all of the information required under §217.127(b) of this title (relating to Records Maintained by Recipients Who Resell or Redisclose Personal Information). The notification must include the name, address, and contact information of the third party requesting resold or redisclosed motor vehicle records, and must include the form(s) used to verify the third party's lawful purpose in obtaining motor vehicle records.

(c) Failure to comply with any of the terms of this section or a re-offense of the service agreement will result in the termination of the service agreement and the permanent inability to receive motor vehicle records.

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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For further information, please call: (512) 465-5665



CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A, General Provisions, §219.2, Definitions; and Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §219.34, North Texas Intermodal Permit; and §219.36, Intermodal Shipping Container Port Permit, with changes to the proposed text as published in the March 2, 2018, issue of the *Texas Register* (43 TexReg 1249). These rules will be republished. The department also adopts amendments to §219.35, Fluid Milk Transport Permit without changes to the proposed text, and this rule will not be republished.

EXPLANATION OF AMENDMENTS

The 85th Legislature, Regular Session, 2017, authorized three new permits for overweight vehicle combinations. Amendments to §§219.2, 219.34, 219.35, and 219.36 implement House Bill 2319, Senate Bill 1383, and Senate Bill 1524 by defining and clarifying terms that are used in these bills.

The department defines the terms "roll stability support safety system" and "truck blind spot systems" because industry and enforcement personnel could interpret these terms to mean different things. These terms were included in House Bill 2319, Senate Bill 1383, and Senate Bill 1524 to attempt to make these permitted vehicles safer. The department's definitions focus on

safety. For example, the roll stability support safety system is defined to require an electronic system. The manual actions or perceptions of a human driver do not qualify as a "roll stability support safety system" because a human driver might not be capable of detecting or preventing instability problems as well as an electronic system.

An amendment to §219.34 and §219.36 clarifies the term "approximately 647 inches," and an amendment to §219.36 clarifies the term "approximately 612 inches." These terms state the authorized distance between the front axle of the truck-tractor and the last axle of the semitrailer in the combinations that are eligible for permits under §219.34 and §219.36.

The department received calls from industry representatives who wanted to know how the department interpreted these terms because industry wanted to exceed these numbers. For example, a manufacturer told one motor carrier that they have equipment in production that exceeded the 612-inch requirement by 46 inches.

The Legislature did not define these terms in House Bill 2319 or Senate Bill 1524. In construing a statute, the Code Construction Act says a court may consider the object sought to be attained, the consequences of a particular construction, the administrative construction of the statute, etc. See Government Code, §311.023.

The Legislature used the terms "approximately 647 inches" and "approximately 612 inches" to ensure a certain distance between the applicable axles to minimize or prevent damage to roadways that could be caused by the excess weight of the permitted vehicles. The department discussed this issue with the Texas Department of Transportation (TxDOT) because they design and maintain roadways on which the permitted vehicles could travel. The department also discussed this issue with the Texas Department of Public Safety (DPS) because they enforce laws and rules regarding weight. Further, the department discussed this issue at TxDOT's Oversize and Overweight Stakeholder Workshop on November 20, 2017, when an industry representative asked for clarification on the meaning of the terms "approximately 612 inches" and "approximately 647 inches."

In defining these terms, the department focused on the object sought to be attained, which is to minimize or prevent damage that could be caused by the excess weight of the permitted vehicles. The department also focused on the consequences of a particular interpretation or construction of the terms. TxDOT stated that distances below 612 inches or 647 inches could have a significant impact on their assessment of bridges and may result in additional load postings. Also, industry only asked if the distance could go above 612 and 647 inches, so they could purchase equipment that is currently in production.

The department, TxDOT, and DPS agree that 612 inches and 647 inches are the minimum distances allowed; however, the permitted vehicles can exceed these distances. TxDOT did not suggest a specific maximum distance; however, they stated the longer the distance, the better. DPS pointed out the potential benefit of not listing a maximum distance in case a manufacturer or engineer designs equipment that exceeds whatever maximum distance the department might establish in §219.34 and §219.36. The amendments establish the maximum distance, so the department's personnel and industry have a clear maximum distance.

Other amendments to §219.2 delete an incorrect statutory reference and update the language to be internally consistent.