

intended to give the registrant the choice to use modern technology to present its cab card to a peace officer. Ballot 412 was not intended to constitute the registrant's voluntary consent to authorize a peace officer or any other person to search the contents of the registrant's device. When a peace officer is relying on voluntary consent as the authority for the search, Ballot 412 does not impact the registrant's authority to either consent to the officer's request or to decline the officer's request to search all or parts of the registrant's device.

The IRP website includes a webpage regarding the implementation of Ballot 412. The webpage includes draft language for member jurisdictions to use to make it clear that the ballot language does not constitute voluntary consent for a peace officer to view the contents of the registrant's device. See <https://www.irponline.org/page/ECBallotImplement>

When a peace officer is relying on authority other than voluntary consent for the search, Ballot 412 does not impact such authority, if any, to search the contents of the registrant's device. This authority, if any, may exist regardless of whether the registrant chooses to display an electronic image of the registrant's cab card or chooses to display a paper copy of the cab card. At the annual IRP meeting in May of 2018, the member jurisdictions discussed the implementation of Ballot 412 during the presentation of an agenda item titled Implementation of Electronic Cab Card Ballot. Part of the discussion focused on the fact that the ballot language does not impact any authority that a peace officer might have to search the contents of the registrant's device.

Also, Ballot 412 was not intended to override any rules regarding the form of evidence that is required or used in connection with a hearing, trial, or discovery proceeding in a court or administrative tribunal. An amendment to §217.56 clarifies that the language does not impact any requirements to provide a paper copy of the cab card in a proceeding before the Texas State Office of Administrative Hearings or a court of competent jurisdiction.

If the language in an IRP ballot expressly conflicts with a member jurisdiction's statute, the member jurisdiction's legislature may need to amend the statute to be consistent with the IRP. For example, if a Texas statute required the registrant to provide a peace officer with the original paper cab card or a paper copy of the cab card, such a statute would expressly conflict with the language in Ballot 412, which authorizes the registrant to provide an electronic image of the cab card.

The language in Ballot 412 does not expressly conflict with any Texas statutes. Also, the amendments to §217.56 are consistent with the department's rules regarding the electronic display of an oversize or overweight permit and an insurance cab card for a motor carrier. The amendments are also consistent with Transportation Code, §601.053(d) and (e) regarding the electronic display of insurance information on a wireless communication device.

Amendments also make the language consistent with the following: 1) other rules in Chapter 217; 2) Transportation Code, Chapter 502; and 3) a resolution of the board of the Texas Department of Motor Vehicles (board) dated December 3, 2009, in which the board delegated the following to the department's executive director or her designee: the final order authority in contested cases involving the assessment of additional registration fees, the cancellation of registration, or the revocation of registration after an audit of the registrant's operational records.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004(1), which requires state agencies to adopt rules of practice that state the nature and requirements of all available formal and informal procedures; and more specifically, Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; and Transportation Code, §502.091(b), which authorizes the department to adopt rules to carry out the IRP.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.091.

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 December 11, 2018.

TRD-201805306

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Effective date: January 1, 2019

Proposal publication date: August 31, 2018

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SUBCHAPTER K. ELECTRONIC SIGNATURES

43 TAC §§217.301 - 217.303

The Texas Department of Motor Vehicles (department) adopts new Chapter 217, Vehicle Titles and Registration, Subchapter K, Electronic Signatures, §217.301, Purpose and Scope; §217.302, Definitions; and §217.303, Process for Accepting Electronic Signatures, without changes to the proposed text as published in the August 31, 2018, issue of the *Texas Register* (43 TexReg 5667). The rules will not be republished.

EXPLANATION OF NEW SUBCHAPTER

Senate Bill 1062, 85th Legislature, Regular Session, 2017, amended Transportation Code, §501.174, directing the department by rule to establish a process to accept electronic signatures on secure documents that have been electronically signed through a system not controlled by the department. The new subchapter establishes that process for electronic signatures on secure documents and non-secure documents.

New §217.301, Purpose and Scope, establishes that the new rules prescribe the policies and procedures for the acceptance of electronic signatures on secure documents and the use and acceptance of electronic signatures on non-secure documents.

New §217.302, Definitions, defines key terms used in the adopted new subchapter, including department, electronic signature, secure document, and webDEALER. Electronic signature is defined by reference to Transportation Code,

§501.172; secure document is defined as a document that incorporates features that can be used to identify and authenticate a document as original, printed by a secure printing process, and provided by the department or an equivalent department in another jurisdiction; and webDEALER is defined by reference to §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems).

New §217.303, Process for Accepting Electronic Signatures, authorizes persons to use electronic signatures for records submitted to the department if the requirements of the subchapter are met. New §217.303(b) clarifies that electronic signatures may not be used for any purpose other than the purpose indicated by the signer on the document and that the electronic signatures must be linked to their respective electronic records and match the signer's printed name.

New §217.303(c) provides that the department does not certify or approve an electronic signature process or vendor. An entity offering an electronic signature process assumes responsibility for the accuracy of the signature.

New §217.303(d) provides that a secure document with an electronic signature may only be submitted through webDEALER and requires a county tax assessor-collector to accept a secure document with an electronic signature submitted in compliance with the subchapter.

New §217.303(e) provides that a non-secure document with an electronic signature may be submitted electronically through webDEALER or physically, and requires a county tax assessor-collector to accept a secure document with an electronic signature submitted in compliance with the subchapter.

New §217.303(f) requires a system used to electronically sign documents to capture and retain the signer's name, the date, and the electronic signature. New §217.303(g) requires an electronic signature physically printed or affixed on a document to indicate it is an electronic signature. New §217.303(h) requires that the electronic signature system verify the identity of the user and that the access be secure and utilize unique credentials for each user. This new subsection also establishes a retention period for information captured by an electronic signature system and requires that the information retained be provided to the department on request.

New §217.303(i) exempts an electronic signature captured by physical means, such as a stylus, pen pad, or mouse, from the requirements of §217.303(h) if the signer presents a current photo identification described by §217.5(d) of this title (relating to Evidence of Motor Vehicle Ownership); the identity of the signer is verified in person by the holder of a general distinguishing number issued under Transportation Code, Chapter 503, or Occupations Code, Chapter 2301; and the photo identification is retained in accordance with §217.5(d).

COMMENTS

The department received comments from Insurance Auto Auctions (IAA) and Texas Automobile Dealers Association (TADA).

COMMENT

IAA requested that when an electronic submission is rejected due to a correctable error or system glitch, they be given the opportunity for the error or glitch to be corrected and the transaction resubmitted electronically.

RESPONSE

The department has reviewed the comment and finds no changes to the rule are necessary, as transactions that are rejected due to correctable errors may be resubmitted, regardless of whether the transaction is submitted physically or electronically. The proposed new rules do not prohibit corrections and resubmissions when necessary.

COMMENT

IAA requested the ability to print and physically submit an electronically signed document that is rejected because webSALVAGE does not recognize or support the transaction.

RESPONSE

Transportation Code, §501.174(d) requires the department to adopt rules that establish a process for the acceptance of electronic signatures on secure documents that have been electronically signed through a system not controlled by the department. Section 501.174(e) requires that system to verify the identity of the person electronically signing and for the documents to be submitted through the electronic titling system. As such, the department is not authorized to accept secure documents with electronic signatures outside of webDEALER. Allowing electronic signatures to be affixed on secure documents and submitted physically is beyond the scope of the statute and raises concerns regarding the potential for fraud to occur. webDEALER provides user verification of the person submitting the title application to the county or department. The department is making no changes to the proposed rules based on this comment.

COMMENT

IAA requested that webDEALER be expanded to accommodate its clear title applications on behalf of insurers and commented it would like the ability to sign all title applications using e-signatures.

RESPONSE

The department has reviewed this comment and determined that while the recommendation is outside the scope of this rulemaking, the department had previously received a request to accommodate this type of transaction. It is not known at this time when this change could be implemented.

COMMENT

TADA expressed concern about the proposed definition of "secure document" and seeks clarification. TADA questioned how a licensee could determine whether a document is an "original" when issued by an equivalent department in another jurisdiction and if that document meets the agency's definition. TADA also asks if the department will presume a document is "original" if it is printed on secure paper and provided by the equivalent department in another jurisdiction and requests additional information as to the meaning of "secure printing process" in the "secure document" definition.

RESPONSE

The department has reviewed the comment and finds no changes are necessary to the definition of "secure document" as proposed. This definition is a commonly-used definition for an inventory-controlled document issued by the department and equivalent departments in other jurisdictions. This definition provides a greater level of specificity than the Federal Regulations governing odometer disclosures (49 U.S.C.A. §32705), which refer only to a "secure printing process" or "other secure

process." Security watermarks or other features are designed to appear hidden or invisible on originals, but clearly visible on photocopies. Notably, the secure documents referenced in the proposed rules are the same secure documents used today; the proposed rules prescribe that a secure document with an electronic signature must be submitted through webDEALER.

STATUTORY AUTHORITY

The new subchapter is 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, §501.174, and Business and Commerce Code, §322.017.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

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 December 11, 2018.

TRD-201805307

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Effective date: January 1, 2019

Proposal publication date: August 31, 2018

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

