PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.30, 30.81, 30.117, 30.120, 30.122, 30.231, 30.240, 30.279, 30.307, 30.331, 30.340, 30.390, 30.506, and 30.507; to repeal §30.247; and to repeal and simultaneously propose new §30.28.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules implement requirements in Senate Bills (SB) 807 and 1307 from the 84th Texas Legislature, 2015. These bills impact 30 Texas Administrative Code (TAC) Chapter 30, Subchapter A, Administration of Occupational Licenses and Registrations.

The proposed rules will enable the commission to: waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807; and extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, amended by SB 1307.

Additionally, the proposed rules will: remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates which no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making non-substantive changes to grammar, punctuation, and organization.

The proposed rules will also repeal and simultaneously propose new §30.28 to reorganize the section to improve readability by the public. The new §30.28 will generalize training provider requirements to apply to all delivery methods.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes have been made to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§30.3, Purpose and Applicability

The proposed amendment to §30.3, would update subsection (b)(11) to match the title of 30 TAC Chapter 30, Subchapter L, Visible Emissions Evaluator Training and Certification.

§30.7, Definitions

The proposed amendment to §30.7, would reorder definitions for alphabetical correctness. The proposed amendment would add a definition for *approved application* and *association.* The proposed rule would clarify training delivery methods and providers and identify entities that may be approved for differing delivery methods. The proposed amendment would add or modify definitions to clarify what the commission considers a *high school diploma* and *home school diploma.* The proposed amendment will also update additional definitions in the section to improve understanding.

§30.10, Administration

The proposed amendment to §30.10, clarifies the responsibilities of the executive director by including changes made in §30.7, Definitions.

§30.18, Applications for an Initial License

The proposed amendment to §30.18, would add language to allow the executive director discretion when considering an applicant's diploma from a non-accredited high school.

§30.20, Examinations

The proposed amendment to §30.20, would include language about the role and responsibility of examination proctors and examinees. The proposed rule would also include language for increased examination security requirements and provide details regarding the consequences for violation of exam security requirements.

§30.24, License and Registration Applications for Renewal

The proposed amendment to §30.24, would clarify language for renewal notification responsibilities. The proposed rule would include language from §30.7, Definitions. The proposed rule would incorporate language from SB 1307 for the extended renewal time for military service members.

§30.26, Recognition of Licenses from Out-of-State; Licenses for Military Service Members, Military Veterans, or Military Spouses

The proposed amendment to §30.26, would change the section title to reflect changes made by SB 1307. The proposed rule would incorporate language from SB 1307 for the qualifications of military service members, military veterans, and military

spouses. The proposed rule would add language clarifying the limitations of reciprocity.

§30.28, Approval of Training

The proposed rule would repeal and simultaneously propose new §30.28, to reorganize the section to improve readability and flow. The current rule does not allow for incorporation of emerging technologies to deliver training. The new rule will generalize training provider requirements so the requirements apply to all delivery methods.

New §30.28(a), existing §30.28(a), would remove the 45- and 120-day application review notification deadlines from the existing rule and place them into internal guidance. The removal of the review notification deadlines from rule would not affect the commission's response times on these reviews and would continue to ensure staff can review training applications completely and accurately.

New §30.28(b) would identify specific training delivery methods approved by the executive director. The proposed subsection will incorporate the existing training methods in existing §30.28(b).

New §30.28(c), part of existing §30.28(b), would allow the executive director to award training credit for successful completion of approved training used to obtain or renew a license.

New §30.28(d), existing §30.28(c), would allow the executive director to determine the number of hours of training credit for approval. The proposed subsection would clarify the methodology used to determine hours from the existing section.

New §30.28(e), existing §30.28(d), would identify the requirements for training provider applications. The proposed subsection would improve the readability of the existing language. The proposed §30.28(e)(6) would also specify documentation required for copyrighted material as listed in existing §30.28(v). The proposed §30.28(e)(7) would additionally include the application deadline from existing §30.28(y).

New §30.28(f) would add the executive director's definition of applicant.

New §30.28(g), existing Figure: TAC §30.28(y)(6), would identify the fee schedule calculations for training applications.

New §30.28(h), existing §30.28(l), would identify the requirements training providers must meet to be approved or renewed. The proposed subsection would make no substantive change to the existing language.

New §30.28(i), existing §30.28(j), would require that training not be advertised as approved until a notice of approval is received from the executive director. The proposed subsection would make no substantive change to the existing language.

New §30.28(j), existing §30.28(m)(1), would prohibit training in a place of business directly related to the occupational license. The proposed subsection would make no substantive change to the existing language.

New §30.28(k), existing §30.28(e), would allow approved training to be offered without notification to the executive director. The proposed subsection would make no substantive change to the existing language.

New §30.28(l), existing §30.28(f), would allow training to be considered approved until the content changes or the executive director notifies the training provider of required changes. The proposed subsection would make no substantive change to the existing language.

New §30.28(m), existing §30.28(g), would require the executive director's approval when training providers change delivery methods. The proposed subsection would make no substantive change to the existing language.

New §30.28(n), existing §30.28(x), would identify the executive director's authority over training providers. The proposed subsection would make no substantive change to the existing language. The proposed §30.28(n)(2) includes language from existing §30.28(y)(3) that grants the executive director authority to conduct an administrative review over applications and a technical review for rule compliance. The proposed §30.28(n)(4) includes the update requirement from existing §30.28(h).

New §30.28(o), existing §30.28(x)(3), would identify the reasons the executive director may recall, rescind, suspend, or deny approval for training. The proposed subsection would make no substantive change to the existing language.

New §30.28(p) would identify the types of training that will not be approved or allowed credit.

New §30.28(q), existing §30.28(i) and (q), would identify the obligations training providers have to the agency and to the students. The proposed subsection would include a requirement to ensure the agency has the most current electronic copy of a provider's training materials.

New §30.28(r), existing §30.28(t), would require that training material be presented in the original manner and be relevant to the critical job tasks for the occupational license. The proposed subsection would make no substantive change to the existing language.

New §30.28(s), existing §30.28(u), would require training providers utilizing public information modify the material to be applicable to the target audience and delivery methods. The proposed subsection would make no substantive change to the existing language.

§30.30, Terms and Fees for Licenses and Registration

The proposed amendment to §30.30, would incorporate language from SB 807 to waive the initial application fee for military service members, military veterans, and military spouses.

§30.81, Purpose and Applicability

The proposed amendment to §30.81, would remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes.

Subchapter D: Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors

The proposed amendment would change the title of Subchapter D to reflect historical rule changes.

§30.117, Definitions

The proposed amendment to §30.117, would remove and modify historical definitions that pertain to occupational licenses due to agency rule changes.

§30.120, Qualifications for Initial License

The proposed amendment to §30.120, would remove historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.122, Qualifications for License Renewal

The proposed amendment to §30.122, would remove historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.231, Purpose and Applicability

The proposed amendment to §30.231, would remove historical terms which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.240, Qualifications for Initial License

The proposed amendment to §30.240, would remove historical terms and dates which no longer pertain to occupational licenses due to agency rule changes.

§30.247, Registration of Maintenance Providers

The proposed repeal of §30.247, would repeal a historical rule that was valid from September 11, 2008, to April 30, 2009, due to legislative changes from House Bill 2482, 80th Texas Legislature, 2007.

§30.279, Exemptions

The proposed amendment to §30.279, would remove and modify citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.307, Definitions

The proposed amendment to §30.307, would remove and modify citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.331, Purpose and Applicability

The proposed amendment to §30.331, would add a new citation that resulted from a recent applicable rule change. The proposed section would also remove historical dates which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.340, Qualifications for Initial License

The proposed amendment to §30.340, would clarify that an examination is required to receive the license. The proposed amendment would make references to college degrees consistent with other rules. The proposed amendment would remove historical dates which no longer pertain to occupational licenses due to agency rule changes. The proposed amendment would clarify the amount of education and training that may be substituted for the required experience. The proposed amendment would clarify the courses required for licensure.

§30.390, Qualifications for Initial License

The proposed amendment to §30.390, would clarify that an examination is required to receive the license. The proposed rule would clarify the course and hours required for licensure. The proposed rule would make references to college degrees consistent with other rules. The proposed rule would clarify the experience requirements for licensure. The proposed rule would clarify the amount of education and training that may be substituted for the required experience.

§30.506, Visible Emission Evaluator Training Requirements

The proposed amendment to §30.506, would add a requirement for the number of proctors per student. This requirement was originally found in §30.507 and moved to §30.506 to clarify that the requirement applies to training providers.

§30.507, Field Training and Testing Requirements

The proposed amendment to §30.507, would remove a proctor requirement that is better suited to §30.506. The proposed amendment would also update a requirement to the field testing certification to be consistent with other certification requirements found in rule.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. The proposed rules would waive licensing and examination fees for military service members, military veterans, or military spouses and extend occupational license renewal deadlines. The proposed rules would also: remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates that no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making nonsubstantive changes to grammar, punctuation, and organization.

No significant fiscal implications are anticipated for TCEQ to implement SBs 807 and 1307. The agency is required to waive occupational licensing application and examination fees for military service members, military veterans, and military spouses. Implementing these requirements will involve minor procedural changes in the occupational licensing application process when reviewing applicants with a military background. These changes would include a request by the agency for applicants to disclose and provide proof of their military background. These minor procedural changes are not expected to result in significant costs. The proposed rules are not expected to affect other units of state or local government, though SBs 807 and 1307 will affect other state agencies that license occupational vocations.

Waiving occupational license application and examination fees will decrease revenue to TCEQ's Occupational Licensing Account Number 468. The current combined TCEQ occupational license application and examination fee for each application is $111.00. With the fee waived for military service members, veterans, and military spouses, the Occupational Licensing Account will experience a decrease in funding. The magnitude of the revenue decrease is not known because TCEQ currently does not track the number of military service members, military veterans, and military spouses, nor can the agency anticipate the number of new applications it will receive in the future. Over time, the agency will be better able to determine the impact of the fee waiver to the account revenue stream. Currently, it is not expected that the decrease in revenue will be significant.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be that military service members, military veterans, or military spouses will have occupational license application and exam fees waived as a tribute for their service to the country.

The proposed rules are not anticipated to result in fiscal implications for businesses. The proposed rules will provide cost savings for those individuals who are military service members, military veterans, or military spouses who seek an occupational license by waiving the application and exam fees. These cost savings are estimated to be $111.00 for each application. Also, military service members who are on active duty who may need more time to renew their license will benefit from the rulemaking in that license renewal deadlines will be extended.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five year period the proposed rules are in effect for small or micro-businesses. The proposed rules are not anticipated to result in fiscal implications for businesses large or small. The proposed rules will provide cost savings for those individuals who are military service members, military veterans, or military spouses who seek an occupational license by waiving the application and exam fees.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by state law and do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001 *et seq,* and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225, applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of this rulemaking. Furthermore, the proposed rulemaking will enable the commission to: extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses, amended by SB 1307; and waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807. This rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3) and does not require a full regulatory impact analysis.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing. This rulemaking does not exceed state law requirements, and state law authorizes their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. Finally, this rulemaking is being proposed under specific state laws, in addition to the general powers of the agency.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an analysis of whether this proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. This rulemaking would not constitute a statutory or constitutional taking because this proposed rulemaking only implements statutory requirements and updates and clarifies the existing rules and does not affect a landowner's rights in real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the rulemaking affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on May 17, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-026-030-WS. The comment period closes on May 23, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Michael Parrish, Occupational Licensing, at (512) 239-2548.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30

Statutory Authority

These amendments and new section are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments and new section are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37 and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, chapter 37. These amendments and the new section are also proposed under Texas Occupations Code, §55.001, which establishes the definitions of active duty, armed forces of the United States, license, military service member, military spouse, military veteran, and state agency; Texas Occupations Code, §55.002, which requires the commission to adopt rules to exempt an individual who holds a license issued by the commission from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; Texas Occupations Code, §55.003, which requires the commission to extend for two years license renewal deadlines for military service members who hold a license; Texas Occupations Code, §55.004, which requires the commission to adopt alternative licensing rules for military service members, military veterans, or military spouses who hold a license issued by another jurisdiction that has substantially equivalent requirements for the license in this state; Texas Occupations Code, §55.005, which requires the commission to provide an expedited license procedure for military service members, military veterans, and military spouses; Texas Occupations Code, §55.006, which requires the commission to provide expedited license renewal to military service members, military veterans, or military spouses; Texas Occupations Code, §55.008, which requires the commission to credit verified military service, training, or education that is relevant to the occupation toward apprenticeship requirements for a license if an apprenticeship is required; and Texas Occupations Code, §55.009, which requires the commission to waive license application and examination fees for certain military service members, military veterans, and military spouses and to prominently post a notice on the home page of the commission's website describing the provisions of Texas Occupations Code,

Chapter 55, that are available to military service members, military veterans, and military spouses.

These amendments and new section implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; Texas Occupations Code, §§55.001 - 55.006, 55.008, and 55.009; and Senate Bills 807 and 1307.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training and Certification) contain the program-specific requirements related to each program.

(b) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) backflow prevention assembly testers;

(2) customer service inspectors;

(3) landscape irrigators, irrigation technicians, and irrigation inspectors;

(4) leaking petroleum storage tank corrective action specialists and project managers;

(5) municipal solid waste facility supervisors;

(6) on-site sewage facility installers, designated representatives, apprentices, maintenance providers, maintenance technicians, and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies;

(10) public water system operators and operations companies; and

(11) visible emissions evaluator [~~evaluators~~] training and certification [~~providers~~].

§30.7. Definitions.

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

[~~(1) Approved training event--Instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance learning, or technology-based training providing the knowledge and skills needed to perform occupational job tasks and that has been reviewed and approved by the executive director.~~]

(1) [~~(2)~~] Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(2) Approved application--An application submitted to the Occupational Licensing Section that contains all the information the executive director has deemed necessary to be accurately processed and that the executive director has determined to be approved.

(3) Approved classroom training providers--Entities that have been approved by the executive director to provide classroom training after demonstration of hands-on subject matter expertise, knowledge of and experience with educational principles and effective instructional designs.

(4) Approved conference and webinar training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide conference and webinar training.

(5) Approved distance training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide distance training after demonstrating comparable subject matter expertise, knowledge of and experience with educational principles, and effective instructional designs.

(6) Approved training--Training which provides the knowledge and skills necessary to perform occupational job tasks and is used for obtaining or renewing a license as determined by the executive director.

(7) Approved training delivery method--Methods approved by the executive director that currently include instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance training, or technology-based training.

(8) Association--The term association as used in the context of this chapter is an industry-related non-profit association whose members hold licenses issued by the commission.

(9) [~~(3)~~] Conference--The term conference as used in the context of this chapter includes conferences, seminars, workshops, symposiums, expos, [~~interactive video conferences~~] and any other such training venues.

(10) [~~(4)~~] Continuing education--Job-related training credit approved by the executive director used for renewal of licenses [~~and registrations~~].

(11) Correspondence training--The term correspondence training as used in the context of this chapter is distance training that can either be paper-based and conducted through a postal system, electronic-based and conducted through a website, or a blend of these delivery systems.

(12) [~~(5)~~] Distance training [~~learning~~]--The acquisition of knowledge that occurs through various technologies with a separation of place and/or time between the instructor(s) or learning resources and the learner.

(13) [~~(6)~~] Distributor--Any person or nongovernmental organization that sells a product primarily to individuals maintaining occupational licenses administered by the agency.

(14) High school diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development (GED) test that indicates a high school graduation level.

(15) Home school diploma--An earned diploma from a student who predominately receives instruction in a general elementary or

secondary education program that is provided by the parent, or by a person in parental authority, in or through the child's home.

[~~(7) High school diploma or equivalent certificate--A graduation diploma from a high school or a General Educational Development (GED) certification from an accrediting agency recognized by the United States Department of Education or other respective territory's or country's accreditation process if outside the United States.~~]

[~~(8) Industry-related association--A nonprofit organization that represents members that possess occupational licenses issued by the agency.~~]

(16) [~~(9)~~] License--An occupational license issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(17) [~~(10)~~] Maintenance provider--A person that, for compensation, provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(18) [~~(11)~~] Manufacturer--For the purpose of this subchapter any person, company, or nongovernmental organization that produces a product for sale primarily to individuals who maintain occupational licenses that are administered by the agency.

(19) [~~(12)~~] Person--As defined in §3.2 of this title (relating to Definitions).

(20) [~~(13)~~] Qualified [~~classroom~~] instructor--An individual who has instructional experience, work-related experience, and subject matter expertise that enables [~~enable~~] the individual to communicate course information in a relevant, informed manner and to answer students' questions.

(21) [~~(14)~~] Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(22) [~~(15)~~] Service provider--Any person, company, or nongovernmental organization that provides a service for its own profit to individuals who maintain occupational licenses that are administered by the agency.

(23) [~~(16)~~] Subject matter expert--A person having a minimum of three years of work-related experience and expert knowledge in a particular content area or areas as relates to training.

(24) Technology-based training--The term technology-based training as used in the context of this chapter includes training offered through computer equipment or through a website (also known as on-line training or e-learning).

(25) [~~(17)~~] Training credit--Hours awarded [~~of credit allowed~~] by the executive director for successful completion of [~~an~~] approved training [~~event~~].

[~~(18) Technology-based training--Training offered through computer equipment or through a Web site (also known as on-line training or e-learning).~~]

(26) [~~(19)~~] Training provider--An administrative entity or individual responsible for obtaining approval of training, providing acceptable delivery of approved training, ensuring that qualified instructors or subject matter experts are utilized in the delivery, support, and development of training and monitoring, recording and reporting attendance accurately and promptly as required by the executive director.

(27) [~~(20)~~] Webinar--Interactive training delivered live via the Internet as a combination of conference training and distance training [~~learning~~] where the learner is separated by place from the learning source. [~~Successful completion of webinar training may only be credited toward training requirements for license renewals.~~]

§30.10. Administration.

The executive director is responsible for:

(1) reviewing applications;

(2) developing, administering, and grading examinations;

(3) issuing and renewing licenses and registrations;

(4) maintaining records related to licenses and registrations;

(5) maintaining a roster of current licenses and registrations;

(6) collecting fees;

(7) approving training providers [~~used for the issuance of training credits~~];

(8) awarding training credit for approved [~~approving~~] training [~~providers~~]; and

(9) responding to complaints against licensees, registrants, and training providers.

§30.18. Applications for an Initial License.

(a) Applications for initial licenses shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the fee according to §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The application must be submitted to the executive director before the applicant may take the examination.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) An approved application shall be valid for one year from the date of application approval.

(d) All statements and qualifications provided by each applicant or on the behalf of the applicant are subject to verification by the executive director.

(e) All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(f) Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(g) All applications must be completed in full. All deficiencies must be corrected within 120 days of notification, or the application shall be considered void.

(h) An applicant must furnish evidence of any training credit, proof of education, or work experience when requested. Diplomas from non-accredited high schools will be evaluated by the executive director on a case-by-case basis and will be considered based on the following submitted information:

(1) transcript;

(2) documentation of actual coursework;

(3) time spent on coursework or program; and

(4) any additional documentation the executive director might reasonably request or that would assist the applicant in demonstrating the proof of their education claim.

(i) The executive director shall determine whether an applicant meets the requirements of this subchapter. If all requirements have been met, the executive director shall issue the license. The license shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers;[,] Customer Service Inspectors;[,] Landscape Irrigators, [~~Installers,~~] Irrigation Technicians, and Irrigation Inspectors;[,] Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists;[,] Municipal Solid Waste Facility Supervisors;[,] On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators;[,] Water Treatment Specialists;[,] Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration;[,] Wastewater Operators and Operations Companies;[,] Public Water System Operators and Operations Companies; and[,] Visible Emissions Evaluator Training and Certification, respectively.) The effective date of the license shall be the date the executive director issues the license.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license. The contents of any examination required for licensure under this chapter are confidential and examinees may not share them with anyone.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An individual with an approved application who fails an examination may not repeat an examination until receiving notification of examination results for that particular examination.

(d) The application becomes void either after 365 days from date of application or failing the same examination four times, whichever occurs first. If an application becomes void, a new fee and a new application must be submitted before the applicant may take the same examination again.

(e) Any scores for repeat examinations taken after an application becomes void will not be applied to the issuance of the license.

(f) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) Examinations shall be given at places and times approved by the executive director.

(h) Examinees must comply with all written and verbal instructions of the proctor and shall not:

(1) bring any unauthorized written material, in either printed or electronic formats, into the examination room;

(2) bring any electronic devices, including any device with a camera, into the examination room;

(3) share, copy, or in any way reproduce any part of the examination;

(4) engage in any deceptive or fraudulent act; or

(5) solicit, encourage, direct, assist, or aid another person to violate any provision of this section or compromise the confidentiality of the examination.

(i) [~~(h)~~] The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(j) [~~(i)~~] An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(k) [~~(j)~~] The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

(1) directly relates to the duties and responsibilities of the licensed occupation;

(2) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(3) is an offense listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(4) is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(l) [~~(k)~~] The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

(A) the individual may pose a continued threat to public safety; or

(B) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(m) After notice and opportunity for a hearing, the commission may deny or revoke any license or registration held by a person who violates any of the provisions of this section. The commission may file a criminal complaint against any individual who removes or attempts to remove any portion of the examination, reproduces without permission any part of the examination, or who engages in any fraudulent act relating to the examination process.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal notification [~~application~~] at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal notification [~~application~~], the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) Approved training [~~The continuing education which includes, but is not limited to, classroom and training programs made available through the internet used~~] to renew a license must be successfully completed after the issuance date and before the expiration date of the current license. Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving as a military service member [~~on active duty in the United States armed forces outside this state~~] may renew their license within two years [~~180 days~~] of returning from active duty by submitting the following:

(1) a completed renewal application;

(2) a copy of the military orders substantiating the military service during the time the license expired; and

(3) the applicable license renewal fee.

(i) For good cause the executive director may extend the two years [~~180-day~~] period for a military service member [~~individuals serving on active duty in the United States armed forces outside this state~~] seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle for military service members [~~while the licensee was on active duty service in the United States armed forces~~] outside of this state who were unable to complete the requirements.

(k) These procedures apply only to military service members who are [~~individuals on active duty service in the United States armed forces~~] outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration.

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies.

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

§30.26. Recognition of Licenses from Out-of-State; Licenses for Military Service Members, Military Veterans, or Military Spouses[~~; Military Service Members; Military Veterans~~].

(a) Except for landscape irrigators the executive director may waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

(b) A license may be issued after review and approval of the application, receipt of the appropriate fee, and verification of the license from the corresponding state, territory, or country.

(c) The executive director may waive any of the prerequisites for obtaining a landscape irrigator [~~or installer~~] license, if the applicant is licensed as an irrigator in another jurisdiction that has a reciprocity agreement with the State of Texas.

(d) The executive director may require the applicant to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the other license or registration was issued;

(2) the current status of the other license or registration; and

(3) whether the other license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

(e) To maintain a license that was issued on the basis of reciprocity, applicants must comply with the renewal requirements of this subchapter. Reciprocity will not be granted for the issuance of lower level licenses of the same type as the one that was initially issued on the basis of reciprocity.

(f) [~~(e)~~] Military Service Members, Military Veterans, or Military Spouses.

(1) The executive director shall issue a license to an applicant who is a military service member, military veteran, or military spouse [~~the spouse of an individual serving on active duty as a member of the armed forces of the United States~~] and:

(A) holds a current license issued by another jurisdiction [~~state~~] that has licensing requirements that are substantially equivalent to the requirements for the license; or

(B) within the five years preceding the application date held the license in this state [~~that expired while the applicant lived in another state for at least six months~~].

(2) A license issued under this subsection shall be valid for the term specified in §30.18(i) of this title (relating to Applications for an Initial License).

(3) The executive director shall notify the license holder of the requirements for renewing a license issued under this subsection as specified in §30.24(b)(1) of this title (relating to License and Registration Applications for Renewal).

(g) [~~(f)~~] In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include, but not be limited to, any combination of the following as determined by the executive director:

(1) education;

(2) continuing education;

(3) examinations (written, practical, or a combination of written and practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods or options as determined by the executive director.

(h) [~~(g)~~] Military service members or military veterans. The executive director shall credit verified military service, training, or education toward the licensing requirements.

(1) Verified military service, training, or education shall not be credited toward an examination requirement.

(2) The executive director may not apply this credit provision to an applicant who:

(A) holds a restricted license issued by another jurisdiction; or

(B) has an unacceptable criminal history.

§30.28. Approval of Training.

(a) The executive director shall approve training that provides the knowledge or skills necessary to obtain or maintain licenses or registrations that are issued by the commission. This training shall be directly related to tasks performed by persons whose duties require a license or registration in a program that is administered by the commission.

(b) The executive director may approve specific training delivery methods, to include:

(1) classroom training;

(2) conferences;

(3) technology-based training;

(4) correspondence courses or similar distance training;

(5) association meetings that include training sessions containing subject matter related to the particular license; or

(6) other professional activities, such as the publication of articles.

(c) The executive director shall award training credit for successful completion of approved training used for obtaining or renewing a license.

(d) The executive director shall determine the occupational program(s) and number of hours of training credit that will be granted for approved training. The executive director may:

(1) use the provider's subject matter experts' qualifications to determine the program(s); and

(2) request field testing data from training providers to validate the hours requested.

(e) Training providers who submit applications for approval must:

(1) utilize a standard form and method provided by the executive director;

(2) include the applicable fee found in the chart contained in subsection (g) of this section;

(3) include supplemental information and materials according to the specific requirements for each method of training as approved by the executive director;

(4) include supplemental materials and information edited by subject matter experts;

(5) include samples of certificates of completion, including information as required by the executive director;

(6) document approval from the publisher to reprint text, pictures, graphics, tables, data, and any other information that is copyrighted or obtained from a source that is not an original creation of the training provider. The training materials submitted shall include appropriate references; and

(7) respond to any deficiencies within 60 days of the notification provided by the executive director or the application will become void and the fee forfeited.

(f) The executive director shall determine whether a provider meets the requirements of this subchapter.

(g) Fees for training applications will be calculated based on the number of requested training credit hours or type of association meetings using the following table. If the requested hours are significantly different than the actual hours of training awarded, the executive director may request an adjustment in the fee from the applicant. If the applicant does not provide the adjusted fee, the application will not be processed, resulting in denial of training approval. Fees are nonrefundable whether the training is approved or not approved.

Figure: 30 TAC §30.28(g)

(h) Training delivered to meet the requirements for obtaining or renewing a license must:

(1) be approved by the executive director before the training begins;

(2) provide the knowledge or skills necessary to perform one or more of the occupation's critical job tasks as determined by a job analysis or training needs assessment;

(3) not promote or endorse the products, product lines, or services of a manufacturer, distributor, or service provider or used as an opportunity for advertisement;

(4) provide the means to accomplish the learning objectives identified for the training;

(5) contain learning aids, such as visual aids and graphics. Training must be interactive in order to enhance learning and attain learning objectives;

(6) include regular monitoring of student comprehension throughout the training and provide feedback from the training provider, instructor, or subject matter expert to the student;

(7) be monitored for successful student completion;

(8) track student time and progress toward completing learning objectives; and

(9) utilize, at a minimum, subject matter experts and instructional design experts or effective qualified instructors to develop training materials for approval. Additionally, development of technology-based training must also utilize qualified subject matter experts in technology delivery methods.

(i) Training shall not be advertised as approved until notice of approval is received from the executive director.

(j) Training may not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license for which the training provider seeks approval.

(k) Once training is approved, training providers may offer the training without notification to the executive director.

(l) Training is considered approved until the content changes, or until the executive director notifies the training provider that changes in the content or delivery of the training are required.

(m) If a training provider changes the delivery method of the training, the training must be submitted for review and approval by the executive director.

(n) The executive director may:

(1) deny applications for training courses that contain extensive errors or do not meet the requirements of this section;

(2) conduct an administrative review for application completeness and a technical review for compliance with applicable agency rules;

(3) monitor, recall, reevaluate, and/or rescind approval of topics or training materials;

(4) require training providers to update training delivery methods or training materials to ensure that the content reflects current technology and practices;

(5) deny an application after determination that another delivery method is more conducive for the training material; and

(6) recall training for reevaluation which may result in rescinding any previous approval.

(o) The executive director's grounds for recalling, rescinding, suspending, or denying approval include, but are not limited to:

(1) the training does not conform to current accepted industry standard practices or agency rules;

(2) the training does not conform to the materials or method as approved;

(3) the subject matter is not related to critical job tasks performed by licensees;

(4) an instructor is not qualified to teach the subject matter;

(5) an instructor is ineffective in the delivery of the subject matter;

(6) the training promotes or endorses products, product lines, or services from a manufacturer, distributor, or service provider;

(7) the training credits for successfully completed training are not electronically submitted within 14 business days of course completion;

(8) the records, rosters, or application materials have been falsified;

(9) the training provider does not comply with a training recall;

(10) the training provider is not active or training has not been conducted for three or more years; or

(11) the training environment is not conducive to learning.

(p) The following types of training will not be approved or awarded training credit:

(1) distance training or webinars that are repeated during the renewal period;

(2) distance training that is intended to teach required manual skills; or

(3) webinar training that is submitted to qualify an applicant for an initial license.

(q) Approved training providers shall:

(1) ensure the executive director has the most current electronic edition of training materials;

(2) keep manuals and training content updated to reflect rule changes;

(3) submit approved training material that references rules for reapproval within 180 days of any new rule adoption that pertains to that training;

(4) submit material with substantial changes, including a summary, list, or other indication of changes, for review and reapproval by the executive director;

(5) allow the executive director staff or their agents access to training in order to audit training content, manner of delivery, and the effectiveness and qualifications of instructors and subject matter experts;

(6) be responsible for the content and delivery of the training;

(7) retain accurate training records for a minimum of five years;

(8) maintain records of training approval throughout the entire period the training provider actively delivers training;

(9) ensure that instructors and subject matter experts are qualified and provide the executive director with qualifications when requested;

(10) notify students of all fees associated with completing the training and obtaining credit for training before and during the training;

(11) accurately present to students the approved training credit along with any other criteria for obtaining full or partial training credit;

(12) provide students with approved copies of texts, manuals, or other training materials to use during the training and for future reference required by the delivery method and as approved by the executive director;

(13) verify participation;

(14) provide acceptable procedures for student identity verification;

(15) maintain procedures to protect student identity and personal information;

(16) provide students access to subject matter experts to answer technology-related and content-related questions within one business day from the time of request; and

(17) electronically report the students' successfully completed training credit hours per procedures provided and approved by the executive director, not to exceed approved training credit hours, within 14 business days of training completion.

(r) Printed training material must be presented in an original manner and must be relevant to the critical job tasks and knowledge for the occupational licensees.

(s) Public information copied from websites or other sources is not acceptable as training materials unless modified to be applicable to the target audience and the method of delivery.

§30.30. Terms and Fees for Licenses and Registrations.

(a) Licenses and registrations are valid for three years from the date of issuance, unless specified otherwise by Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers;[,] Customer Service Inspectors;[,] Landscape Irrigators, [~~Installers,~~] Irrigation Technicians, and Irrigation Inspectors;[,] Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists;[,] Municipal Solid Waste Facility Supervisors;[,] On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators;[,] Water Treatment Specialists;[,] Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration;[,] Wastewater Operators and Operations Companies;[,] Public Water System Operators and Operations Companies; and[,] Visible Emissions Evaluator Training and Certification, respectively).

(b) The executive director may adopt a system under which licenses or registrations expire on various dates.

(c) The license fee is $111 for a three-year license. The total amount shall be paid with each initial and renewal application and is nonrefundable. The initial fee is waived for military service member, military veteran, or military spouse applicants if they:

(1) meet all other requirements for the license; or

(2) hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license the applicant is applying for in this state.

(d) Registration fees are established in the applicable subchapters of this chapter.

(e) The executive director may charge a $20 fee to process a duplicate certificate or pocket card.

(f) A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.

(h) The executive director may charge an individual requesting a criminal history evaluation letter under §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations) a fee adopted by the commission. Fees adopted by the commission under §30.13 of this title must be in an amount sufficient to cover the cost of administering §30.13 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2141

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30 TAC §30.28

Statutory Authority

This repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452 and 26.456, THSC, §§341.033, 341.034, 361.027, and 366.071, or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued

under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015.

§30.28. Approval of Training.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. CUSTOMER SERVICE INSPECTORS

30 TAC §30.81

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37 and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; and THSC, §341.034, which requires persons who perform duties relating to public water supplies to hold a license or registration issued by the commission under TWC, Chapter 37.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.034.

§30.81. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who conduct and certify customer service inspections.

(b) An individual who performs customer service inspections must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) An endorsement for customer service inspections shall expire when an individual renews a water operators license or the license expires. To obtain a customer service inspector license, an individual

holding an endorsement must submit a new application with the appropriate fee.

(d) A licensed customer service inspector shall not perform plumbing inspections required under Texas Occupations Code, §1301.255 and §1301.551 [~~Plumbing Licensing Law 15(a) (Texas Civil Statutes, Volume 17-1/2, Article 6243-101)~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER D. LANDSCAPE IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS AND IRRIGATION INSPECTORS

30 TAC §§30.117, 30.120, 30.122

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103,which authorizes the Texas Commission on Environmental Quality(commission) to make rules. These amendments also proposed under TWC,§37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573,26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033,341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251;establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC,§37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007,which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC,§37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC,§37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC,§37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; Texas Occupations Code, §1903.053, which requires the commission to adopt by rule and enforce standards governing the responsibilities of licensed irrigators; and Texas Occupations Code, §1903.251,which requires a person to hold a license issued by the commission under TWC, Chapter 37, if the person engages in certain activities related to landscape irrigation.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §1903.053 and §1903.251.

§30.117. Definitions.

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

(1) Irrigation technician--A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service, or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply.

[~~(1) Installer--An individual who connects irrigation systems to any water supply.~~]

(2) Irrigator--A person who sells, designs, offers consultations, installs, maintains, alters, repairs, services, or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply. [~~An individual who sells, designs, installs, maintains, alters, repairs, or services an irrigation system; provides consulting services relating to an irrigation system; or connects an irrigation system to any water supply.~~]

§30.120. Qualifications for Initial License.

[~~(a) To obtain an installer license prior to January 1, 2009, an individual must:~~]

[~~(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and~~]

[~~(2) pass the applicable examination.~~]

(a) [~~(b)~~] Effective January 1, 2010, the installer license became invalid and was replaced with the irrigation technician license [~~will no longer be valid and will be replaced by an irrigation technician license. No new installer license applications will be accepted after June~~

~~1, 2009. New installer licenses issued after the effective date of these rules will remain valid through December 31, 2009. The fee for initial installer licenses issued after the effective date of these rules will be prorated to reflect the validity period~~].

(b) [~~(c)~~] To obtain an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) complete and pass the basic irrigator training course; and

(3) pass all sections of the applicable examination.

(c) [~~(d)~~] To obtain an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) complete the basic irrigation technician course; and

(3) pass the applicable examination.

(d) [~~(e)~~] To obtain an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) successfully complete:

(A) the basic irrigator training course;

(B) an approved backflow prevention assembly testing training course; and

(C) an approved water conservation or water audit course; or

(D) an approved landscape irrigation inspection course; and[~~.~~]

(3) pass the applicable examination.

(e) [~~(f)~~] An individual is ineligible to obtain an irrigation inspector license if the individual engages in or has financial or advisory interest in an entity that:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; or

(3) connects an irrigation system to any water supply.

§30.122. Qualifications for License Renewal.

~~[(a) To renew an installer license that expires prior to June 1,2009, an individual must meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).]~~

(a) [~~(b)~~] Effective January 1, 2010, the installer license was [~~will no longer be valid and will be~~] replaced by an irrigation technician license. [~~No installer license renewal applications will be accepted after December 31, 2008.~~]

~~[(c) Installer licenses renewed after the effective date of these rules, but prior to June 1, 2009, will remain valid until December 31, 2009. The fee for installer licenses renewed after the effective date of these rules will be prorated to reflect the validity period.]~~

(b) [~~(d)~~] To renew an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) complete 24 hours of approved training credits.

(c) [~~(e)~~] To renew an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 16 hours of approved training credits.

(d) [~~(f)~~] To renew an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE TECHNICIANS, AND SITE EVALUATORS

30 TAC §30.231, §30.240

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Commission (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033,

341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are proposed under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; THSC, §366.011 and §366.012.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

(1) constructs any part of an on-site sewage facility;

(2) performs the duties of a designated representative;

(3) performs the duties of a site evaluator;

(4) performs the duties of an apprentice;

(5) performs the duties of a licensed maintenance provider; or

(6) performs the duties of a maintenance technician.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

[~~(c) A person that holds a current maintenance provider registration that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance provider duties until August 31, 2009. Effective September 1, 2009, those individuals shall either hold a:~~]

[~~(1) maintenance provider license; or~~]

[~~(2) maintenance technician registration.~~]

(c) [~~(d)~~] Effective September 1, 2009, all current maintenance provider registrations were [~~will be~~] converted to maintenance technician registrations.

[~~(e) Individuals renewing their maintenance provider registration after April 30, 2009 will be issued a maintenance technician registration or may apply for a maintenance provider license, provided they meet the qualifications for the initial license of a maintenance provider.~~]

[~~(f) No applications for maintenance provider registrations will be accepted after April 30, 2009.~~]

§30.240. Qualifications for Initial License.

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an apprentice registration for at least two years; or

(C) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the applicant's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the applicant and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) to document experience as an Installer I, the applicant shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related by blood or marriage to the applicant or applicant's spouse;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the applicant; or

(iii) other documentation of the applicant's work experience, approved by the executive director;

(B) to document experience as an apprentice, the applicant shall submit either:

(i) a sworn statement from the installer for whom the applicant performed construction services;

(ii) a sworn statement from a designated representative who witnessed the applicant working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter; and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, certified professional soil scientist, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

(e) Effective September 1, 2009, a maintenance provider must be licensed with the executive director. To obtain a maintenance provider license, a person must:

(1) meet the requirements of Subchapter A of this chapter;

[~~(2) submit a completed application and a $111 fee to the executive director on a form approved by the executive director. Applicants with a current maintenance provider registration will be given a pro rata reduction in the $111 fee toward the maintenance provider license for the unexpired term of their registration;~~]

(2) [~~(3)~~] submit verification that the applicant holds a current Installer II, Class C (or higher) Wastewater license or acceptable documentation of three years experience as a maintenance technician. Registered maintenance provider experience obtained prior to the effective date of these rules may be applied towards the three years of experience as a maintenance technician; and

(3) [~~(4)~~] successfully complete agency-approved courses in basic maintenance and advanced aerobic wastewater treatment related to residential proprietary aerobic treatment units. Advanced aerobic wastewater treatment courses must have been approved after September 1, 2008;

(4) [~~(5)~~] pass the maintenance provider licensing examination; and

(5) [~~(6)~~] any additional information required by the executive director.[~~; and~~]

[~~(7) Exemption. Maintenance provider license applicants who obtained a maintenance provider registration prior to the effective date of these rules, hold a current maintenance provider registration, and meet all of the other provisions of this chapter for licensing as a maintenance provider on the effective date of these rules are exempt from the requirements for completion of the agency-approved advanced aerobic wastewater treatment course and the maintenance provider licensing examination.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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30 TAC §30.247

Statutory Authority

This repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a

person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This repeal is also proposed under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §366.011 and §366.012.

§30.247. Registration of Maintenance Providers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. WATER TREATMENT SPECIALISTS

30 TAC §30.279

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is proposed under Texas Occupations Code, §1904.051, which requires the commission to establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances; Texas Occupations Code, §1904.052, which requires a person to obtain a certificate from the commission before engaging in water treatment; Texas Occupations Code, §1904.053, which establishes that the commission is authorized to take applications for certification into the water treatment specialist program; and Texas Occupations Code, §1904.054, which authorizes the commission to issue certificates stating that a person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §§1904.051 - 1904.054.

§30.279. Exemptions.

(a) Individuals who are licensed under the Texas Occupations Code, Chapter 1301 [~~Plumbing License Law (Texas Civil Statutes, Volume 17- 1/2, Article 6243-101)~~] are exempt from the requirements of this subchapter.

(b) Employees of industrial facilities who install or service water treatment equipment at their facilities are exempt from the requirements of this subchapter.

(c) Employees of public water systems installing water treatment equipment at their system who hold a Class C license or higher, are exempt from the requirements of this subchapter.

(d) Employees of registered operations companies installing water treatment equipment at the facilities for which the operations

company has a contract to operate and who hold a Class C license or higher, are exempt from the requirements of this subchapter.

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SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

30 TAC §30.307

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; TWC, §26.345, which requires the commission to administer TWC, Chapter 26, Subchapter I, concerning Underground and Aboveground Storage Tanks; TWC, §26.364, which authorizes the commission to implement a program under TWC, Chapter 37, to register persons who contract to perform corrective action under TWC, Chapter 26, Subchapter I; TWC, §26.365, which authorizes the commission to register geoscientists into the corrective action program; and TWC, §26.366, which authorizes the commission to implement a program to license persons who supervise a corrective action under TWC, Chapter 26, Subchapter I.

This amendment implements TWC, §§5.013, 5.102, 5.103, 26.345, 26.364 - 26.366, and 37.001 - 37.015.

§30.307. Definitions.

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

(1) Corrosion specialist--A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by NACE International; or

(B) licensed as a professional engineer by the Texas Board of Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(2) Corrosion technician--A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as they relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by NACE International as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in paragraph (1) of this section), where the corrosion specialist is responsible for maintaining control and oversight over all corrosion testing and inspection activities; or

(C) has been officially qualified as a cathodic protection tester, according to the assessment and examination procedures prescribed by NACE International.

(3) Critical junctures--In the case of an installation, repair, or removal of an underground storage tank (UST) system, all of the following steps:

(A) preparing the tank bedding immediately before receiving the tank;

(B) setting the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connecting piping systems to the tank;

(D) pressure testing the UST, including associated piping, performed during the installation;

(E) completing backfill and filling the excavation;

(F) anytime during the repair in which the piping system is connected or reconnected to the tank;

(G) anytime during the repair in which the tank or its associated piping is tested; and

(H) anytime during the removal of the UST.

(4) Engineering construction--Construction designed by a civil or mechanical engineer, as opposed to building construction which is designed by an architectural engineer.

(5) Installation--The installation of underground storage tanks [~~USTs~~] and ancillary equipment, including, but not limited to, the following activities:

(A) installation of new or used tanks at a new or existing facility;

(B) installation of new or replacement piping for new or existing tanks;

(C) addition of secondary containment equipment for new or existing tanks or piping;

(D) addition or replacement of the following types of equipment at a new or existing facility:

(i) spill and overfill prevention equipment, as required in §334.51 of this title (relating to Spill and Overfill Prevention and Control); and

(ii) equipment or devices which are permanently installed for the purpose of providing release detection or release monitoring as required for compliance with §334.50 of this title (relating to Release Detection), except:

(I) observation wells or monitoring wells (excluding equipment and devices therein) constructed by a well driller who possesses the appropriate license required by the Texas Occupations Code, Chapter 1901 [~~Texas Department of Licensing and Regulation pursuant to the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws)~~]; or

(II) any equipment temporarily installed solely for the purpose of conducting a tank or piping tightness test, as defined in §334.2 of this title (relating to Definitions), except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal. Temporarily in this context means the reasonable amount of time required to attach the equipment, make the tests, and remove the equipment, under the given conditions at the site;

(E) installation or replacement of anchoring systems designed to prevent tank flotation;

(F) installation or replacement of vent lines at new or existing facilities;

(G) installation or replacement of submersible pumping systems at new or existing facilities; and

(H) installation or replacement of any underground Stage I or Stage II vapor recovery systems.

(6) On-site supervisor--An individual who supervises the installation, repair, or removal of an underground storage tank (UST) [~~a UST~~] in the State of Texas, and who meets the licensing requirements of this subchapter for one of the following licenses:

(A) Class A for an on-site supervisor who supervises the installation or repair of UST systems; or

(B) Class B for an on-site supervisor who supervises the removal of UST systems.

(C) Class A/B combination for an on-site supervisor who supervises the installation, repair, and removal of UST systems.

(7) Removal--Permanent removal of an underground storage tank [~~a UST~~] from service as defined in §334.2 of this title (relating to Definitions) conducted according to §334.55 of this title (relating to Permanent Removal from Service).

(8) Repair--The modification or correction of an underground storage tank (UST) [~~a UST~~] and ancillary equipment. The term does not include:

(A) relining a UST through the application of epoxy resins or similar materials;

(B) performing a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) maintaining and inspecting cathodic protection devices by a corrosion specialist or corrosion technician;

(D) performing emergency actions to halt or prevent leaks or ruptures; or

(E) performing minor maintenance on ancillary aboveground equipment.

(9) Underground storage tank (UST)--Any one or combination of underground tanks and any connecting underground pipes used to contain accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

(10) Underground storage tank contractor (or UST contractor)--A person that offers to undertake, represents itself as being able to undertake, or undertakes the installation, repair, or removal of a UST, and who meets the registration requirements of this subchapter.

(11) Underground utilities--Public underground water systems, sanitary sewers, or storm sewers. The phrase "underground utilities" does not include private underground pipe systems (water or sewer piping), power or communication cables, or natural gas lines.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER J. WASTEWATER OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.331, §30.340

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are also proposed under TWC, §26.0301, which authorizes the commission to issue licenses and registrations for wastewater treatment plant operators and sewage treatment or collection facility services under contract.

These amendments implement TWC, §§5.013, 5.102, 5.103, 26.0301, and 37.001 - 37.015.

§30.331. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations to:

(1) domestic wastewater treatment facility operators;

(2) wastewater collection system operators; and

(3) companies that operate these facilities on a contract basis.

(b) Persons that operate, assist in the operation, or contract to operate domestic wastewater treatment facilities or supervise wastewater collection activities, other than an operator-in-training, must be licensed or registered and meet the qualifications of this subchapter and Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and must comply with the requirements in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems), Chapter 317 of this title (relating to Design Criteria Prior to 2008 [~~for Sewerage Systems~~]), and all other applicable rules under the jurisdiction of this commission.

(c) Operators are responsible for performing adequate process control of wastewater treatment and collection facilities.

(d) All Class D and Class I licenses previously issued to operators who do not possess a high school diploma or equivalent, may still be renewed according to §30.342 of this title (relating to Qualifications for License Renewal).

(e) An individual who has an honorary license shall not operate a domestic wastewater treatment facility or supervise a wastewater collection system.

[~~(f) Certificates of competency or registration issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.~~]

(f) [~~(g)~~] The holder of a license or registration is not subject to revocation or suspension of a license or registration if the licensed operator or registered company is unable to properly operate the wastewater treatment or collection facility due to:

(1) the refusal of the permittee to authorize the necessary funds to operate the wastewater treatment or collection facility properly; or

(2) the failure of the wastewater treatment or collection facility to comply with its wastewater disposal permit resulting from faulty design or construction of the facility.

§30.340. Qualifications for Initial License.

(a) To obtain a license, an individual must have met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), [~~and~~] the following requirements for each class of license, and pass an examination.[~~:~~]
Figure: 30 TAC §30.340(a)

[~~Figure: 30 TAC §30.340(a)~~]

(b) At least one-half of the total experience required for a wastewater treatment license must be in actual domestic wastewater treatment facility operation or maintenance duties. Related experience, which involves tasks similar to those required for operation of wastewater treatment facilities, will count at a rate of 50% toward meeting the total experience requirement. For laboratory experience to be applicable, the laboratory must be owned and operated by the permittee and the laboratory technician must consult daily with operational personnel.

(c) Wastewater collection system experience must be in actual wastewater collection system operation or maintenance duties. Credit for wastewater experience that is not directly connected with collection system operation or maintenance shall be approved if the experience involves tasks that are similar to that required for the operation and maintenance of collection systems. Each year of related experience shall count as 1/2 year of experience. Each year of experience in collection system operation and maintenance shall only count as 1/2 year of experience toward a wastewater treatment facility operator license.

(d) Individuals who request to substitute a bachelor's [~~bachelors~~] or master's [~~masters~~] degree for experience at the Class A, Class B, or Class III level must have a major in chemistry, biology, engineering, microbiology, bacteriology, or another similar discipline[~~, as~~] approved by the executive director.

(e) For each license, applicants may substitute either college hours or training credit hours to meet the experience requirement:

(1) 16 semester hours or an additional 20 hours of training credits are equal to six months of the required work experience;

(2) Class C and Class II applicants may only substitute up to one year of the required work experience; and

(3) Class A, Class B, and Class III applicants may only substitute up to two years of the required work experience.

[~~(e) Applicants may substitute an equivalent of:~~]

[~~(1) 32 semester hours of college or an additional 40 hours of training credits for one year of the experience requirement; or~~]

[~~(2) 16 semester hours of college or an additional 20 hours of training credits for six months of the experience requirement.~~]

[~~(f) The maximum years allowed for substitution are as follows:~~]

[~~(1) Class A, Class B, and Class III applicants may substitute up to two years of the required work experience; and~~]

[~~(2) Class C and Class II applicants may substitute up to one year of the required work experience.~~]

(f) [~~(g)~~] The hours of training credit required for a license must be in approved courses, which include the following or their equivalents.

Figure: 30 TAC §30.340(f)

[~~Figure: 30 TAC §30.340(g)~~]

(g) [~~(h)~~] An individual who previously held a Class D license or higher may not apply for a new Class D license if the individual currently operates any activated sludge type facilities, any trickling filter or rotating biological contractor facilities with a permitted daily average flow of 100,000 gallons per day or greater, or any facility that uses a subsurface area drip dispersal system as defined in §222.5 of this title (relating to Definitions) for disposal of its effluent. A trickling filter or rotating biological contractor is a secondary aerobic process that uses microbiological organisms attached to a fixed substrate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.390

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the

public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is also proposed under THSC, §341.033, which requires persons who furnish drinking water to the public for a charge to hold a license issued by the commission under TWC, Chapter 37; and THSC, §341.034, which requires persons who operate a public water supply on a contract basis to hold a registration issued by the commission under TWC, Chapter 37.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.033 and §341.034.

§30.390. Qualifications for Initial License.

(a) To obtain a license, an individual must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), and the following requirements for each class of license, and pass an examination.
Figure: 30 TAC §30.390(a)
[~~Figure: 30 TAC §30.390(a)~~]

(b) An individual who applies for a Class C, B, or A license, and relies on a bachelor's [~~bachelors~~] or master's [~~masters~~] degree to meet the educational requirements, must have a bachelor's [~~bachelors~~] or master's [~~masters~~] degree with a major in chemistry, biology, engineering, microbiology, bacteriology, or other similar discipline approved by the executive director.

(c) An individual who applies for a Class C or B license must obtain at least one-half of the total work experience requirement in the specific field for the license that is requested: [~~.~~]

(1) for [~~For~~] Class C and B surface water licenses, the experience must be obtained through operations activities at the production or treatment facilities for surface water or groundwater under the direct influence of surface water;[~~.~~]

(2) for [~~For~~] Class C and B groundwater licenses, the experience must be obtained through operations activities at the production or treatment facilities for groundwater source or groundwater under the direct influence of surface water; or[~~.~~]

(3) for [~~For~~] Class C and B distribution licenses, at least one-half of the required experience must be obtained as a result of operations activities at treated water storage, pumping, or distribution facilities; and[~~.~~]

(4) once the work experience has been met from paragraphs (1), (2), or (3) of this subsection, the executive director may count any remaining experience to meet up to 50% of the remaining requirement.

(d) For all classes of licenses, laboratory experience must:

(1) be obtained at a laboratory that is owned and operated by the public water system; and

(2) involve daily consultation with individuals who perform process control duties in production or distribution of drinking water for the water system.

(e) For each license, applicants may substitute either college hours or training credits to meet the experience requirement:

(1) 16 semester hours or an additional 20 hours of training credits are equal to six months of the experience;

(2) Class C applicants may only substitute up to one year of the required work experience; and

(3) Class B and Class A applicants may only substitute up to two years of the required work experience.

[~~(e) Individuals may substitute college credits or additional approved training for work experience.~~]

[~~(1) For a Class C license, 32 semester hours of college, or 40 additional hours of approved training may be substituted for one year of work experience, approved by the executive director.~~]

[~~(2) For a Class C license, 16 semester hours of college, or 20 additional hours of approved training may be substituted for six months of work experience, approved by the executive director.~~]

[~~(3) For Class B and A licenses, 64 semester hours of college, or 80 additional hours of approved training may be substituted for two years of work experience, approved by the executive director.~~]

[~~(4) For Class B and A licenses, 32 semester hours of college, or 40 additional hours of approved training may be substituted for one year of work experience, approved by the executive director.~~]

(f) Training credits must be in approved courses that include the following or equivalent.
Figure: 30 TAC §30.390(f)
[~~Figure: 30 TAC §30.390(f)~~]

(g) An individual who previously held a Class D license shall not apply for a new Class D license if the individual:

(1) currently operates facilities at groundwater treatment systems of 250 connections or more;

(2) currently operates facilities at groundwater treatment systems serving a population of 750 or more;

(3) currently operates facilities at surface water treatment systems;

(4) currently operates facilities at groundwater systems under the influence of surface water;

(5) performs supervisor, crew chief, or foremen duties for distribution systems that have over 250 connections; or

(6) operates multiple groundwater systems and the cumulative number of connections exceeds 250.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER L. VISIBLE EMISSIONS EVALUATOR TRAINING AND CERTIFICATION

30 TAC §30.506, §30.507

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

These amendments implement TWC, §§5.013, 5.102, 5.103 and 37.001 - 37.015.

§30.506. Visible Emission Evaluator Training Requirements.

(a) Visible emission evaluator training providers must:

(1) ensure that training meets the general and delivery standards approved by the executive director;

(2) follow the criteria and procedures of Method 9 as established by United States Environmental Protection Agency;

(3) provide a six to eight hour mandatory lecture session for first time students, and those students desiring to attend the lecture session again as a refresher;

(4) present the lecture session to the new students prior to any field training or testing;

(5) present the lecture session in a setting that is conducive to learning; [~~and~~]

(6) use visual aids and handouts to clarify topics that are taught; and[~~.~~]

(7) provide one proctor for 24 attendees or less, two proctors for 25 to 100 attendees, and an additional proctor for every 50 attendees over 100.

(b) Visible emission evaluator training shall include, but is not limited to, the following topics:

(1) opacity history to include Ringlemann equivalency;

(2) court cases that uphold opacity readings and procedures;

(3) applicability of Federal and State Method 9 opacity regulations;

(4) Federal and State New Source Performance Standards;

(5) Federal and State New Source Review program;

(6) State operating permits;

(7) State Implementation Plans;

(8) scientific principles of opacity;

(9) methodology of reading visible emissions, to include, but not limited to:

(A) position of sun;

(B) multiple stacks;

(C) water vapor plumes;

(D) slant angle correction;

(E) "red sky" concerns;

(F) not staring at plume;

(G) meteorology;

(H) wind direction and speed; and

(I) contrasting background;

(10) applicability and uses of Method 22, 203A, 203B, and 203C;

(11) proper documentation methods using the various field forms; and

(12) field testing instructions.

(c) The training topics may be modified at the discretion of the executive director.

(d) The training provider will issue a certificate of completion to attendees of the lecture session which will contain the training provider's name, title of course (visible emission evaluator course classroom lecture), student's name, location of lecture, and date of lecture.

(e) The training provider shall develop and submit for executive director approval an exit questionnaire that shall be administered to the attendees upon completion of the lecture. This questionnaire is for determining the effectiveness of the training session and the ability of the instructor to convey the necessary information. The completed questionnaires shall be kept on file for a minimum of three years and be made available to the agency upon request.

§30.507. Field Training and Testing Requirements.

(a) Field training shall:

(1) provide repetition of any field instructions, given at the lecture session, to those attendees attempting recertification who have not had to attend the lecture;

(2) provide familiarization plumes shown before the start of each black portion and each white portion of the field test;

(3) provide for completion of one test run for new students prior to taking a test for certification. The training run shall consist of 25 black readings and 25 white readings, and be given exactly as a regular certification test run. The training run cannot be accepted from the new student as certification, even if the score is within the passing parameters. This training run will be kept on file for three years; and

(4) allow attendees that are attempting recertification to take the training run described above before certification.

(b) Field testing shall include:

(1) a complete run which consists of 50 contiguous plumes;

(2) a random order of opacity from 0% to 100%;

(3) avoidance of adverse weather; i.e., drizzle, rain, fog, or high winds; and

[~~(4) at least two proctors per each 100 attendees, and two proctors if less than 100 attendees; and~~]

(4) [~~(5)~~] a certificate issued to those students that successfully pass the test that contains the name of the provider, title of certification (to include a term similar to "visible emissions evaluator"), the name of the student, and the date of successful certification. The provider shall number each certificate so that each certificate is unique and not duplicated.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 239-2141

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.3

The Texas Parks and Wildlife Department proposes an amendment to §53.3, concerning Combination Hunting and Fishing License Packages. Under Parks and Wildlife Code, §42.012, the Texas Parks and Wildlife Commission (commission) is required to waive the hunting license fee for a qualified disabled veteran, defined as "a veteran with a service connected disability, as defined by the Veteran's Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 50 percent or more and who is receiving compensation from the United States for the disability." Under Parks and Wildlife Code, §46.004, the commission is required to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012. Under Parks and Wildlife Code, §50.001, the commission is required to establish fees for combination hunting and fishing licenses.

In November of 2013 the department adopted an amendment to §53.3 to designate nonresident disabled veterans as Texas residents for purposes of allowing them to obtain a super combination hunting and "all water" fishing package (or "super-combo," consisting of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag) at no charge. As adopted (38 TexReg 9371), the amendment contained an August 31, 2016 sunset date. Staff was directed to encourage other states to promulgate reciprocal license privileges for Texas residents prior to the sunset date. Although such privileges were explored, due to differences among the states regarding hunting and fishing license structure, authority to set fees and fiscal realities, a reciprocal arrangement is not feasible. Notwithstanding the lack of reciprocity, the department has determined that it is appropriate to continue to allow nonresident disabled veterans to obtain the super-combo license package at no charge.

Justin Halvorsen, Revenue Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state or local governments as a result of enforcing or administering the rule, consisting of the cost to the department of issuing the license and the theoretical lost revenue resulting from no-cost super-combo license packages issued to nonresidents who otherwise would have had to purchase the necessary nonresident licenses and stamps.

Department data indicate that since 2013, an average of 2,680 nonresident disabled veteran super-combo license packages have been issued each license year (September 1 - August 31). Assuming this average is representative of future issuance trends, the department estimates that for each of the first five years that the amendment as proposed is in effect, there will be an issuance cost to the department of approximately $1,796

(rounded up to the nearest whole dollar). This figure was derived by multiplying the average number of nonresident disabled veteran super-combo license packages issued (2,680) by the $.67 transaction fee incurred by the department each time a license is issued via the department's electronic point-of-sale system.

As noted above, to facilitate issuance of a super combination license to nonresident disabled veterans, the subsection proposed for continuation currently defines "resident" for purposes of obtaining a super-combo license to include a nonresident disabled veteran. If the provision expired and a nonresident disabled veteran was unable to acquire a super-combo license (which is available only to residents as defined by the Parks and Wildlife Code and Commission regulation), the nonresident disabled veteran would be required to obtain the appropriate nonresident license(s) and endorsement(s).

The department is unable to determine how many nonresident disabled veterans to whom super-combo license packages were issued would have purchased all of the individual licenses and endorsements that make up a super-combo license. However, the department believes that it is highly unlikely that persons who currently qualify for the nonresident disabled veteran super-combo license would seek to purchase all of the licenses and endorsements that make up the super-combo license if the no cost nonresident disabled veterans super-combo license expired. If the licenses and endorsements that make up a super-combo were sold individually to a nonresident, the total cost would be $404 consisting of a hunting license ($315 for nonresidents), "all water" fishing license ($68 for nonresidents), upland game bird stamp ($7), migratory game bird stamp ($7), and archery stamp ($7).

It is more likely that a nonresident would purchase the lowest cost license required to engage in the activity for which a license was required. Among the license types that such a person would more likely acquire are the following: nonresident freshwater fishing package ($58), a nonresident saltwater fishing package ($63), a nonresident all-water fishing package ($68), a nonresident one-day all-water fishing package ($16), a nonresident general hunting license ($315), a nonresident spring turkey license ($126), a nonresident special hunting license ($132), or a nonresident 5-day special hunting license ($48), and any required endorsements/stamps.

Mr. Halvorsen also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the acknowledgment of the service and sacrifice of those who have become disabled while serving in the United States Armed Forces by allowing qualified nonresident disabled veterans to hunt and fish without having to purchase licenses or stamps.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rule will not directly affect small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Justin Halvorsen, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8551 (e-mail: justin.halvorsen@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §42.012, which requires the commission to waive the hunting license fee for a qualified disabled veteran; §46.004, which requires the commission to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012; and §50.001, which requires the commission to establish fees for combination hunting and fishing licenses.

The proposed amendment affects Parks and Wildlife Code, Chapters 42, 46, and 50.

§53.3. Combination Hunting and Fishing License Packages.

(a) Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) - (9) (No change.)

(10) Nonresident disabled veteran super combination hunting and "all water" fishing package--$0. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag. For purposes of this paragraph, a nonresident disabled veteran is a resident for the purpose of obtaining a super combination hunting and "all water" fishing package. [~~This paragraph expires August 31, 2016.~~]

(11) - (12) (No change.)

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

The Texas Parks and Wildlife Department (the Department, or TPWD) proposes the repeal of §§65.90 - 65.94 and new §§65.90 - 65.99, concerning Chronic Wasting Disease - Movement of Deer. The rules proposed for repeal were intended to function as interim rules (Interim Deer Breeder Rules) in order to maintain regulatory continuity for the duration of the 2015-2016 deer season and the period immediately thereafter. As stated in previous rulemakings, the department's intent was to review the interim rules and, based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free-ranging deer herds, guidance from the Texas Animal Health Commission, and input from stakeholder groups, present the results of that review to the Parks and Wildlife Commission (Commission) in the spring of 2016 for possible modifications.

To ensure that the concerns and interests of the regulated community were fully understood and considered, the Department engaged the Center for Public Policy Dispute Resolution at the University of Texas School of Law to provide facilitation services for the spectrum of stakeholders (including deer breeders, landowners and land managers, hunters, veterinarians, wildlife enthusiasts, the Texas Animal Health Commission (TAHC), and the Department), the purpose of which was to negotiate and develop a consensus concerning the essential components of eventual regulations to comprehensively address and implement effective chronic wasting disease (CWD) management strategies. The stakeholder group convened three times during February and March at which time apparent consensus was reached. The stakeholders also participated in a final phone conference on March 21. The official report of the facilitator is available on the department's website at http://tpwd.texas.gov/huntwild/wild/diseases/cwd/.

At the March 23, 2016, meeting of the Texas Parks and Wildlife Commission (Commission), Department staff briefed the Commission on the process and results of the facilitation and presented a synoptic overview of the substantive regulatory provisions being recommended for proposal by staff to address both the consensus issues that emerged from the facilitation and additional regulatory components necessary to operationalize consensus decisions, as well as other regulatory components deemed necessary but on which there was no consensus.

In addition to the facilitated process, the new rules are also a result of extensive cooperation between the department and TAHC to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

Regulatory Authority

Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as "Triple T" permits). In addition, the department may issue permits authorizing the trapping, transporting and processing of surplus white-tailed deer (popularly referred to as TTP permits) and permits for the removal of urban white-tailed deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer within a facility for breeding purposes and the release of such deer into the wild. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the Commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. There are currently 1,275 permitted deer breeders (operating more than 1,300 deer breeding facilities) in Texas.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for propagation within an enclosure on property surrounded by a fence capable of retaining deer. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition the department regulations authorize the introduction of a deer from a deer breeding facility into a DMP facility for propagation. Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.

Background Regarding CWD

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. Currently, the only test certified by the U.S. Department of Agriculture (USDA) for CWD must be conducted post-mortem by extracting and testing the obex (a structure in the brain) or medial retropharyngeal lymph node, although the department in this rulemaking proposes to allow certain ante-mortem tests to be valid.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population

decline in at least one free-ranging population, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations. The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

Discovery of CWD

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 50,000 "not detected" CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 20,000 "not detected" test results as well. The intent of the proposed new rules is to reduce the probability of CWD being spread from facilities where it might exist and to increase the probability of detecting and containing CWD if it does exist.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Under the provisions of the Agriculture Code, §161.101(a)(6) CWD is a reportable disease and requires a veterinarian, veterinary diagnostic laboratory, or person having care, custody, or control of an animal to report the existence of CWD to TAHC within 24 hours after diagnosis. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the last five years, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and two DMP facilities in Texas, as well as two destinations in Mexico). The department estimates that more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility. At least one of those locations, a deer breeding facility in Lavaca County, was also confirmed to have a CWD positive white-tailed deer acquired from the index facility.

Heightened testing requirements resulted in additional discoveries. A total of 10 white-tailed breeder deer have now been confirmed positive at four facilities (including the index facility). A total of four CWD positive deer were found in the in the index facility. Three CWD positive deer that originated from the index facility were discovered in the Lavaca County facility. A CWD positive deer was harvested from a Medina County release site and another CWD positive deer was sampled in the associated Uvalde County breeding facility located on the same ranch. While the Uvalde County breeding facility is epidemiologically linked to the index facility, neither positive deer at this location originated from the index facility. More recently, another CWD positive deer was reported in a Medina County deer breeding facility and a free-ranging hunter-harvested mule deer in Hartley County was confirmed to have CWD.

Previous CWD Rulemaking

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and TAHC convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules (31 TAC §§65.80 - 65.88), among other things, require deer harvested in a specific geographical area (the Containment Zone), to be presented at check stations to be tested for CWD.

In response to the first discovery of CWD in a deer breeding facility in Medina County, the department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer. The department followed the emergency rulemaking with the "interim" rules that are proposed for repeal as part of this rulemaking, which were published for public comment in the October 2, 2015, issue of the *Texas Register,* adopted by the Commission on November 5, 2015, and published for adoption in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815).

The department also adopted emergency rules governing DMP and Triple T activities (effective October 5, 2015, published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305, 7307) and followed with interim DMP rules published for public comment in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086), adopted by the Commission on January 21, 2016, and published for adoption in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1250).

Consensus Rule Components

As mentioned previously, the proposed new rules contain provisions that represent a consensus resulting from facilitation. Early in the facilitation process, representatives of the regulated community stated that two important goals for the regulatory community were that new rules allow live-animal testing and that the new rules allow for the transfer of breeder deer without requiring testing at the release site. At a subsequent facilitation meeting, stakeholders suggested the creation of several regulatory components, the most important of which was the creation of four new subcategories of "TC 1" deer breeding facilities (in the rubric of the interim rules, those facilities representing the least amount of risk of spreading CWD), each with a different testing regime. The proposed TC 1 testing regime would allow ante-mortem testing, and would allow the transfer of breeder deer without requiring CWD testing at the release site. After extended discussion and refinement over the remaining facilitation meetings, all stakeholders agreed that the structure was suitable for attaining the goals of both the regulated community, the other stakeholders, and the department.

The major consensus provisions emerging from the facilitation process are:

1. TC 1 breeding facility testing plans which require no release site testing for recipients of breeder deer;

2. The requirements for TC2 breeding facilities and Class II release sites;

3. The requirements for TC 3 breeding facilities and Class III release sites;

4. Standards for valid ante-mortem testing;

5. Standards for post-mortem testing;

6. The definition for "eligible-aged deer" to provide for breeder deer 12 months and older, provided the breeding facility is enrolled in the TAHC Herd Certification Program;

7. The stipulation that breeding facilities and release sites that accept breeder deer assume the lowest facility status of all originating facilities;

8. The provisions allowing breeding facilities to maintain MQ authorization or facility status by making up for missed tests;

9. The allowance of ante-mortem tests to be submitted in lieu of post-mortem tests;

10. Stipulation that failure to test a release site make the site ineligible for future releases;

11. Testing requirements for DMP sites;

12. Testing requirements for Triple T and TTP permits;

13. Testing requirements at Triple T release sites;

14. Tagging requirements for Class III release sites; and

15. Testing requirements and prohibitions for release sites that failed to comply with the interim rules and release sites that fail to comply with the new rules.

Non-consensus Rule Components

The stakeholders at the facilitation were unable to reach consensus on the following:

1. The release of breeder deer to sites not surrounded by a 7-foot high fence; which is a provision of the interim rules and which the department has retained in the proposed new rules.

2. Standardized ear tagging requirements were a part of the stakeholder discussions. There was no consensus on this issue nor do the proposed rules prescribe a change to the standard for ear tagging requirements for all breeder deer, with the exception of Class III release sites.

Description of the Rules

Definitions

Proposed new §65.90, concerning Definitions, would set forth the meanings of specialized words and terms in order to eliminate ambiguity and enhance compliance and enforcement.

Proposed new §65.90(1) would define "accredited testing facility" as "a laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD." The definition is necessary in order to provide a standard for testing facilities.

Proposed new §65.90(2) would define "ante-mortem" testing as "a CWD test performed on a live deer." The definition is necessary because the proposed new rules allow or require ante-mortem testing in addition to post-mortem testing.

Proposed new §65.90(3) would define "breeder deer" as "a white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." The definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(4) would define "confirmed" as "a CWD test result of "positive" received from the National Veterinary Service Laboratories (NVSL) of the United States Department of Agriculture." The definition is necessary in order to provide a definitive standard for asserting the presence of CWD in a sample. Samples collected from breeder deer are sent initially to an accredited testing facility, such as the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). A test result of "suspect" is returned when CWD is detected, and a tissue sample is forwarded to the NVSL for confirmation.

Proposed new §65.90(5) would define "CWD" as "chronic wasting disease." The definition is necessary to provide an acronym for a term that is used repeatedly in the rules.

Proposed new §65.90(6) would define "CWD-positive facility" as "a facility where CWD has been confirmed." The definition is necessary because the proposed new rules contain provisions that are predicated on whether or not CWD has been detected and confirmed in a given deer breeding, DMP, nursing, or other facility authorized to possess white-tailed deer or mule deer.

Proposed new §65.90(7) would define "deer breeder" as "a person who holds a valid deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(8) would define "deer breeding facility (breeding facility)" as "a facility permitted to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(9) would define "department (department)" as "Texas Parks and Wildlife Department." The definition is necessary to avoid confusion, since the proposed new rules contain references to another state agency.

Proposed new §65.90(10) would define "Deer Management Permit (DMP)" as "a permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for propagation purposes. The proposed new rules would regulate certain aspects of activities conducted under a DMP and a definition is necessary to avoid any confusion as to what is meant by the term.

Proposed new §65.90(11) would define "eligible-aged deer" as "if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older or for any other deer, 16 months of age or older." CWD is difficult to detect in deer younger than 12 months of age. The department's previous CWD testing rules at §65.604(e) of this title provided for testing of mortalities that were 16 months or older. The department is retaining that standard but is also recognizing that the TAHC and USDA use a standard of 12 months.

Proposed new §65.90(12) would define "eligible mortality" as "an eligible-aged deer that has died." The proposed new rules stipulate CWD testing requirements. As mentioned earlier, CWD is difficult to detect in younger animals; therefore, the proposed new rules would require that all deer tested be of eligible age.

Proposed new §65.90(13) would define "exposed deer." This definition would replace the former definition for "Tier 1," which proved to be easily confused with other terms such as "TC 1." The definition would provide that "unless the department determines through an epidemiological investigation that a specific breeder deer has not been exposed to CWD, an exposed deer is a white-tailed deer or mule deer that is in a CWD-positive facility or was in a CWD-positive facility within the five years preceding the confirmation of CWD in that facility." The definition is necessary to distinguish the circumstances under which certain provisions of the proposed new rules are applicable. The five-year timeframe was selected because a deer infected with CWD could shed prions (the infectious agent believed to cause CWD) and infect other animals during this period before exhibiting clinical symptoms of the disease. However, if an epidemiological investigation concludes that any part of the five-year window is unnecessary, the status of "exposed" could be altered.

Proposed new §65.90(14) would define "facility" as "any location required to be registered in TWIMS under a deer breeder permit, Triple T permit, or DMP, including release sites and/or trap sites." The definition is necessary to provide a shorthand term for the locations to which the proposed new rules apply, rather than having to enumerate a cumbersome list of sites.

Proposed new §65.90(15) would define "hunter-harvested deer" as "a deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)." The definition is necessary because the proposed rules in some instances require deer harvested by hunters (as opposed to other types of mortality) to be tested for CWD.

Proposed new §65.90(16) would define "hunting year." Because the proposed new rules would stipulate the testing of deer harvested by lawful hunting it is necessary to create a term that covers hunting under the normal seasons and bag limits established for each county by the Commission and hunting that occurs during the period of validity of Managed Lands Deer Permits; therefore, "hunting year" would be defined as "that period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)."

Proposed new §65.90(17) would define "landowner (owner)" as "any person who has an ownership interest in a tract of land, and includes a landowner's authorized agent." The definition is necessary because the proposed new rules set forth testing requirements and other obligations for persons who own land where breeder deer are released.

Proposed new §65.90(18) would define "landowner's authorized agent" as "a person designated by a landowner to act on the landowner's behalf." The definition is necessary for the same reason set forth in the discussion of proposed new §65.90(17).

Proposed new §65.90(19) would define "liberated deer" as "a free-ranging deer that bears evidence of a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue)." The definition is necessary because the proposed new rules would in certain circumstances require the testing of hunter-harvested deer that could be identified as breeder deer that had been liberated.

Proposed new §65.90(20) would define "Movement Qualified (MQ)." Because the proposed new rules require deer breeding facilities to maintain a minimum level of testing over specified time period in order to be authorized by the department to transfer breeder deer to other deer breeders or for purposes of release, it is necessary to create a shorthand term to reference that ability. Therefore, "Movement Qualified (MQ)" would be defined as "a designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer."

Proposed new §65.90(21) would define "Not Movement Qualified (NMQ)" as "a designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder." Because the proposed new rules would prohibit the movement of deer from any facility that is not MQ, a definition for that condition is necessary.

Proposed new §65.90(22) would define "NUES tag" as "an ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES)." The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to a release site to be tagged with either a RFID or NUES tag.

Proposed new §65.90(23) would define "originating facility" as "any facility from which deer have been transported, transferred, or released, as provided in this division or as determined by an investigation of the department, including for breeder deer, the source facility identified on a transfer permit and for deer being moved under a Triple T permit, the trap site.

Proposed new §65.90(24) would define "post-mortem test" as "a CWD test performed on a dead deer," which is necessary in order to delineate the situations in which the proposed new rules require post-mortem testing as opposed to ante-mortem testing.

Proposed new §65.90(25) would define "properly executed." Because the proposed new rules would require the submission of electronic reports and forms that provide critical information to the department, it is necessary to make clear that all information on such a form or report must be provided. Therefore, the proposed new rules would define "properly executed" as "a form or report required by this division on which all required information has been entered."

Proposed new §65.90(26) would define "reconciled herd" as "the deer held in a breeding facility for which the department has determined that the deer breeder has accurately reported every birth, mortality, and transfer of deer in the previous reporting year." The definition is necessary because the proposed rules require a deer breeder to have a reconciled herd in order to transfer or release breeder deer.

Proposed new §65.90(27) would define "release site" as "a specific tract of land that has been approved by the department for the release of deer under this division." The definition is necessary because the proposed new rules impose CWD testing and other requirements for certain tracts of land where breeder deer are liberated or transferred.

Proposed new §65.90(28) would define "reporting year" as "the period of time from April 1 of one calendar year to March 31 of the next calendar year." Deer breeders are required to file annual reports with the department. The proposed new rules condition the eligibility of deer breeders to transfer and release deer on the completeness and accuracy of those reports.

Proposed new §65.90(29) would define "RFID tag" as "a button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system." The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to release sites to be tagged with either an RFID or NUES tag.

Proposed new §65.90(30) would define "status" as "the level of testing required by this division for any given deer breeding facility or release site." The definition also clarifies that the highest status for a Transfer Category is 1 and the lowest status is Transfer Category 3. Similarly, Class I is the highest status for release sites and Class III is the lowest. As noted previously, the proposed new rules categorize breeding facilities and release sites based on relative risk. The definition is necessary because the proposed new rules include regulatory requirements that are predicated upon the status of a breeding facility or release site.

Proposed new §65.90(31) would define "submit." In order to eliminate lengthy repetition throughout the proposed new rules, "submit" is defined as "when used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory."

Proposed new §65.90(32) would define "suspect." The testing process for determining that a deer is in fact infected with CWD is two-fold. If the initial test on a sample indicates the presence of the disease, the sample or another sample from the same animal is re-tested. Because the proposed new rules would make any facility NMQ pending confirmation (i.e., the re-test), it is necessary to create a term for the initial test result that causes the re-test. Therefore, "suspect" would be defined as "an initial CWD test result of "detected" that has not been confirmed."

Proposed new §65.90(33) would define "TAHC" as "Texas Animal Health Commission."

Proposed new §65.90(34) would define "TAHC CWD Herd Certification Program" as "the disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae)." The proposed new rules have provisions specific to deer breeders who participated in the TAHC herd certification program. The definition makes it clear that references to herd certification are references to the herd certification program administered by TAHC.

Proposed new §65.90(35) would define "TAHC Herd Plan" as "a set of requirements for disease testing and management developed by TAHC for a specific facility." The proposed new rules in some cases make eligibility to transfer or receive breeder deer contingent on compliance with a herd plan developed by TAHC. The definition makes it clear that references to herd plans are references to herd plans developed by TAHC.

Proposed new §65.90(36) would define "Test, Test Result(s), or Test Requirement" as "a CWD test, CWD test result or CWD test requirement as provided in this division," for the same reasons described in the explanation of the definition for "submit."

Proposed new §65.90(37) would define "trap site" as "a specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1," which is necessary because the proposed new rules would impose testing and reporting requirements on trap sites under various permits.

Proposed new §65.90(38) would define "Triple T permit." Because the proposed new rules would affect certain activities conducted under Triple T permits, the term is defined in order to eliminate any confusion. A Triple T permit is "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds)." In the context of the proposed new rules, a reference to Triple T permit is limited to a Triple T permit for activities involving white-tailed and mule deer.

Proposed new §65.90(39) would define "Trap, Transport and Process (TTP) permit"-as "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit)." The proposed definition is necessary to clarify and distinguish TTP and Triple T permit requirements.

Proposed new §65.90(40) would define "TWIMS" as "the department's Texas Wildlife Information Management Services (TWIMS) online application." TWIMS is the system that all deer breeders are required to use to file required notifications and reports required by current rule.

General Provisions

Proposed new §65.91, concerning General Provisions, would set forth a number of provisions that are applicable to the transfer or release of deer.

Proposed new §65.91(a) would stipulate that in the event that a provision of the proposed new rules conflicts with any other provision of 31 TAC Chapter 65, the new rules (if adopted) would apply. In order to avoid confusion resulting from a conflict between regulations, the proposed new rules with the agency's existing rules governing white-tailed deer and mule deer. Therefore, the proposed new rules would clarify that the proposed new rules govern in the event of conflict.

Proposed new §65.91(b) would prohibit the transfer of live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP for any purpose except as provided by the proposed new rules. Because deer breeders, landowners, and wildlife managers frequently transfer deer under various permits, it is necessary in light of the emergence of CWD in Texas deer breeding facilities as well as in free-ranging deer to prohibit the movement of breeder deer except as authorized by the proposed rules.

Proposed new §65.91(c) would prohibit the movement of deer to or from any facility where CWD has been detected, beginning with the notification that a "suspect" test result has been received from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample and would stipulate that such prohibition would take effect immediately upon the notification of a CWD "suspect" test result and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility. The proposed new provision is necessary because CWD is an infectious disease, which makes it necessary to prohibit certain activities in order to contain the potential spread of the disease while test results are confirmed.

Proposed new §65.91(d) would provide that a facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of the division at that status for a minimum of two years, if

the facility is a breeding facility, or for the period specified for release sites in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer). The proposed new rules create a tiered system of testing requirements based on the level of risk of transmission of CWD for each deer breeding facility or release site. The level of risk is based on the degree to which the facility has been monitored for the presence of CWD, or contains or is connected to exposed animals. Epidemiological science dictates that a population receiving individuals from a higher risk population is itself at greater risk; therefore, the proposed new rules would address such transfers from higher risk to lower risk populations by requiring the receiving facility or release site to comply with the testing requirements associated with the originating facility, and would stipulate a duration for the application of continued testing requirements.

Proposed new §65.91(e) would provide that a deer breeding facility that was initially permitted after March 31, 2016, will assume the lowest status among all originating facilities from which deer are received. The proposed new subsection is necessary for the same reasons addressed in the discussion of proposed new §65.91(d).

Proposed new §65.91(f) would provide that the designation of status by the department in and of itself does not authorize the transfer or movement of deer and prohibit any person from removing or causing the removal of deer from a facility that has been designated NMQ by the department. The provision is necessary because a breeding facility of any status can be designated NMQ.

Proposed new §65.91(g) would require all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department. To provide greater regulatory efficiency, it is necessary to require the use of an automated system.

Proposed new §65.91(h) would provide that in the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division, which is necessary to provide for continuity of administration in the event of technical disruptions.

CWD Testing

Proposed new §65.92, concerning CWD Testing, would establish the general provisions regarding the collection and submission of CWD test samples.

Proposed new §65.92(a) would require all CWD test samples at the time of submission for testing to be accompanied by a properly executed, department-prescribed form provided for that purpose. The technical response being developed by the department would provide for the accredited laboratories that perform CWD testing notify the department of test results electronically. Requiring persons who submit test samples to those laboratories to use a department-supplied form that contains data fields that can be entered by the laboratory, the process of notification and the sharing of records is enhanced by eliminating the need for manual data entry by the department after the test results have been received.

Proposed new §65.92(b) would set forth the requirements for valid ante-mortem testing, including the identification of the specific tissues that may be used, the requirement that tissue samples be collected by a licensed veterinarian, that the testing be done by an accredited laboratory, that samples be submitted within six months of submission from a live deer that is at least 16 months of age, has been in the facility for at least 16 months; and has not been the source of a "not detected" ante-mortem test result submitted within the previous 36 months. Under the Texas Veterinary Practices Act (Occupations Code, Chapter 801) only a licensed veterinarian is authorized to perform the procedures that the proposed new rules would allow for purposes of meeting ante-mortem testing requirements. Additionally, in order to be minimally accurate and epidemiologically valuable, tissue samples must be extracted from deer older than 16 months of age that have been in one environment long enough to be expected to have contracted CWD if it were present (which also allows epidemiologists to determine where the disease was acquired). Finally, the most significant epidemiological distinction between ante-mortem testing and post-mortem testing is that the testing of animals that have died provides a much higher likelihood of detecting the presence of disease, since diseased animals are more likely to die than healthy animals. In order to prevent the repeated use of tissues from an animal that has produced "not detected" results in the recent past, it is necessary to stipulate a minimum frequency that an animal may be used to provide tissue samples. The department has chosen the 36-month interval because it is approximately half the amount of the known maximum incubation period for CWD (five years). It should also be noted that although ante-mortem testing has not yet been acknowledged as an official test protocol by the USDA, the submission of a "suspect" ante-mortem test would cause the subject animal to be euthanized and subjected to post-mortem testing for confirmation.

Proposed new §65.92(c) would stipulate that ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status would have to be collected and submitted between October 15 of one year and March 15 of the following year. This time period was chosen because it encompasses the time period when breeder deer are most likely to be handled by deer breeders for other reasons (affording the opportunity to take tissue samples at convenient times) and because it is necessary for the department to impose a "window" for logistical and administrative purposes.

Proposed new §65.92(d) would set forth the requirements for post-mortem testing, stipulating that a post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. The provision also would stipulate that a medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department could be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality. Obviously, the department's efforts to detect and contain CWD depend on the quality of the testing itself. At the current time, USDA will not certify herd plans for cervidae unless post-mortem CWD testing is performed by laboratories that have been approved by USDA. The standard for approval is compliance with 9 CFR §55.8, which sets forth the specific tests, methodology, and procedure for conducting post-mortem CWD tests. Therefore, in order to ensure that post-mortem CWD tests are performed in accordance with uniform standards, the proposed new rules would require all CWD tests to be performed by

a laboratory approved by USDA. Additionally, the proposed new subsection would specify which tissues must be submitted and who is authorized to collect those tissues. At the current time, the only CWD testing approved by USDA must be performed on certain tissues from eligible mortalities, such as the obex (a structure in the brain) or certain lymph nodes. Laypersons can be trained to remove an obex, but the successful extraction of appropriate lymph nodes requires an experienced veterinarian, technician, or biologist. Therefore, the proposed new subsection also stipulates that to be valid, a CWD test must be performed on an obex, which can be collected by anyone. If a lymph node is to be tested in addition to the obex, it must be a medial retropharyngeal lymph node collected from the eligible mortality by an accredited veterinarian or other person approved by the department.

Proposed new §65.92(e) would allow ante-mortem tests to be substituted for required post-mortem tests at a ratio of 2:1, provided at least two eligible mortalities have occurred in the facility in the corresponding report year; and the number of "not detected" post-mortem test results is equal to at least 50 percent of the total test results required have been submitted. The department acknowledges that natural mortality is unpredictable and that therefore there will be time periods when test results for a sufficient number of mortalities cannot be submitted; therefore, the proposed new rule allows limited substitution of ante-mortem tests for post-mortem tests. For reasons discussed earlier, test results from natural mortalities have a higher epidemiological value than ante-mortem tests and the department believes that ante-mortem testing should not replace more than half of the total required post-mortem testing.

Proposed new §65.92(f) would prohibit the use of a single ante-mortem test result more than once to satisfy any testing requirement of the division. From an epidemiological perspective, the use of one test result to satisfy more than one testing requirement (especially if the submissions take place in more than one reporting year) creates a weakness because the test result is then not unique.

Proposed new §65.92(g) would stipulate that the testing requirements of the division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division. The department believes that a person subject to the provisions of the proposed new rules should not be able to avoid compliance simply by selling, donating, or trading property to another person related to the seller.

Proposed new §65.92(h) would provide that the owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division. The proposed new rules contemplate a disease management strategy predicated on the results of CWD testing. Incomplete, inadequate, or tardy reporting of test results confound that strategy. For this reason, the proposed new rule would establish a date certain for reporting test results to the department.

Harvest Log

Proposed new §65.93, concerning Harvest Log, would set forth the elements and requirements for on-site harvest documentation. The proposed new rules require a harvest log to be maintained on Class II and Class III release sites and Triple T release sites. For each deer harvested from a Class II or Class III release site for which a harvest log is required, the proposed new rules would require the hunter's name and hunting license number (or driver's license number, if the daily harvest log is also being used as a cold storage/processing book) to be entered into the harvest log, along with the date of kill, type of deer killed, any alphanumeric identifier tattooed on the deer, the tag number of any RFID or NUES tag affixed to the deer; and any other identifier and identifying number on the deer. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary. The proposed new paragraph also would require the daily harvest log to be presented to any department employee acting within the scope of official duties and for the contents of the daily harvest log to be reported to the department via TWIMS by no later than April 1 of each year, and would also provide for the format and retention of the harvest.

Breeding Facility Minimum Movement Qualification

Proposed new §65.94, concerning Breeding Facility Minimum Movement Qualification, would set forth the testing requirements necessary for a breeding facility to be able to transfer deer to other deer breeders or for purposes of release. The proposed new provision would cause any breeding facility to be NMQ (prohibited from transferring breeder deer anywhere for any purpose) if the breeding facility was not in compliance with MQ requirements in effect prior to the new rules, if the breeding facility is not in compliance with the testing requirements of the new rules as of their effective date and moving forward, if the facility is prohibited from transferring deer by order of TAHC, if the facility does not have a reconciled herd inventory, or if the facility was not in compliance with reporting and recordkeeping requirements. Among the requirements for achieving the movement qualification standard in proposed new §65.94(a) is a requirement to submit CWD "not detected" test results for at least 50% of eligible mortalities occurring in the facility during each reporting year beginning April 1, 2016. However, the department recognizes that if a breeding facility has unusually low eligible mortalities, this provision would result in the submission of very few test results. Therefore a provision is included to require that beginning April 1, 2021, the number of "not detected" test results submitted during the previous five consecutive years must be equal to or greater than the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent. This provision is intended to provide a minimum number of tests that must be submitted in a five-year period. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average natural mortality rate among eligible-aged deer and tested 50% of those mortalities, the breeding facility would test 2.25 percent (i.e., 50% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 2.25 percent. The resulting number is 50 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.94(b) would provide that a breeding facility that has been designated as NMQ for failure to comply with testing requirements would be restored to MQ when sufficient "not detected" test results are submitted. The department has determined that once a breeding facility is compliant with applicable testing requirements, MQ authority should be restored, so long as the other requirements being MQ are met.

Proposed new §65.94(c) would require a facility designated NMQ to report all mortalities within the facility to the department immediately upon discovery. From an epidemiological perspective, once a breeding facility cannot provide the minimum assurance that adequate disease surveillance is being maintained, there is an increased risk that if CWD is present it could be spread. Therefore, the proposed new rule requires noncompliant facilities to report all mortalities immediately, rather than at the end of the reporting year.

Proposed new §65.94(d) would require that immediately upon the notification that a facility has received a "suspect" test result, all facilities that received deer from or provided deer to the suspect facility within the previous five years would be designated NMQ until a determination that the facility is not epidemiologically linked to the suspect deer or upon further testing the "suspect" deer is determined not to be positive. The proposed new rules are intended to detect CWD if it is present and prevent the spread of CWD once it is detected; therefore, the department has determined that it is prudent, once a "suspect" test result has been returned, to stop all movement to and from all connected facilities until the "suspect" test is either confirmed or determined to be non-positive.

Movement of Breeder Deer

Proposed new §65.95, concerning Movement of Deer, would establish the various status levels and attendant testing requirements for breeding facilities and release sites.

Proposed new §65.95(a) would allow a TC 1 or TC 2 breeding facility designated MQ and in compliance with the applicable provisions of the divisions to transfer breeder deer under existing rules to another breeding facility, an approved release site, a DMP facility, or to another person for nursing purposes.

Proposed new §65.95(b) would establish three categories of breeder facilities based on level of epidemiological risk. The TC 1 category represents the lowest risk of transmitting CWD, based on the provenance of the deer within the facility and the testing regimen performed at the facility on annual and five-year time periods. The proposed new rule would establish TC 1 status for breeding facilities that have "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program. The proposed new rule would also establish TC 1 status for breeding facilities that have submitted "not detected" post-mortem test results equivalent to one the following testing regimes (discussed in greater detail later in this preamble: 1) results equivalent to at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility population; 2) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility population; or 3) annual ante-mortem tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and annual post-mortem tests of at least 50 percent of eligible mortalities. These categories were developed during the facilitation effort discussed earlier in this preamble. The department is confident that the testing requirements provide an increased potential to detect and contain CWD compared to the interim rules.

Among the options provided in proposed new §65.95(b) for obtaining TC 1 status is an option to test at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter. Another option is to conduct ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter. For both of those options, the department recognizes that if a breeding facility has an unusually low number of eligible mortalities, the requirement to submit post-mortem tests for 80 percent of all eligible mortalities during year could result in a lower number of post-mortem tests. Therefore, both provisions contain a minimum number of post-mortem tests to be submitted over a five-year period. That number is calculated as the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average number of natural mortalities among eligible-aged deer and tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 3.6 percent. The resulting number is 80 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.95(b) also would stipulate consequences for breeding facilities that have failed to comply with the testing requirements for TC 1 breeding facilities, providing for reduction in status to TC 2, provisions for re-attaining TC 1 status if testing compliance is achieved within 60 days of being reduced in status, the stipulation of a minimum time period of two years at TC 2 status if TC 1 status is not re-attained within 60 days, and a provision for ineligibility to regain TC 1 status if breeder deer from a lower status facility are accepted during the 60-day re-attainment period. The department believes that failure to comply with testing requirements is problematic from an epidemiological point of view and should result in demotion to a lower status, but recognizes that it is not necessarily possible to observe or locate mortalities in a timely manner; therefore, the proposed new rules would offer a limited time period for delinquent facilities to "catch up" before being reduced in status for a two-year period.

Proposed new §65.95(b)(2) would establish testing requirements for TC 2 breeding facilities, which would be the minimum testing requirements for MQ status stipulated in §65.94, relating to Breeding Facility Minimum Movement Qualification. A TC 2 breeding facility is a facility that is neither a TC 1 breeding facility nor a TC 3 facility.

Proposed new §65.95(b)(2) also would establish provisions regarding classification and requirements for TC 3 breeding facilities. A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. As such, TC 3 breeder facilities are the facilities with the highest risk of harboring and spreading CWD. Therefore, the proposed new rule prohibits the transfer of deer from any TC 3 facility unless such transfer is expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan, and requires all transferred deer to be tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

Proposed new §65.95(c) would set forth provisions governing release sites.

Proposed new §65.95(c)(1) would provide that an approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, require that liberated breeder deer have complete, unrestricted access to the entirety of the release site, and stipulate that all release sites onto which breeder deer are liberated be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times (and make the owner of the release site responsible for ensuring that the fence and associated infrastructure retain deer). In order to provide a measure of confidence that CWD is not spread from those places where breeder deer are released, it is necessary to identify the specific location where breeder deer are authorized to be released. Similarly, it is necessary to establish a level of vigilance sufficient to give reasonable assurance that breeder deer are not allowed to leave the specific premise where they were released. It is also necessary to ensure that released deer are not confined in smaller enclosures within a permitted release site, which have the effect of creating unnatural densities that could encourage the spread of disease if present.

Proposed new §65.95(c)(1) also would provide that any testing requirements of the division continue in effect until "not detected" test results are submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site, that a release site not in compliance with the testing requirements of this subsection is ineligible to receive deer, prohibit any intentional act that allows any live deer to leave or escape from a release site, and require a harvest log to be maintained. In addition, the owner of a Class II or Class III release site would be required to maintain a harvest log.

The proposed new rule would establish that a Class I release site is a release site that has received deer only from TC 1 facilities and is in compliance with the applicable provisions of the division. On that basis, Class I release sites represent the lowest risk of harboring or spreading CWD and are therefore not required to perform CWD testing. A Class II release site is a release site that receives deer from a TC 2 breeding facility (but not a breeding facility of lower status). The proposed new rule would require that for each year a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of five consecutive hunting years immediately following the release, submit "not detected" post-mortem test results for 50 percent of liberated deer that are harvested at the release site or, if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer. Because a Class II release site receives breeder deer that represent a higher risk of harboring and spreading CWD than breeder deer from a TC 1 facility, the department has determined that some level of testing is prudent. The 50 percent value for hunter-harvested deer provides an additional level of surveillance from an epidemiological perspective, as does the alternative of testing 50 percent of liberated deer (deer that were previously breeder deer). The five-year period for testing represents the approximate time period during which CWD could be expected to be detected. The proposed new rule would also provide that once the testing requirements have been met, the site becomes a Class I release site (no testing required).

Finally, proposed new §65.95 would provide that a Class III release site is any release site that has received deer from an originating facility that is a TC 3 facility, received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, and has not been released from a TAHC hold order. The proposed new rule would require the landowner of a Class III release site to submit post-mortem CWD test results for 100 percent of all hunter-harvested deer or one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year, whichever is greater and condition the minimum harvest and testing provision on terms prescribed in a TAHC herd plan. The proposed new rule also would prohibit the transfer of a breeder deer to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag.

Movement of DMP Deer

Proposed new §65.96, concerning Movement of DMP Deer, would set forth the movement and testing requirements associated with DMP activities. The proposed new rule would require a DMP release site to which breeder deer from a TC 2 breeding facility are released, or if the DMP property from which deer are trapped for DMP purposes is a Class II release site, to submit "not detected" test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation. As discussed elsewhere in this preamble, a TC 2 breeding facility or Class II release site represents a higher risk of transmitting CWD than a TC 1 breeding facility or Class I release site; therefore some level of testing is appropriate. The department has determined that testing half the hunter-harvested deer each year for five years (the approximate time period during which CWD could be expected to be detected) provides a reasonable assurance that CWD would be detected if it were present. The proposed new rule would prohibit the transfer of deer from a TC 3 breeding facility to a DMP facility because breeder deer in a TC 3 breeding facility are presumed to be exposed and therefore present an unacceptable risk of spreading CWD to free-ranging populations. The proposed rules would not impose testing requirements on any DMP facility that either does not receive breeder deer or receives breeder deer solely from TC 1 deer breeding facilities.

Testing and Movement of Deer Pursuant to a Triple T or TTP Permit

Proposed new §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would set forth

general provisions and testing requirements applicable to the movement of deer under a Triple T or TTP permit.

Proposed new §65.97(a) would stipulate that the disease detection provisions of §65.102 cease effect upon the effective date of the proposed new section, if adopted. This is necessary to prevent regulatory conflict.

Proposed new §65.97(a) also would provide that the department may require a map of any prospective Triple T trap site to be submitted as part of the application process, which is necessary to address situations in which the exact nature of a prospective Triple T site and its relationship to nearby or adjoining tracts of land is unclear with respect to previous releases.

Proposed new §65.97(a) would further enumerate the criteria under which the department will not authorize deer to be trapped at a specific site, including a release site that has received breeder deer within five years of the application for a Triple T permit, a release site that has failed to fulfill testing requirements, any site where a deer has been confirmed positive for CWD, any site where a deer has tested "suspect" for CWD, or any site under a TAHC hold order. Further, proposed §65.97(a) would provide that in addition to the reasons for denying a Triple T permit listed in §65.103(c) (concerning Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD. Each of the enumerated criteria for permit refusal represents an unacceptable risk of spreading CWD to free-ranging populations.

In addition, proposed new §65.97(a) would require all Triple deer to be tagged prior to release in one ear with a button-type RFID tag approved by the department and for the RFID tag information to be submitted to the department. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary.

Proposed new §65.97(a) would further stipulate that a Triple T permit does not authorize the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation), which is necessary to ensure that all deer are harvested by hunters under the regulations established for lawful hunting.

Proposed new §65.97(a) also would require all test samples to be collected or tested after the Saturday closest to September 30 (the first day of lawful hunting in any year), which is necessary to ensure that test samples are temporally linked to the year for which activities of the permit are authorized; however, this requirement would not apply to permits issued for the removal of urban deer, for which test samples could be collected between April 1 and the time of application.

Additional provisions of proposed new §65.97(a) include a harvest log requirement, the stipulation that a Triple T release site consist solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, the requirement that deer released pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site, the requirement that the testing requirements of the section continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which deer were released, and the provision that a Triple T release site that does not comply with the testing requirements of the subsection becomes ineligible to be a release site in the future.

Proposed new §65.97(b) would establish the testing requirements for Triple T trap and release sites. At the trap site, the proposed new rule would require 15 "not detected" post-mortem test results to be submitted prior to permit issuance. For release sites, the proposed new provision would require the landowner of a Triple T release site to submit "not detected" post-mortem test results for a period of five consecutive hunting years immediately following the release for either 50 percent of liberated deer that are harvested at the Triple T release site, or if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

Proposed new §65.97(b) also would stipulate that CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

Proposed new §65.97(c) would set forth the testing requirements for TTP permits. The proposed new provision would require "not detected" test results for at least 15 eligible-aged deer from the trap site to submitted and would require the landowner of a Class III release site where TTP deer are trapped to submit CWD test results for 100% of the deer trapped. The proposed new rule also would require test results related to a TTP permit to be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

Transition Provisions

Proposed new §65.98, concerning Transition Provisions, would set forth provisions to clarify enforcement of regulations with respect to the effective dates of various provisions and would stipulate that the department's executive director develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations.

Violations and Penalties

Proposed new §65.99, concerning Violations and Penalties, would prescribe the penalties and sanctions for violations of a condition of a permit or a provision of the division.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will initially be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of the permit programs affected will administer and enforce the rules as part of their current job duties and resources already in place will be reallocated for purposes of program administration, primarily to address programming costs. However, if administering the program following the initial transition requires continued reallocation of staff and resources, there may be a need for additional personnel to assist in administering the program.

Mr. Wolf also has determined that for each of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from facilities where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the

continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds, and maintaining the economic viability of deer breeding operations.

There will be adverse economic impact on persons required to comply with the rules as proposed. For deer breeders, those impacts are the same as the adverse economic impacts to small and micro-businesses, which are addressed later in this preamble.

For persons who obtain breeder deer for purposes of release (including under a DMP permit) or trap free-ranging deer under a Triple T or TTP permit, the adverse economic impacts of the proposed new rules consist of the CWD testing requirements that the proposed new rules would impose, based on the source and history of the deer being released.

The current cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) is a minimum of $46, to which is added a $6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be $52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be $92. Therefore, for any Class II or Class III release site owner, the cost of compliance with the testing requirements of the proposed new rules would be approximately $92 per animal required to be tested.

There are no adverse economic impacts for persons who obtain and release breeder deer from solely from TC 1 breeding facilities because under the rules as proposed, a release site that receives breeder deer only from TC 1 facilities is a Class I release site and no CWD testing is required.

For persons who obtain breeder deer from TC 2 breeding facilities or facilities of higher status (making the release site a Class II release site), the proposed new rules would require the landowner to test either 50 percent of the liberated deer (deer that were ever held under a deer breeder permit) harvested by hunters or, if no liberated deer are harvested, 50 percent of the deer harvested by hunters. Thus, the adverse economic impacts would be a function of the number and type of deer harvested, which could be as low as the cost of testing one deer (i.e., if only two liberated deer were part of the harvest, one would have to be tested and the testing requirement would be met).

For Class III release sites, the proposed new rules would require the landowner to test 100% of hunter-harvested deer. Therefore, the cost of compliance would be the cost of a CWD test for every deer harvested. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer.

For a person trapping deer under a Triple T or TTP permit, the adverse economic impact would be would be the cost of complying with the requirement to submit 15 valid CWD test results of "not detected" to the department prior to permit issuance.

The proposed new rules will result in adverse economic impacts to landowners of Class II and Class III release sites, who would be required to comply with certain testing requirements. Only those landowners who receive breeder deer from TC 2 and/or TC 3 breeding facility would be subject to the testing requirements imposed by the proposed rules.

For a Class II release site, if deer are hunter-harvested, a number of deer equivalent to 50 percent of the number of liberated breeder deer that are harvested at the site or 50 percent of all hunter-harvested deer if not liberated deer are harvested.

For a Class III release site, the proposed new rules would require 100 percent of all hunter-harvested deer to be tested or one hunter-harvested deer per breeder deer released between the last day of lawful deer hunting at the site in the previous year and the last day of lawful deer hunting at the site in the current year.

Also, because the proposed new rules require all release sites for breeder deer to be enclosed by a fence of at least seven feet in height, a landowner desiring to have breeder deer released on a tract that is not surrounded by such a fence would incur the cost of building one. The cost of fence construction varies by terrain and region, but anecdotal information suggests that it is $10,000 per linear mile or more. The department notes that only 610 breeder deer were released to low-fence environments in 2014 (the last year that such releases were allowed), and that the practice is extremely rare because the breeder deer purchased for liberation represent a significant purchase cost and once they are released they become free-ranging deer and may be legally killed on an adjoining property should they wander from the release site.

Small and Micro-business Impact Analysis

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

Parks and Wildlife Code, §43.357(a), authorizes a person to whom a breeder permit has been issued to "engage in the business of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, deer breeders are authorized to engage in business activities; namely, the purchase and sale of breeder deer. The same is not true of DMP or Triple T permit holders, who are authorized only to trap, temporarily detain, and release deer and are not authorized by those permits to buy or sell deer, or to exchange deer for anything of value.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. Although the department

does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rules as proposed would impact the ability of a deer breeder to engage in certain activities undertaken to generate a profit, the proposed rules may have an adverse impact on deer breeders.

Impact on Sales

The variety of business models utilized by deer breeders makes meaningful estimates of potential adverse economic impacts difficult. Although a deer breeder has the permit privilege to buy and sell breeder deer and many deer breeders participate in a market for breeder deer, other deer breeders are interested only in breeding and liberating deer on their own property to provide hunting opportunity. Once a breeder deer is liberated, it cannot be returned to a breeding facility and assumes the same legal status as all other free-ranging deer. Thus, if a person who is a deer breeder is engaged primarily in buying and selling deer, the potential adverse economic impact is greater than that for a deer breeder who engages in deer breeding activities primarily for purposes of release onto that person's property. The department does not require deer breeders to report the buying or selling prices of deer. However, publicly available and anecdotal information indicates that sale prices, especially for buck deer, may be significant. The sale price for a single deer may range from hundreds of dollars to many thousands of dollars.

It should also be noted that some aspects of this analysis are based on anticipated marketplace behavior which cannot be accurately predicted. In addition, to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the proposed new rules from marketplace behavior that is the result of the discovery of CWD. For reasons unrelated to the proposed new rules, it is possible, perhaps even likely, that breeders and release site owners will be reluctant to purchase a breeder deer from a facility with a close relationship to a facility at which CWD has been detected.

The proposed new rules would not completely prohibit the transfer of deer except facilities that are not movement qualified or TC 3 facilities that are not otherwise authorized to transfer deer pursuant to a TAHC herd plan (in addition to facilities that were not allowed to transfer deer under previous regulations due to failure to test a minimum number of deer or failure to comply with record-keeping requirements). All TC 1 and TC 2 facilities would be allowed to transfer deer, provided certain conditions are met.

For TC 1 facilities, the department has determined that there will likely be no adverse economic impact on sales as a result of the proposed new rules. Since transfers of breeder deer from TC 1 facilities are subject to the fewest restrictions under the proposed new rules, breeder deer from a TC 1 facility can more easily be sold to other breeders or to landowners for purposes of liberation. In addition, TC 1 facilities are subject to monitoring and testing at a higher level. Since classification as a TC 1 facility requires certain actions by deer breeders as provided in the proposed rules, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility. One category of TC 1 facilities are facilities with "fifth" year or "certified" status in the TAHC CWD Herd Certification Program.

For TC 2 and TC 3 facilities, the adverse economic impact of the proposed new rules would consist of testing costs and the possible loss of sales to TC 1 facilities and Class I release sites. The proposed new rules would not prohibit the transfer of breeder deer by TC 2 facilities, but because the proposed new rules would cause any TC 1 facility or Class I release site that accepts deer from a TC 2 (or TC 3) facility to assume the status (and regulatory obligations, such as testing) of the TC 2 (or TC 3) facility, and because TC 2 facilities carry a greater risk of exposure to CWD, it can be assumed that TC 1 facilities or Class I release sites will be less likely destinations for breeder deer coming from facilities of lower status. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer.

As noted above, since the proposed rules would provide a mechanism for more breeder facilities to be classified as a TC 1 facility, many facilities classified as TC 2 under the Interim Rules may elect to undertake the requirements of the proposed rule necessary to attain TC 1 status. Since such decisions are personal and business decisions to be made by each breeder, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility.

As noted above, if a release site is unwilling to obtain deer from a TC 2 facility, the impact of the proposed rules to a TC 2 deer breeder would be the loss of sales and any attendant profit from the sale of deer. Similarly, a TC 1 facility that acquires a breeder deer from a TC 2 facility would assume the lower TC 2 status. As previously mentioned in this analysis, the department does not require holders of deer breeder permits to disclose the dollar values of sales and purchases of breeder deer; therefore, an exact quantification of the possible impact of the proposed new rules on TC 2 facilities cannot be accurately calculated. However, based on public and anecdotal information, such impact could be from few hundred dollars or less per deer or to thousands of dollars per deer.

The proposed new rules would prohibit the introduction to or removal of deer from TC 3 breeder facilities unless authorized by a TAHC herd plan and then only in compliance with the requirements of this division. TC 3 facilities are breeder facilities that received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or possessed a deer that was in a CWD-positive facility within the previous five years. The proposed rules would result in an adverse economic impact to deer breeders whose facilities are TC 3 facilities. The extent of such adverse economic impact would consist of loss of revenue as a result of being unable to introduce or remove deer from the breeding facility and thus being unable to deliver or accept deer that have been bought or sold. The dollar value of the adverse economic impact is dependent on the volume of deer produced or acquired by any given permittee, which can vary from a few deer to hundreds of deer. However, as noted above, it is difficult, if not impossible, to accurately determine whether and how much any adverse economic impact is due to the presence of CWD in a facility (or a related facility) or attributable to the proposed new rules. Department records indicate that there are currently 304 TC 3 facilities in the state; if the proposed new rules are adopted, that number will be less than 100. The department notes that with the exception of breeding facilities that are CWD-positive, the proposed new rules allow "exposed" facilities (which would be classified as TC 3 facilities) to transfer breeder deer following successful compliance with the testing and other provisions of the proposed new rules.

Testing Costs

The proposed new rules would cause an adverse economic impact to deer breeders who must undertake disease-testing requirements to continue certain activities. As a result, deer breeders and owners of release sites that are not Class I release sites would incur costs related to the increased testing and monitoring requirements of the proposed new rules.

The cost of a CWD testing administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by a deer breeder is a minimum of $46, to which is added a $6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be $52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be $92.

A significant factor that differentiates the proposed new rules from the interim rules is that the proposed new rules either require or allow ante-mortem (live animal) tests for CWD to be submitted by deer breeders seeking to maintain or increase status. Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately $30-70 per head and the cost of ante-mortem lymph node biopsies at approximately $700 per head (these costs are in addition to the estimated $92 lab fee per sample for the actual CWD test). It is important to note that ante-mortem procedures for CWD testing are very new and at the current time there are very few veterinarians with the training and expertise to perform them reliably; thus, the fee structure for such procedures can best be described as still evolving.

Additionally, deer breeders who seek "certified" or "fifth year" facilities are also required to obtain an annual inventory by an accredited veterinarian. The cost of an annual inventory by an accredited veterinarian is estimated by TAHC to be approximately $250. However, it should be noted that the requirements for obtaining "certified" or "fifth year" status are not imposed by the proposed rules, but rather by existing TAHC regulations.

The department notes that because CWD has been proven to be transmissible by direct contact (including through fences) and via environmental contamination, there may be adverse economic impacts unrelated to the proposed new rules in the event that CWD is confirmed in a breeding facility due to the possible reluctance of potential customers to purchase deer from a facility that accepted deer from a CWD-positive facility. Additionally, in the absence of the proposed new rules, if CWD is detected within a facility or breeder deer that have been in a facility that accepted deer from a CWD-positive facility, there could be lost revenue to the permittee since potential purchasers who are aware of CWD would likely refrain from purchasing deer from such a facility. Therefore, the proposed new rules, by providing a mechanism to minimize the spread of CWD, could also protect the economic interests of the regulated community.

The department also notes that for any given deer breeder that is currently not qualified to move or release deer, compliance with the proposed new rules could be achieved in five years or less and at the additional direct economic cost of CWD testing requirements imposed by the proposed new rules.

Loss of Sacrificed Deer

The proposed new rules would allow for the testing of additional deer (compared to the previous testing requirements) for some deer breeders who desire to move to a higher status. If deer are sacrificed for testing (in order to reach the required number of post-mortem tests to be movement qualified, maintain status, or in increase in status), there could be an economic impact from the loss of the deer and any revenue that might have been realized from the sale of the deer to another breeder or to a release site for liberation. As noted previously, the department does not require that breeders report financial data. The economic impact on a deer breeder would depend on whether the deer breeder sacrifices deer to achieve testing requirements, and the number and type of deer sacrificed. As noted above, the lost revenue from the sacrificed deer could range from few hundred dollars or less per deer to thousands of dollars per deer.

However, it should also be noted that the option in the proposed rules for ante-mortem testing should result in fewer deer being sacrificed for purpose of testing.

Alternatives Considered

In the development of the proposed rules, including through discussions among stakeholders and through the facilitated rulemaking process, several alternatives were raised, discussed and/or considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to allow the interim rules to expire on their own terms on August 31, 2016. If the interim rules expired, the CWD testing and deer movement requirements would revert to those that existed prior to the 2015 discovery of CWD in Medina County. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and farmed cervid populations and the economies that depend upon them. Although the previous rules provided some level of monitoring and containment, the 2015 discovery of CWD in a white-tailed deer in Medina County and the subsequent discovery of CWD in additional white-tailed deer warrants a more comprehensive approach. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state, the previous rules would not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD. Therefore, this alternative was rejected.

Another alternative would have been to propose rules identical or very similar to the interim rules. This alternative was rejected for several reasons. The interim rules were intended to be an interim regulatory response to the 2015 discovery of CWD in white-tailed deer, and were not intended to be a long-term response. The interim rules were developed to implement requirements necessary to protect deer herds through the 2015-2016 hunting season, and facilitate continuation of activities by deer breeders. As a result, the interim rules did not provide for a fuller universe of options, such as live-animal (ante-mortem) testing of breeder deer. Therefore, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would also have the simultaneous effect of preventing landowners and land managers from implementing popular management strategies involving the movement of deer, and would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed new rules reflect mathematical models aimed at higher confidence than is possible under current disease-testing requirements that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. The department also believes that a higher testing intensity is necessary to provide assurance to the hunting public, private landowners, and the regulated community that wildlife resources are safe and reliable.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677 (e-mail: *mitch.lockwood@tpwd.texas.gov);* or via the department's website at www.tpwd.texas.gov.

31 TAC §§65.90 - 65.94

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

§65.91. General Provisions.

§65.92. Transfer Categories and Requirements.

§65.93. Release Sites - Qualifications and Testing Requirements.

§65.94. Chronic Wasting Disease - Deer Management Permit Provisions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2016.

TRD-201601677
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 389-4775

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31 TAC §§65.90 - 65.99

The new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed new rules affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test--A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed--A CWD test result of "positive" received from the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--Chronic wasting disease.

(6) CWD-positive facility--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

(11) Eligible-aged deer--

(A) if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older; or

(B) for any other deer, 16 months of age or older.

(12) Eligible mortality--An eligible-aged deer that has died.

(13) Exposed deer--Unless the department determines through an epidemiological investigation that a specific deer has not been exposed, an exposed deer is a white-tailed deer or mule deer that:

(A) is in a CWD-positive facility; or

(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in the CWD-positive facility.

(14) Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, or DMP, including release sites and/or trap sites.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(18) Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(19) Liberated deer--A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue).

(20) Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(21) Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(22) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).

(23) Originating facility--Any facility from which deer have been transported, transferred, or released, as provided in this definition or as determined by an investigation of the department, including:

(A) for breeder deer, the source facility identified on a transfer permit; and

(B) for deer being moved under a Triple T permit, the trap site.

(24) Post-mortem test--A CWD test performed on a dead deer.

(25) Properly executed--A form or report required by this division on which all required information has been entered.

(26) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer in the previous reporting year has been accurately reported.

(27) Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(28) Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(29) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(30) Status--A level assigned under this division for any given facility on the basis of testing performance and the source of the deer. For the transfer categories established in §65.95(b) of this title (relating to Movement of Breeder Deer), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC3). For the release site classes established in §65.95(c) of this title, Class I is the highest status and Class III is the lowest.

(31) Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(32) Suspect--An initial CWD test result of "detected" that has not been confirmed.

(33) TAHC--Texas Animal Health Commission.

(34) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).

(35) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.

(36) Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(37) Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(38) Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds),

(39) Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game

Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(40) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. General Provisions.

(a) To the extent that any provision of this division conflicts with any other provision of this chapter, this division prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a CWD test result of "suspect" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) A facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of this division at that status for:

(1) a minimum of two years, if the facility is a breeding facility; or

(2) for the period specified in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer), if the facility is a release site.

(e) A deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received.

(f) The designation of status by the department in and of itself does not authorize the transfer or movement of deer. No person may remove or cause the removal of deer from a facility that has been designated NMQ by the department pursuant to this division.

(g) Unless expressly provided otherwise in this division, all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

§65.92. CWD Testing.

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) For the purposes of this subchapter, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue collected by or under the supervision of a qualified licensed veterinarian within six months of submission from a live deer that:

(1) is at least 16 months of age;

(2) has been in the facility for at least 16 months; and

(3) has not been the source of a "not detected" ante-mortem test result submitted within the previous 36 months.

(c) Ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status under the provisions of this section shall be collected and submitted between October 15 of one year and March 15 of the following year.

(d) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. A medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department may be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality.

(e) To meet the requirements of §65.94(a)(1)(B) and (C) of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title, ante-mortem test results may be substituted for post-mortem test results at a ratio of two "not detected" ante-mortem test results for each required "not detected" post-mortem test result, provided:

(1) at least two eligible mortalities have occurred in the facility in the corresponding report year; and

(2) "not detected" post-mortem test results equal to at least 50 percent of the total test results required have been submitted.

(f) Except as provided in this section, an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(g) The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

(h) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division.

§65.93. Harvest Log.

(a) When a release site is required by this division to maintain a harvest log, the harvest log shall be maintained daily and shall meet the requirements of this section.

(b) For each deer harvested on the release site the landowner must, on the same day that the deer is harvested, legibly enter the following information in the daily harvest log:

(1) the name and hunting license of the person who harvested the deer;

(2) the date the deer was harvested;

(3) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);

(4) any alphanumeric identifier tattooed on the deer;

(5) any RFID or NUES tag number of any RFID or NUES tag affixed to the deer; and

(6) any other identifier and identifying number on the deer, including a description of any evidence or indication that the deer was a liberated deer including, but not limited to evidence of having been eartagged at any time (holes, rips, notches, etc. in ear tissue).

(c) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(d) By not later than April 1 of each year, the owner of a release site shall submit the contents of the daily harvest log to the department via TWIMS or via another method specified by the department.

(e) The daily harvest log shall be on a form provided or approved by the department and shall be retained for a period of one year following submission and acceptance by the department.

§65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not complied with the following testing requirements:

(A) submitted CWD "not detected" test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006;

(B) submitted CWD "not detected" test results for at least 50% of eligible mortalities occurring in the facility during each reporting year beginning April 1, 2016; and

(C) beginning April 1, 2021, the number of "not detected" test results submitted during the previous five consecutive years must be equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent; tests submitted pursuant to subparagraph (B) of this paragraph may be used to satisfy the testing requirements of this subparagraph;

(2) is not authorized pursuant to a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory;

(4) is not in compliance with the provisions of §65.608 of this title (relating to Annual Reports and Records).

(b) A facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section, will be restored to MQ when sufficient "not detected" test results as described in subsection (a) of this section are submitted.

(c) A facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

(d) Immediately upon the notification that a facility has received a CWD suspect" test result (a CWD suspect facility), all facilities that received deer from or provided deer to the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a TC 1 or TC 2 breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department as provided in §65.610(e) of this title (relating to Transfer of Deer) to:

(1) another breeding facility;

(2) an approved release site as provided in paragraph (3) of this subsection;

(3) a DMP facility; or

(4) to another person for nursing purposes.

(b) Breeder Facilities.

(1) TC 1.

(A) Except as may be otherwise provided in this division, a breeding facility is a TC 1 facility if:

(i) it has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program;

(ii) has submitted "not detected" post-mortem test results equivalent to:

(I) at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter; and

(II) a number of "not detected" post-mortem test results submitted during the previous five consecutive years equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 3.6 percent; tests submitted pursuant to subclause (I) of this clause may be used to satisfy the testing requirements of this subclause.

(iii) has submitted the following "not detected" test results:

(I) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted;

(II) post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter; and

(III) beginning April 1, 2021, the number of "not detected" post-mortem test results submitted within the previous five consecutive years must be equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent; tests submitted pursuant to subclause (II) of this clause may be used to satisfy the testing requirements of this subclause; or

(iv) "not detected" test results are submitted on an annual basis for:

(I) ante-mortem tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted; and

(II) post-mortem tests of at least 50 percent of eligible mortalities.

(B) Failure to Comply with TC 1 Testing Requirements.

(i) Upon processing of the annual report, a TC 1 facility that has not met the post-mortem testing requirements of this section becomes a TC 2 facility.

(ii) If the deer breeder seeks to regain TC 1 status, the deer breeder must, within 60 days from the date the breeder is notified by the department of the change in status, furnish the test results

necessary to be in full compliance with the applicable TC 1 testing requirements in order to be returned to TC1 status.

(iii) If after 60 days the department has not received test results sufficient to achieve compliance with the applicable TC 1 testing requirements, the breeding facility is not eligible to regain TC 1 status for a period of two years.

(iv) A breeder will not be eligible to regain TC 1 status, if breeder deer from a lower status breeding facility are transferred to the breeding facility during the 60 days in which the breeder is seeking to regain TC 1 status.

(2) TC 2.

(A) A breeding facility is a TC 2 facility if:

(i) it is not a TC 1 facility; and

(ii) it is not a TC 3 facility.

(B) The testing requirements for a TC 2 facility are the minimum testing requirements established for MQ designation in §65.94(a)(1) of this title (relating to Breeding Facility Minimum Movement Qualification).

(3) TC 3.

(A) A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and meets any of the following criteria:

(i) received an exposed deer within the previous five years;

(ii) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or

(iii) possessed a deer that was in a CWD-positive facility within the previous five years.

(B) No deer from a TC 3 facility may be transferred or liberated unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan.

(C) A TC 3 breeding facility remains a TC 3 breeding facility until the TAHC hold order in effect at the breeding facility has been lifted.

(D) A TC3 breeding facility may not transfer a breeder deer for any purpose unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

(c) Release Sites.

(1) General.

(A) An approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(B) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site.

(C) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer.

(D) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site. A release site that is not in compliance with the testing requirements of this subsection is ineligible to receive deer.

(E) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(F) The owner of a Class II or Class III release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(2) Class I Release Site. A release site that is in compliance with the applicable provisions of this division and receives deer only from TC 1 facilities is a Class I release site and is not required to perform CWD testing, unless it becomes a Class II or Class III release site.

(3) Class II Release Site.

(A) A release site that receives deer from a TC 2 breeding facility is a Class II release site unless it becomes a Class III release site.

(B) Each year that a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of five consecutive hunting years immediately following the release, submit "not detected" post-mortem test results for:

(i) 50 percent of liberated deer that are harvested at the release site; or

(ii) if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer.

(C) Upon the satisfaction of the provisions of paragraph (3)(B) of this subsection, a Class II release site becomes a Class I release site.

(4) Class III Release Site.

(A) A release site is a Class III release site if:

(i) it has:

(I) received deer from an originating facility that is a TC 3 facility; or

(II) received an exposed deer within the previous five years or has transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; and

(ii) has not been released from a TAHC hold order related to activity described in clause (i) of this subparagraph.

(B) The landowner of a Class III release site must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(i) 100 percent of all hunter-harvested deer; or

(ii) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a TAHC herd plan.

(C) No breeder deer may be transferred to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

§65.96. Movement of DMP Deer.

This section applies to the movement of deer under a DMP.

(1) Testing Requirements.

(A) There are no CWD testing requirements for a DMP facility that:

(i) does not receive breeder deer; or

(ii) receives breeder deer solely from TC 1 deer breeding facilities.

(B) A release site onto which deer are liberated from the following is required to submit "not detected" test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation of:

(i) deer from a DMP facility that receives breeder deer from a TC 2 deer breeding facility; or

(ii) deer from a DMP facility that receives deer trapped deer from a Class II release site.

(2) The department will not authorize the transfer of deer to a DMP facility from a TC 3 breeding facility.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

(1) The provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section.

(2) The department may require a map of any Triple T trap site to be submitted as part of the application process.

(3) The department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) release site that has received breeder deer within five years of the application for a Triple T permit;

(B) release site that has failed to fulfill testing requirements;

(C) any site where a deer has been confirmed positive for CWD;

(D) any site where a deer has tested "suspect" for CWD; or

(E) any site under a TAHC hold order.

(4) In addition to the reasons for denying a Triple T permit listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.

(5) All deer released under the provisions of this section must be tagged prior to release in one ear with a button-type RFID tag approved by the department. RFID tag information must be submitted to the department.

(6) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(7) Except for a permit issued for the removal of urban deer, a test result is not valid if the sample was collected or tested after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(8) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(9) The owner of a Triple T release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(10) A Triple T release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(11) Deer transferred pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site.

(12) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which deer were transferred to the site pursuant to a Triple T permit. A Triple T release site that is not in compliance with the testing requirements of this subsection will be ineligible as a release site.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 eligible-aged deer from the trap site.

(2) The landowner of a Triple T release site shall submit "not detected" post-mortem test results for a period of five consecutive hunting years immediately following the release for:

(A) 50 percent of liberated deer that are harvested at the Triple T release site; or

(B) if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

(3) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(c) Testing Requirements for TTP Permit.

(1) "Not detected" test results for at least 15 eligible-aged deer from the trap site must be submitted.

(2) The landowner of a Class III release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. Transition Provisions.

(a) This division does not apply to an offense committed before the effective date of this division. An offense committed before the effective date of this division is governed by the regulations that existed on the date the offense was committed, including, but not limited to the following:

(1) Deer Breeder: published in the *Texas Register* September 4, 2015 (40 TexReg 5566); January 1, 2016 (41 TexReg 9); January 29, 2016 (41 TexReg 815);

(2) DMP: published in the *Texas Register* October 23, 2015 (40 TexReg 7305); February 12, 2016 (41 TexReg 1049); February 19, 2016 (41 TexReg 1250); and

(3) Triple T/TTP: published in the *Texas Register* October 23, 2015 (40 TexReg 7307); January 1, 2016 (41 TexReg 9).

(b) A release site that was in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall be not subject to testing requirements until deer are liberated or released onto the release site under the provisions of this division.

(c) A release site that was not in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall:

(1) be required to comply with the applicable provisions of this division regarding Class II or Class III sites for a period of five years beginning on the first day of lawful hunting for the 2016-2017 hunting year; and

(2) be ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit until the release site has complied with paragraph (1) of this subsection.

(d) The department's executive director shall develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations. The transition plan shall include, but is not limited to, provision addressing a mechanism for classifying facilities that have obtained "not detected" ante-mortem test results at a level that meets or exceeds that required in this division prior to the effective date of this division.

§65.99. Violations and Penalties.

(a) A person who violates a provision of this division or a condition of a deer breeder's permit, DMP, Triple T permit, or TTP permit commits an offense and is subject to the penalties prescribed by the applicable provisions of the Parks and Wildlife Code.

(b) A person who possesses or receives white-tailed deer or mule deer under the provisions of this division and/or Subchapters C, D, or T of this chapter is subject to the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer.

(c) A person who fails to comply with a provision of this division or a condition of a deer's breeder permit, DMP, Triple T permit, or TTP permit may be prohibited by the department from future permit eligibility or issuance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2016.

TRD-201601678
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 389-4775

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS

SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.3, §520.5

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §520.3, District Conducted Elections; Notice, and §520.5, Election Forms; Reporting. Specifically, the changes to §520.3(b) involve inserting language to state that unless specifically requested to file original forms, districts may file completed forms electronically with the State Board and retain the original copies for their files. The changes to §520.5(b) state that unless specifically requested to submit original copies, districts may submit completed forms electronically to the State Office. It also adds language to specify that districts should retain originals if electronic forms are sent to the State Office.

Mr. Kenny Zajicek, Fiscal Officer, State Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the amended rules.

Mr. Zajicek has also determined that for the first five-year period the amended rules are in effect, the public benefit anticipated as a result of administering the rules will be the possibility of improved district operations by districts being able to compete with the public workforce for qualified employees.

There are no anticipated costs to small businesses or individuals resulting from these amended rules.

Comments on the proposed amendments may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amendments are proposed under Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by these amendments.

§520.3. District Conducted Elections; Notice.

(a) Districts shall:

(1) Adopt rules for conducting elections consistent with §201.073, Agriculture Code of Texas.

(2) Administer elections consistent with their adopted rules.

(3) Prior to adoption or any subsequent amending of election rules, submit a draft copy for approval by the Executive Director or his designee for the purpose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(4) Maintain a copy of adopted rules with the State Board and maintain a copy of adopted rules at their office for public review.

(b) Districts are required to use all election forms prescribed by the State Board, and they are to[;] file all original completed forms required by the State Board with the State Board and retain copies for their files. Unless specifically requested to file original forms, districts may file completed forms electronically with the State Board and retain the original copies for their files.

(c) - (d) (No change.)

§520.5. Election Forms; Reporting.

(a) The State Board may consider and approve or amend certain election forms and require districts to utilize the forms for the pur-

pose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(b) The State Board may require districts to submit original copies of certain completed election forms to the State Board State Office for filing. Unless specifically requested to submit original copies, districts may submit completed forms electronically to the State Office. Districts should retain copies of any originals submitted to the State Office or the originals if electronic forms are sent to the State Office.

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601623
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: May 22, 2016
For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts proposes amendments to §5.160, concerning incorporation by reference: accounting policy statements 2012 - 2013. The Accounting Policy Statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System and for preparation of the annual financial report. This section is being amended to update the effective dates of the Accounting Policy Statements incorporated by reference. The section is also being amended to update the website address where the Accounting Policy Statements may be found.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by facilitating the collection and dissemination of state financial information. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Michael Apperley, Manager, Fiscal Integrity Department, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Government Code, §§403.011, 2101.012, 2101.035, and 2101.037 which provide the comptroller with the authority to supervise and manage the state's fiscal concerns, prescribed rules and procedures relating to the operation of the Uniform Statewide Accounting System and the preparation of the annual financial report.

This amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

§5.160. Incorporation by Reference: Accounting Policy Statements 2015 - 2016 [~~2012~~ - ~~2013~~].

The "Accounting Policy Statements," issued by the Fiscal Management Division of the Comptroller of Public Accounts as of August 31, 2015 [~~2012~~], are incorporated by reference and filed with the secretary of state. All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request. All statements are also available on the comptroller's [~~Comptroller's~~] website at: https://fmx.cpa.texas.gov/fm/pubs/aps/index.php [~~https://fmx.cpa.state.tx.us/fm/pubs/aps/index.php~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §92.21, in Subchapter B, Application Procedures; an amendment to §92.64, in Subchapter D, Facility Construction; and an amendment to §92.551, in Subchapter H, Enforcement in Chapter 92, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The proposed amendments and new section implement Texas Health and Safety Code §247.022, as amended by House Bill 1769, 84th Legislature, 2015. Section 247.022(d) allows an assisted living facility license applicant in "good standing" to request that DADS issue an initial license that does not require an on-site health inspection. Section 247.022(d) also prohibits DADS from requiring an applicant in good standing that requests an initial license to admit a resident to the facility before DADS

issues an initial license. The criteria for being in "good standing" are listed in §247.022(f). Section 247.022 requires a license applicant in good standing to submit for DADS approval the applicant's policies and procedures, verification of employee background checks, and employee credentials before DADS issues an initial license. Section 247.022 requires a facility granted an initial license in accordance with §247.022(d) to disclose to residents and prospective residents that the facility has not yet met the requirements of an on-site health inspection. Section 247.022 requires DADS to conduct an on-site health inspection within 90 days after DADS issues an initial license. The proposed new section and amendments set forth the requirements for an applicant in good standing to obtain an initial license, allow a facility to admit more than three residents after it receives an initial license, and allow DADS to impose an administrative penalty if a facility does not disclose to residents and prospective residents that it has not met the requirements of an on-site health inspection.

SECTION-BY-SECTION SUMMARY

Proposed new §92.21 allows an applicant for an initial license for a Type A or Type B assisted living facility to request DADS to issue the license before conducting an on-site health inspection. The proposed new section states that if DADS determines the applicant is in good standing, the applicant is not required to admit a resident to the facility or have an on-site health inspection before DADS issues the initial license. The proposed new section sets forth the criteria for an applicant to be in good standing and requires an applicant to submit information to DADS for approval before a license is issued. If DADS issues a license under the proposed new section, DADS conducts an on-site health inspection within 90 days after issuing the license. Until a facility that is issued a license under the proposed new section meets the requirements of an on-site health inspection, the facility must disclose, in writing, to residents and prospective residents that the facility has not yet met the requirements of an on-site health inspection.

The proposed amendment to §92.64(4)(B) clarifies that a facility may admit more than three residents after it meets the requirements of a Life Safety Code inspection and DADS issues a license under proposed new §92.21.

The proposed amendment to §92.551(d) allows DADS to impose an administrative penalty of $500-$800 if a facility does not disclose that the facility has not yet met the requirements of an on-site health inspection in accordance with proposed new §92.21.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses because the amendments and new section, which allow DADS to issue an initial license more quickly to an applicant with a history of compliance with assisted living rules, do not impose any new obligations on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public will benefit by assisted living facilities being licensed more quickly if they are associated with a person who has previous experience with an assisted living facility and has complied with assisted living facility rules. This will provide more options for persons seeking services from an assisted living facility.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Lorraine Brady at (512) 438-2235 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R09" in the subject line.

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.21

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The new section implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.

(a) An applicant may request that DADS issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by and made available from DADS.

(b) If an applicant makes a request in accordance with subsection (a) of this section, DADS determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not been cited for a violation that:

(i) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(ii) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(B) has not had a sanction imposed by DADS against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to DADS:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §92.123 of this chapter (relating to Investigation of Facility Employees); and

(C) documentation that the applicant's employees have the credentials described in §92.41(a) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities); and

(2) comply with §92.14(d) of this subchapter and §92.11(c)(1)(A) - (C) of this subchapter (relating to Criteria for Licensing).

(e) DADS issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if DADS determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with the requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

(f) DADS conducts an on-site health inspection within 90 days after the date DADS issues a license in accordance with subsection (e) of this section. The on-site health inspection includes DADS observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §92.41(d)(1) of this chapter as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 438-2235

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SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §92.64

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.64. Plans, Approvals, and Construction Procedures.

At the option of the applicant, DADS reviews plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities. DADS informs the applicant of the results of the review within 30 days after receipt of the plans. If the plans comply with DADS architectural requirements, DADS may

not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within a reasonable time.

(1) Submittal of plans.

(A) For review of plans, before construction is begun, the applicant must submit one copy of contract documents including working drawings and specifications in sufficient detail to interpret compliance with these standards and assure proper construction by the general contractor or builder. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer licensed by the Texas Board of Professional Engineers. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be drawn to scale of 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved. DADS review is limited to the plans and specifications for conversions or remodeling as submitted.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance with architectural and DADS licensing standards cannot be reasonably assured or determined by DADS, DADS may request a revised set of documents for review.

(F) The review of plans and specifications by DADS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.4 of this chapter (relating to License Fees).

(2) Contract documents.

(A) Site plan documents must include grade contours; streets with names; North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, including ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include room names, numbers, and usages; numbered doors including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet.

(E) Schedules must include door materials, widths, and types; window materials, sizes, and types; room finishes; and special hardware.

(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, and interior elevations where needed for special conditions.

(G) Details must include wall sections as needed, especially for special conditions; cabinet and built-in work; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(H) Building structure documents must include structural framing layout and details primarily for column, beam, joist, and structural building; roof framing layout if the layout cannot be adequately shown on a cross section; and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system including exit signs and emergency egress lighting; emergency electrical provisions including generators and panels; staff communication system; fire alarm and similar systems including control panel, devices, and alarms; and sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating and air-conditioning systems (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(L) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(M) Specifications must include information about installation techniques; quality standards and manufacturers; references to applicable codes and other standards used for design; design criteria; special equipment; hardware; finishes; and any other information DADS may need to interpret drawings and notes.

(N) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction where the facility is located.

(3) Construction phase.

(A) DADS must be notified in writing prior to construction start.

(B) All construction not done to comply with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection or initial survey of the facility must be performed by DADS prior to the facility admitting residents, unless DADS issues a provisional license. An initial architectural inspection will be scheduled after DADS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of the architect's or engineer's knowledge that the facility meets the architectural requirements for a license.

(B) After DADS surveys the completed construction and finds it acceptable, DADS forwards the information to the Licensing and Credentialing Unit as part of the applicant's license application. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license. All buildings, including basic furnishings and operational needs, grades, drives, and parking must be 100 percent complete at the time of the initial visit for occupancy approval and licensing. A facility may admit no more than three residents after it receives initial approval from DADS but before a [~~the~~] license is issued, except if DADS issues one of the following licenses the facility may admit more than three residents: [~~unless DADS issues~~]

(i) a provisional license in accordance with §92.20 of this chapter (relating to Provisional License); or[~~.~~]

(ii) an initial license in accordance with §92.21 of this chapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing).

(C) An applicant must make the following documents available to a DADS surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required by subparagraph (A) of this paragraph;

(ii) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or bearing the seal of a licensed professional engineer, including a sequence of operation, the owner's manuals, and the manufacturer's published instructions covering all system equipment;

(iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate;

(iv) for software-based fire alarm systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;

(v) documentation of materials used in the building which have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains, including cubicle curtains, and rated ceilings;

(vi) a signed letter from the installer of carpeting verifying that the carpeting is named in the laboratory test document;

(vii) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee licensed by the State Fire Marshal's Office, or bearing the seal of a licensed professional engineer, including the hydraulic calculations, fire alarm configuration, aboveground and underground Contractor's Material and Test Certificate;

(viii) all literature and instructions provided by the sprinkler system manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25;

(ix) service contracts for maintenance and testing of alarm systems, sprinkler systems, and other systems;

(x) a copy of a gas test results of the facility's gas lines from the meter;

(xi) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of architect or engineer's knowledge and belief, in substantial compliance with the architect or engineer's contract documents, the Life Safety Code, DADS licensure standards, and local codes; and

(xii) the contract documents described in paragraph (2) of this section.

(5) Non-approval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, DADS may recommend that the facility not be licensed and approved for occupancy. The items that may trigger non-approval include:

(i) substantial changes made during construction that were not submitted to DADS for review and which may require revised "as-built" drawings to cover the changes, including architectural, structural, mechanical, and electrical items specified in paragraph (3)(B) of this section;

(ii) construction that does not meet minimum Life Safety Code or DADS licensure standards, including corridors that are less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) lack of written approval by local authorities;

(iv) fire protection systems, including fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;

(v) required exits not all usable according to NFPA 101 requirements;

(vi) telephones that are not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment that are not installed or not functioning; and

(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) A facility must submit two copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet to DADS for DADS records and the facility's use for evacuation plans and fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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SUBCHAPTER H. ENFORCEMENT
DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.551. Administrative Penalties.

(a) Assessment of an administrative penalty. DADS may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by DADS;

(3) refuses to allow a DADS representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a DADS representative or the enforcement of this chapter;

(5) willfully interferes with a DADS representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) Criteria for assessing an administrative penalty. DADS considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, DADS may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. DADS uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.
Figure: 40 TAC §92.551(d)
[~~Figure: 40 TAC §92.551(d)~~]

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) DADS may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) DADS provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give DADS written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and DADS will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give DADS written consent to DADS' report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) DADS gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, and to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that DADS determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2) - (7) of this section;

(C) related to advance directives as described in §92.41(g);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Advance Directives); or

(ii) the same right of all residents under §92.125 of this chapter; or

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) DADS is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS' supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that DADS determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty

that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS; and

(B) agree to waive the license holder's right to an administrative hearing if DADS approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) DADS may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) DADS approves or denies a license holder's amelioration plan not later than 45 calendar days after the date DADS receives the plan. If DADS approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) DADS does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2016.

TRD-201601672
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 438-2235

CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.2; and new §97.202 in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment and new section is, in part, to implement House Bill 4001, 84th Legislature, Regular Session, 2015, which amends Texas Health and Safety Code, Chapter 142, governing home and community support services agencies (HCSSA). House Bill 4001 adds habilitation as a service that a HCSSA provides and defines "habilitation" as services described in Texas Government Code §534.001 that are delivered by a licensed HCSSA. Therefore, the proposed rules allow a licensed HCSSA to provide habilitation and require those services to be provided in accordance with Texas Administrative Code, Title 40, Chapter 97. The proposed rules do not require an entity providing habilitation to obtain a HCSSA license if the entity does not provide any other service for which a license is required-home health, hospice, or personal assistance services. The proposal also includes minor editorial changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.2 defines habilitation according to Texas Government Code §534.001. The proposed amendment uses the acronyms for alternate delivery site, end stage renal disease, legally authorized representative, and registered nurse as defined terms. The definitions of those terms were not changed, but they were reordered alphabetically. The proposed amendment also makes minor editorial changes.

The proposed new §97.202 states that if a HCSSA provides habilitation, the services must be provided in accordance with the minimum licensure standards in Chapter 97 and the specific standards that apply to the categories of service designated on the HCSSA's license.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and new section are in effect, enforcing or administering the amendment and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new section will not have an adverse economic effect on small businesses or micro-businesses, because there are no costs for compliance with the amendment and new section.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and new section are in effect, the public benefit expected as a result of enforcing the amendment and new section is the provision of habilitation by a licensed HCSSA in accordance with HCSSA standards.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendment and new section. The amendment and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Christy Parks at (512) 438-3791 in DADS Regulatory Services division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R12, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R12" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142 which authorizes the executive commissioner to license and regulate home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Health and Safety Code §§142.001 - 142.017, and Texas Human Resources Code, §161.021.

§97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative polices and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternative delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) [~~(5)~~] Advanced practice nurse--A registered nurse who is approved by the Texas Board of Nursing to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the Texas Board of Nursing. See the Texas Board of Nursing's definition of advanced practice nurse in Title 22, Texas Administrative Code, (22 TAC) [~~22 TAC~~] §221.1.

(7) [~~(6)~~] Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(8) [~~(7)~~] Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(9) [~~(8)~~] Agency--A home and community support services agency.

[~~(9) Alternate delivery site (ADS)--A facility or site, including a residential unit or an inpatient unit:~~]

[~~(A) that is owned or operated by an agency providing hospice services;~~]

[~~(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;~~]

[~~(C) that is located in the geographical area served by the hospice; and~~]

[~~(D) from which the hospice provides hospice services.~~]

(10) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(11) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(12) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(13) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(14) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(15) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(16) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(17) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(18) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(19) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(20) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(21) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(22) Certified home health services--Home health services that are provided by a certified agency.

(23) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(24) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(25) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(26) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(27) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(28) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(29) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(30) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(31) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(32) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(33) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(34) DADS--Department of Aging and Disability Services.

(35) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(36) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(37) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(38) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(39) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(40) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(41) ESRD--End stage renal disease. [~~(ESRD)--~~]For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(42) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(43) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(44) [~~(43)~~] Health assessment--A determination of a client's physical and mental status through inventory of systems.

(45) [~~(44)~~] Home and community support services agency--A person who provides home health, hospice, habilitation, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(46) [~~(45)~~] Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(47) [~~(46)~~] Home health medication aide--An unlicensed person issued a permit by DADS to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(48) [~~(47)~~] Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(49) [~~(48)~~] Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(50) [~~(49)~~] Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(51) [~~(50)~~] Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(52) [~~(51)~~] Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(53) [~~(52)~~] Independent living environment--A client's residence, which may include a group home, foster home, or boarding

home facility, or other settings where a client participates in activities, including school, work, or church.

(54) [~~(53)~~] Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(55) [~~(54)~~] Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(56) [~~(55)~~] Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(57) [~~(56)~~] IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(58) [~~(57)~~] JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(59) [~~(58)~~] Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(60) [~~(59)~~] LAR [~~Legally authorized representative (LAR)~~]--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(61) [~~(60)~~] Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(62) [~~(61)~~] Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(63) [~~(62)~~] Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(64) [~~(63)~~] Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(65) [~~(64)~~] Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(66) [~~(65)~~] Medication administration record--A record used to document the administration of a client's medications.

(67) [~~(66)~~] Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(68) [~~(67)~~] Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(69) [~~(68)~~] Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(70) [~~(69)~~] Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(71) [~~(70)~~] Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(72) [~~(71)~~] Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(73) [~~(72)~~] Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(74) [~~(73)~~] Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(75) [~~(74)~~] Original active client record--A record composed first-hand for a client currently receiving services.

(76) [~~(75)~~] Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(77) [~~(76)~~] Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(78) [~~(77)~~] Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(79) [~~(78)~~] Person--An individual, corporation, or association.

(80) [~~(79)~~] Person with a disclosable interest--Any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(81) [~~(80)~~] Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(82) [~~(81)~~] Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(83) [~~(82)~~] Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(84) [~~(83)~~] Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(85) [~~(84)~~] Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(86) [~~(85)~~] Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(87) [~~(86)~~] Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(88) [~~(87)~~] Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(89) [~~(88)~~] Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(90) [~~(89)~~] Plan of care--The written orders of a practitioner for a client who requires skilled services.

(91) [~~(90)~~] Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(92) [~~(91)~~] Preparedness--Actions taken in anticipation of a disaster.

(93) [~~(92)~~] Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(94) [~~(93)~~] Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(95) [~~(94)~~] Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(96) [~~(95)~~] Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

~~[(96) Registered nurse (RN)--A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.]~~

(97) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed

Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(98) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(99) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(100) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(101) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(102) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(103) Restraint--A restraint is:

(A) A manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) A drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(104) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(105) [~~(104)~~] Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(106) [~~(105)~~] Section--A reference to a specific rule in this chapter.

(107) [~~(106)~~] Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(108) [~~(107)~~] Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(109) [~~(108)~~] Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(110) [~~(109)~~] Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(111) [~~(110)~~] Statute--The Texas Health and Safety Code, Chapter 142.

(112) [~~(111)~~] Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(113) [~~(112)~~] Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(114) [~~(113)~~] Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(115) [~~(114)~~] Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(116) [~~(115)~~] Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(117) [~~(116)~~] Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(118) [~~(117)~~] Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(119) [~~(118)~~] Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(120) [~~(119)~~] Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(121) [~~(120)~~] Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(122) [~~(121)~~] Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(123) [~~(122)~~] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601661
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 438-3791

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SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 1. GENERAL PROVISIONS

40 TAC §97.202

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§97.202. Habilitation.

(a) An agency may provide habilitation.

(b) An agency that provides habilitation must provide habilitation in accordance with this chapter, including any licensure standards in Subchapter D of this chapter that apply to the categories of service designated on the agency's license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601662
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 438-3791

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 800, relating to General Administration: Subchapter B. Allocations, §800.68

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to amend Agency rules to clarify that the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in Agency rule §800.52(7). This proposed amendment also strikes an adjacent clause that is now out of date and unnecessary.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68(b)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(c)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(d)(3) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(e)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state or to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to prevent local workforce development areas (workforce areas) from receiving substantially more funding than in a previous year, providing ample time for program capacity building.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 3, 2015. The Commission also conducted a webinar with Board executive directors and Board staff on November 12, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.68. Adult Education and Literacy.

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (f) of this section.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after Fiscal Year (FY) 2015)~~].

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

(1) The relative proportion based on:

(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and

(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;

(2) a base amount of 1 percent for each workforce area; and

(3) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.

(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(e) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601601
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0829

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CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §805.2 and §805.3

Subchapter B. Staff Qualifications, §805.21

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §805.21 is to address issues based on observations and feedback related to finding and supporting qualified staff across an Adult Education and Literacy (AEL) system built on partnerships.

Current staff qualification requirements set forth in §805.21 were carried over with some modifications from the Texas Education Code (TEC). The TEC rules were developed for an AEL program that largely operated as an independent, nonintegrated program. Transition of the AEL program to TWC, with the implementation of new contracts, has revealed a stronger need for partnerships, including partnerships with community colleges and Local Workforce Development Boards (Boards).

The amendment to §805.3 aligns with new Texas Education Code (TEC) §25.085, which modifies the compulsory attendance age from 18 years to 19 years.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§805.2. Definitions

New §805.2(7) defines "assessment services" as the processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance to direct placement, progress, and achievement in AEL and other instructional services, including the identification of potential academic or support service needs.

New §805.2(8) defines "clock hour," distinguishing a clock hour of 60 minutes from a credit hour, which constitutes 50 minutes of instruction over a 15-week period in a semester system or a 10-week period in a quarter system.

New §805.2(9) defines "college and career transitional support" as support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

New §805.2(12) defines "literacy," in alignment with the Workforce Innovation and Opportunity Act (WIOA), as an individual's ability to read, write, and speak in English, and to compute and

solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

New §805.2(13) defines "principles of adult learning" as a wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

New §805.2(14) defines "proctoring" as one type of assessment service, the administration of tests or pretests by test proctors working under the guidance or supervision of an individual who oversees program assessment services and/or accountability assessment.

New §805.2(15) defines "professional development" as encompassing all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e., the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

New §805.2(16) defines "program year" for AEL purposes. The AEL program year, which aligns to the U.S. Department of Education's (ED) Adult Education and Family Literacy Act (AEFLA) program year, is July 1 through June 30.

New §805.2(17) defines "substitute," specifying the distinction between a substitute and a full- or part-time instructor. A substitute works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

New §805.2(18) defines "support services," to align with the definition in WIOA §2, as services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities.

New §805.2(19) defines "workforce training" to align with the definition in WIOA §134(c)(3)(D), which states that workforce training services may include the following:

occupational skills training, including training for nontraditional employment;

on-the-job training;

incumbent worker training;

programs that combine workplace training with related instruction, which may include cooperative education programs;

training programs operated by the private sector;

skill upgrading and retraining;

entrepreneurial training;

transitional jobs;

job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

§805.3. Federal and State AEL Funds

Section 805.3 is amended to replace "18 years of age" with "19 years of age" to align with new TEC §25.085.

SUBCHAPTER B. STAFF QUALIFICATIONS

The Commission proposes the following amendments to Subchapter B:

§805.21. Staff Qualifications and Training

Current §805.21(1) and (2) are removed.

Current §805.21(3) is renumbered as new §805.21(1), and is amended to apply additionally to administrative, data entry, and proctoring staff, and staff providing support or employment services to students.

Current §805.21(4) is renumbered as new §805.21(2), and is amended to remove teachers and counselors and to apply additionally to staff that oversees program assessment services and/or accountability and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

New §805.21(3) is added to specify requirements for workforce training instructors.

New §805.21(4) is added to set forth the process for submitting staff qualification exemption requests.

New §805.21(4)(B) specifies that exemptions must be submitted and approved prior to an individual being placed in the position for which an exemption is requested.

Current §805.21(5) is amended to remove teachers and counselors and add "other staff with program oversight or coordination responsibilities." The required 12 clock hours of professional development annually is modified to 15 clock hours each program year. The provision modifying the amount of required professional development once the described individuals have completed six clock hours of AEL college credit or two years of AEL experience is removed. Additionally, staff described in §805.21(5), hired on or after January 1 of a program year, may have half of the required staff professional development time required in that particular program year.

Current §805.21(6) is renumbered as new §805.21(9), new §805.21(6) is added to specify that all AEL instructional staff, except substitutes, who are paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year.

New §805.21(6)(A)(i) - (iii) specify that the 15 hours shall include three clock hours of principles of adult learning as defined in §805.2(13), six clock hours in relevant areas of literacy instruction, with literacy defined in §805.2(12), and six hours at the discretion of the program that consist of content related to the AEL program's purpose, which is to provide adults with specific basic education that enables them to effectively:

--acquire the basic educational skills necessary for literate functioning;

--participate in job training and retraining programs;

--obtain and retain employment; and

--continue their education to at least the level of secondary school completion and postsecondary education preparation.

New §805.21(6)(A)(iv) allows for six clock hours of content area in staff professional development to be waived for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

New §805.21(6)(B) is added to specify that staff meeting the specifications outlined in §805.21(6)(A) and hired on or after January 1 of a program year, may require half of the professional development time required for that program year, and to specify that for instructors in the content areas of reading, writing, mathematics, and English language acquisition, the professional development time completed shall consist of three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

New §805.21(6)(C) is added to specify that staff described in §805.21(2) must receive at least six clock hours of professional development as described in §805.21(b)(2)(A)(i) - (iii) within 30 calendar days of providing instructional activities if new to AEL or direct student service delivery; the six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. New §805.21(6)(C) also specifies that any waiver of the requirement that staff members who are new to AEL or to direct student service must receive staff development within 30 calendar days of providing instructional services shall be approved before the individual provides any instructional services.

Language referring to exemptions for qualifications, which previously required Commission approval when an entity submitted its application for funding, has been removed from current §805.21(6).

New §805.21(7) is added to specify that staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

New §805.21(8) is added to specify that AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

Current §805.21(6) is renumbered as new §805.21(9) and modified to remove the word "in-service" and replace the term "local programs" with "grant recipients." The definition of "exceptional circumstances" is added to include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Language is changed to specify that documents justifying these circumstances shall be available for monitoring and as requested by AEL staff. Language requiring exemptions to be submitted to the Commission for approval in cases of exemptions for minimum qualifications is removed.

Current §805.21(7) is renumbered as new §805.21(10), and "fiscal agent" is replaced with "grant recipient."

Current §805.21(8) is removed.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to stronger alignment to an integrated system built on a need for partnerships, including those with community colleges and Local Workforce Development Boards.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 3, 2015. The Commission also conducted a webinar with Board executive directors and Board staff on November 12, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,

Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §805.2, §805.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.2. Definitions.

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

(1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education (ABE)--Instruction in reading, writing, and speaking and comprehending English, and solving quantitative problems, including functional context, designed for adults who:

(i) have minimal competence in reading, writing, and solving quantitative problems;

(ii) are not sufficiently competent to speak, read, or write the English language; or

(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education (ASE)--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(C) English literacy education (EL)--Instruction designed to help adults with limited English proficiency achieve competence in the English language.

(2) AEL consortium--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

(3) AEL fiscal agent--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

(4) AEL grant recipient--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

(5) AEL lead organization of a consortium--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.

(6) AEL service provider--An entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

(7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.

(8) Clock hour--60 minutes.

(9) College and career transitional support--Support that may include, but is not limited to recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

(10) [~~(7)~~] Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, or assessment services by a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this title (relating to Staff Qualifications and Training).

(B) A student contact hour is 60 minutes.

(11) [~~(8)~~] Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients include:

(A) a local educational agency;

(B) a community-based organization of demonstrated effectiveness;

(C) a volunteer literacy organization of demonstrated effectiveness;

(D) an institution of higher education;

(E) a public or private nonprofit agency;

(F) a library;

(G) a public housing authority;

(H) a nonprofit institution that is not described in any of subparagraphs (A) - (G) of this paragraph and has the ability to provide literacy services to adults and families; and

(I) a consortium of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) - (H) of this paragraph.

(12) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of profi-

ciency necessary to function on the job, in the family of the individual, and in society.

(13) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(14) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(15) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e., the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

(16) Program year--The AEL program year is July 1 through June 30.

(17) Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

(18) Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in Workforce Innovation and Opportunity Act (WIOA) §2.

(19) Workforce training--Services described in WIOA §134(c)(3)(D), including the following:

(A) occupational skills training, including training for nontraditional employment;

(B) on-the-job training;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

(J) AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

§805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who have attained 19 [~~18~~] years of age unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601603
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0829

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SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.21. Staff Qualifications and Training.

The requirements of this section shall apply to all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff.

[~~(1) All staff shall receive at least 12 clock hours of professional development annually.~~]

[~~(2) All staff new to AEL and assigned assessment and instructional duties shall receive six clock hours of in-service professional development before they begin work in assessment and instructional activities, in addition to the annual professional development requirements set forth in paragraph (1) of this section.~~]

(1) [~~(3)~~] AEL aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students [~~Aides~~] shall have at least a high school diploma or high school equivalency certificate.

(2) [~~(4)~~] AEL directors [~~Directors, teachers, counselors, and~~] supervisors, staff that oversees program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

(3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.

(4) Requests for exemptions for staff qualification requirements in individual cases:

(A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and

(B) shall be submitted and approved prior to an individual being placed in the position in question.

(5) All AEL directors [~~Directors, teachers, counselors, and~~] supervisors, and other staff with program oversight or coordination responsibilities [~~without valid Texas teacher certification~~] shall receive 15 [~~attend 12~~] clock hours of [~~in-service~~] professional development each program year with the following exception: Staff hired on or after January 1 of a program year may require half of the professional development time required for that program year. [~~annually, in addition to that specified in paragraph (2) of this section, until they have completed either six clock hours of AEL college credit or attained two years of AEL experience.~~]

(6) All AEL instructional staff, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:

(A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:

(i) receive three clock hours of training in principles of adult learning;

(ii) receive six clock hours in relevant areas of literacy instruction; and

(iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:

(I) acquire the basic educational skills necessary for literate functioning;

(II) participate in job training and retraining programs;

(III) obtain and retain employment; and

(IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

(iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

(B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

(C) Staff described in this paragraph shall receive at least six clock hours of the required professional development outlined in subparagraph (A)(i) - (iii) of this paragraph within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructional services.

(7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

(8) AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

(9) [~~(6)~~] The requirements for [~~in-service~~] professional development may be reduced by grant recipients [~~local programs~~] in individual cases in which [~~where~~] exceptional circumstances prevent employees from completing the required hours of [~~in-service~~] professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff [~~maintained. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Commission for approval in the application for funding and shall include justification and proposed qualifications~~].

(10) [~~(7)~~] Records of staff qualifications and professional development shall be maintained by each grant recipient [~~fiscal agent~~] and shall be available for monitoring.

[~~(8) The requirements in paragraphs (1) - (6) of this section also apply to volunteers who generate student contact time, as defined in §805.2, which is accrued by the AEL program and reported to the Commission for funding purposes.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
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For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, §217.2, Definitions; §217.3, Motor Vehicle Titles; §217.4, Initial Application for Title; §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; Subchapter B, §217.26, Identification Required; §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers; §217.40, Special Registration Permits; §217.43, Military Specialty License Plates; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.46, Commercial Vehicle Registration; §217.54, Registration of Fleet Vehicles; §217.55, Exempt and Alias Vehicle Registration; Subchapter D, §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle; and Subchapter F, §217.123, Access to Motor Vehicle Records.

EXPLANATION OF PROPOSED AMENDMENTS

Several bills from the 84th Legislature, Regular Session, 2015, amended sections of the Transportation Code. Because of these statutory changes, several rules must be amended to maintain consistency with the amended statutes. Amendments are proposed throughout Chapter 217, Subchapters A, B, D, and F to reflect the statutory changes and to correct statutory citations; delete unnecessary language, including language that repeats statute; and to update and clarify various requirements and procedures.

SECTION BY SECTION ANALYSIS

Amendments are proposed to §217.2, Definitions, to update the definition of "implement of husbandry" to mirror the amendment to the definition in Transportation Code, §541.201(6) by Senate Bill 971, 84th Regular Session. This section is also amended to include a definition for "even trade."

Amendments are proposed to §217.3, Motor Vehicle Titles, to remove an unnecessary sentence that requires a brand on a title indicating that an oversize permit must be obtained.

Amendments are proposed to §217.4, Initial Application for Title, to remove an unnecessary rule citation, update numbering within the rule, and prescribe requirements applicable to "even trade" title transactions. The proposed amendments require both parties to an even trade to apply for title in person at the same time, unless a party provides a power of attorney and medical documentation indicating the party is unable to be physically present.

Amendments are proposed to §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; §217.26, Identification Required; and §217.123, Access to Motor Vehicle Records, to add a concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H as an acceptable form of identification to support an application for a title, replacement title, initial registration, or a request for personal information.

Amendments are proposed to §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers, to implement House Bill 75, 84th Regular Session. This bill exempted a farmers' cooperative society incorporated under Chapter 51, Agriculture Code, or a marketing association organized under Chapter 52, Agriculture Code from the requirement to submit proof of the applicant's Texas Agriculture or Timber Exemption Registration issued by the Texas Comptroller of Public Accounts when applying for or renewing the registration of farm plates under this section.

Amendments are proposed to §217.40, Special Registration Permits, to reflect that permits are issued in lieu of registration insignia as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The amendments also delete "Permits" from the section heading.

Amendments are proposed to §217.43, Military Specialty License Plates, to simplify the rule and allow for future amendments to the statutes authorizing military specialty license plates without requiring rule amendments. Amendments to this section are also proposed to implement House Bill 789, 84th Regular Session, which amended Transportation Code, §504.303, to allow a retired member of the United States armed forces to use an identification card issued by any branch of the military under the jurisdiction of the United States Department of Defense or the United States Department of Homeland Security indicating that the member is retired to support an application for a military specialty license plate. Amendments are also proposed to update numbering within the section.

Amendments are proposed to §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices, to implement House Bill 792, 84th Regular Session, which amended Transportation Code, §504.502 by adding "bus" to the type of vehicle eligible for antique plates.

Amendments are proposed to §217.46, Commercial Vehicle Registration, to clarify which vehicles may not be registered in combination and to reflect that tow trucks are issued permits by the Texas Department of Licensing and Regulation under Occupations Code, Chapter 2308, Subchapter C.

Amendments are proposed to §217.54, Registration of Fleet Vehicles, to clarify that for a cancellation of a commercial fleet vehicle registration for non-compliance with the inspection requirements under Transportation Code, Chapter 548, a registrant must pay a $10 fee in addition to the other requirements for reinstatement of the registration.

Amendments are proposed to §217.55, Exempt and Alias Vehicle Registration, to implement House Bill 1360, 84th Regular Session, which added United States Coast Guard Auxiliary Vehicles to the categories of vehicles eligible for an exemption under Transportation Code, §502.453. Amendments are also proposed to clarify the language in the rule.

Amendments are proposed to §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle, to correct a statutory citation.

Further, nonsubstantive amendments are proposed throughout these sections to correct grammar and punctuation.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amended sections will be accuracy, clarity, and consistency in the department's rules. Mr. Kuntz has also determined that for each of the first five years the proposed amendments are in effect, there are no anticipated significant economic costs for persons required to comply with the amendments as proposed.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the amendments.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.2 - 217.5, 217.7

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) Alias title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

(4) Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Division director--The director of the department's Vehicle Titles and Registration Division.

(7) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) Exempt agency--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(10) House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

(11) Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.

(12) Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck. <u>This term does include a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or a motor vehicle designed and adapted to deliver feed to livestock.</u>

(13) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether

importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) Moped--A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

(15) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(16) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(18) Person--An individual, firm, corporation, company, partnership, or other entity.

(19) Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(20) Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(21) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States or foreign passport.

(B) Business applicant. If the applicant is a business, verifiable proof consists of an original or copy of a letter of signature authority on letterhead, a business card, or employee identification and a copy of current photo identification issued by this state or by the United States or foreign passport.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

(22) Even trade--A transaction involving the even exchange of two automobiles with comparable standard presumptive value.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers having a gross weight of 4,000 pounds or less may apply for and receive a Texas title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width and forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet in width or less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or

less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. [~~If the park model type trailer exceeds one hundred two inches in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.~~]

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from the three basic component parts (motor, frame, and body), except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin is provided.

(B) A newly assembled vehicle, for which a title has never been issued in this jurisdiction or any other, may be titled if:

(i) it is assembled and completed with a body, motor, and frame, except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle classes, (as established by the Federal Highway Administration, except as provided by subparagraph (C) of this paragraph), that were never engineered or manufactured to be combined with one another;

(iii) it has all safety components required by federal law during the year of assembly, unless the vehicle qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6) of this section;

(v) for a vehicle assembled with a body, motor, and frame, the applicant provides proof, on a form prescribed by the department, of a safety inspection performed by an Automotive Service Excellence (ASE) technician with valid certification as a Certified Master Automobile and Light Truck Technician, certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated safely on the roadway; and

(III) is equipped and operational with all equipment required by statute or rule as a condition of sale during the year the vehicle was assembled unless it is being inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and frame, the applicant submits a copy of the Certified Master Automobile and Light Truck Technician's ASE certification;

(vii) the applicant submits a Rebuilt Vehicle Statement; and

(viii) the applicant submits the following to establish the vehicle's vehicle identification number:

(I) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department; or

(II) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the component part by which the vehicle will be identified.

(C) Component parts from the following vehicle classes may be interchanged with one another or used in the creation of an assembled vehicle:

(i) 2-axle, 4-tire passenger cars;

(ii) 2-axle, 4 tire pickups, panels and vans;

(iii) 6-tire dually pickups, of which the rear tires are dual tires.

(D) The ASE inspection for a newly assembled vehicle required under subparagraph (B) of this paragraph is in addition to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501[;]; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "nonrepairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

§217.4. Initial Application for Title.

(a) Time for application. Except as otherwise provided in Transportation Code, Chapter 501, a [A] person must apply for the title not later than the 30th day after the date of assignment, except:

(1) in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser; or,

[~~(2) as provided by §215.144(e) of this title (relating to Record of Sales and Inventory); or~~]

(2) [~~(3)~~] a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership.

(b) Place of application. When motor vehicle ownership is transferred, a title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant, except:

(1) as provided by Transportation Code, Chapters 501 and 502 and by §217.84(a) of this title (relating to Application for Nonrepairable or Salvage Vehicle Title);

(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or

(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(1) motor vehicle description including, but not limited to, the motor vehicle:

(A) year;

(B) make;

(C) identification number;

(D) body style; and

(E) empty weight;

(2) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(3) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(4) previous owner's legal name and complete mailing address, if available;

(5) legal name as stated on the identification presented and complete address of the applicant;

(6) name and mailing address of any lienholder and the date of lien, if applicable;

(7) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(8) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(1) evidence of vehicle ownership, as described in §217.5 of this title (relating [~~related~~] to Evidence of Motor Vehicle Ownership);

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(3) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(4) an identification certificate if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations:

(A) A lien recorded on out-of-state evidence as described in §217.5 cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached; and

(B) A lien recorded on out-of-state evidence as described in §217.5 is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title; and

(6) any documents required by §217.9 of this title (relating to Bonded Titles).

(e) Requirements applicable to even trades. Both parties to an even trade must apply for title in person at the same time. If one party to an even trade cannot be physically present due to a verifiable physical or medical condition, the transaction may be processed by a representative of the applicant if the representative presents documentation authorizing the representative to act on behalf of the applicant and documentation from a treating physician attesting that the applicant is unable to be physically present. One party to an even trade may not be appointed as a representative of the applicant who is unable to be physically present, and no person may serve as representative of both parties to an even trade.

§217.5. Evidence of Motor Vehicle Ownership.

(a) Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle year, make, identification number, and body style;

(ii) the empty or shipping weight;

(iii) the gross vehicle weight when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iv) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(v) if the vehicle is a "neighborhood electric vehicle," a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A title issued by the department, a title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the title application for any used motor vehicle. A registration receipt is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) unless the applicant is an active duty member of the U.S. Armed Forces or is from the immediate family of such a member returning to Texas with proof of the active duty status of the family member, verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(b) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(1) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(2) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(3) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(A) incomplete or altered vehicle identification number;

(B) alteration or strikeover of the vehicle's model year;

(C) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(D) alteration or strikeover to the weight.

(4) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(A) in which the date of sale on an assignment has been erased or altered in any manner; or

(B) of alteration or erasure on a Dealer's Reassignment of Title.

(c) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Identification required.

(1) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

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

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(F) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification of one owner must be presented;

(B) the name of a leasing company, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(ii) the leasing company may submit:

(I) a government issued photo identification, required under paragraph (1) of this subsection, of the lessee listed as the registrant; or

(II) a government issued photo identification, required under paragraph (1) of this subsection, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(ii) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(iii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney; or

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity.

(4) Within this subchapter, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(6) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301 is exempt from submitting to the county tax assessor-collector, but must retain:

(A) the owner's identification, as required under paragraph (1) of this subsection; and

(B) authorization to sign, as required under paragraph (2) of this subsection.

(7) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

§217.7. Replacement of Title.

(a) Lost or destroyed title. If a title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(b) Identification required.

(1) An owner or lienholder may not apply for a certified copy of title unless the applicant presents a current photo identification of the owner or lienholder containing a unique identification number and expiration date. The identification document must be a:

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

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(F) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification for each owner must be presented;

(B) the name of a leasing company, then the lessor's employee or authorized agent who signed the application for the leasing company must present:

(i) a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney;

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity; or

(C) identification, required under paragraph (1) of this subsection, of the owner or lienholder.

(4) Within this subchapter, "current" is defined as within 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document, such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(c) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof of the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail. A certified copy will not be issued until after the 14th day that the original title was issued.

(d) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in accordance with Transportation Code, §501.052 and §501.053.

(e) Additional copies. An additional certified copy will not be issued until 30 days after issuance of the previous certified copy.

(f) Fees. The fee for obtaining a certified copy of a title is $2 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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General Counsel
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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.26, 217.33, 217.40, 217.43, 217.45, 217.46, 217.54, 217.55

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.26. Identification Required.

(a) An application for initial registration is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. 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) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(5) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(6) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(b) If the motor vehicle is titled in:

(1) more than one name, then the identification of one owner must be presented;

(2) the name of a leasing company, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(B) the leasing company may submit:

(i) a government issued photo identification, required under this section, of the lessee listed as the registrant; or

(ii) a government issued photo identification, required under this section, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(3) the name of a trust, then a government issued photo identification, required under this section, of a trustee must be presented; or

(4) the name of a business, government entity, or organization, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(B) the employee or authorized agent must present a government issued photo identification, required under this section; and

(C) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(c) Within this section, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(d) Within this section, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or photocopy.

(e) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is exempt from submitting to the county tax assessor-collector, but must retain:

(1) the owner's identification, as required under this section; and

(2) authorization to sign, as required under this section.

(f) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

(g) This section does not apply to non-titled vehicles.

§217.33. Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers.

(a) An applicant must provide a properly completed application for farm plates. Except as provided by subsection (d) of this section, the [~~The~~] application must be accompanied by proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(1) legible;

(2) current; and

(3) in the name of the person or dba in which the vehicle is or will be registered, pursuant to Transportation Code, §502.146 and §502.433.

(b) A registration renewal of farm plates must be accompanied by proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts.

(c) In accordance with Transportation Code, §502.146 and §502.433, an applicant's Texas Agriculture or Timber Exemption Registration Number may be verified through the online system established by the Comptroller.

(d) A farmers' cooperative society incorporated under Chapter 51, Agriculture Code, or a marketing association organized under Chapter 52, Agriculture Code applying for or renewing the registration of farm plates under this section is not required to submit proof of the applicant's Texas Agriculture or Timber Exemption Registration issued by the Texas Comptroller of Public Accounts.

§217.40. Special Registrations [~~Registration Permits~~].

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I, charge the department with the responsibility of issuing special registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of special registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.434. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's annual registration fee and the annual fee for the desired gross vehicle weight computed as follows:

(i) one-month (or 30 consecutive days)--10 percent;

(ii) one-quarter (three consecutive months)--30 percent;

(iii) two-quarters (six consecutive months)--60 percent; or

(iv) three-quarters (nine consecutive months)--90 percent.

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the additional weight has been paid prior to the actual hauling.

(F) An applicant must provide proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(i) legible;

(ii) current;

(iii) in the name of the person or dba in which the vehicle is or will be registered; and

(iv) verifiable through the online system established by the Comptroller.

(2) Annual permits.

(A) Transportation Code, §502.093 authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and

(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.253 and §502.255.

(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Currently registered foreign semitrailers having a gross weight in excess of 6,000 pounds used or to be used in combination with commercial motor vehicles or truck tractors having a gross vehicle weight in excess of 10,000 pounds are exempted from the requirements to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255. An annual permit is required for the power unit only. For vehicles registered in combination, the combined gross weight may not be less than 18,000 pounds.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401; the optional county fee for transportation projects under Transportation Code, §502.402; or the optional registration fee for child safety under Transportation Code, §502.403.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094, the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092 authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semi-trailers.

(5) One-trip permits. Transportation Code, §502.095 authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5 fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.095 authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds; and

(F) a commercial vehicle exceeding 10,000 pounds, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with this subchapter, must do so on a form prescribed by the department.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter B, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making application either with the department or the county tax assessor-collectors' offices.

[~~(d) Display of registration insignia. The department will issue a specially designed tag or windshield validation sticker, upon receipt of a complete application for a permit.~~]

[~~(1) Tags shall be displayed in a manner that is clearly visible and legible when viewed from outside of the vehicle. The tag shall be attached to or displayed in the vehicle to allow ready inspection.~~]

[~~(2) Windshield validation stickers shall be displayed on the inside of the front windshield in the lower left corner.~~]

(d) [~~(3)~~] Receipt for permit in lieu of registration. A receipt will be issued for each permit in lieu of registration [~~insignia as evidence of registration~~] to be carried in the vehicle during the time the permit is valid. A one-trip or 30-day trip permit must be displayed as required by Transportation Code, §502.095(f). If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office [~~who issued the original receipt~~]. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.058.

(e) Transfer of temporary [~~registration~~] permits.

(1) Temporary [~~registration~~] permits are non-transferable between vehicles and/or owners.

(2) If the owner of a vehicle displaying a temporary [~~registration~~] permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the county tax assessor-collector office or department immediately.

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091, and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents, if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by paragraph (1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

§217.43. Military Specialty License Plates.

(a) Purpose and Scope. Transportation Code, Chapter 504 authorizes the department to issue military specialty license plates. This section prescribes the policies and procedures for the application, issuance, and renewal of military specialty license plates.

(b) Classification and fees. The department will issue specialty plates for the military and charge fees as authorized by Transportation Code, §504.202 and Chapter 504, Subchapter D.

[~~(1) Meritorious Service. There are no fees for the first set of specialty license plates. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:~~]

[~~(A) Congressional Medal of Honor;~~]

[~~(B) Legion of Valor, consisting of Air Force Cross, Distinguished Flying Cross, Distinguished Service Cross and Navy Cross;~~]

[~~(C) Legion of Merit;~~]

[~~(D) Silver Star;~~]

[~~(E) Bronze Star and Bronze Star with Valor;~~]

[~~(F) Distinguished Service Medal;~~]

[~~(G) Defense Superior Service Medal; and~~]

[~~(H) Air Medal and Air Medal with Valor.~~]

[~~(2) Recognition Award. The first set of specialty license plates is $3 and no registration fee is collected. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:~~]

[~~(A) Former Prisoner of War (POW);~~]

[~~(B) Disabled Veteran;~~]

[~~(C) Purple Heart; and~~]

[~~(D) Pearl Harbor Survivor.~~]

[~~(3) Issued to members or former members of the U.S. Armed Forces. There is no charge for the specialty plate, however, registration fees and any additional fees collected at the time of registration apply. These plates include:~~]

[~~(A) World War II, Korea, Vietnam Operations, Iraqi Freedom, Enduring Freedom, Enduring Freedom Afghanistan, Desert Storm and Desert Shield;~~]

[~~(B) Coast Guard Auxiliary;~~]

[~~(C) Armed Forces Reserved;~~]

[~~(D) U.S. Paratrooper;~~]

[~~(E) Marine Corps League;~~]

[~~(F) Texas Guard (National and State);~~]

[~~(G) Texas Wing Civil Air Patrol;~~]

[~~(H) Woman Veteran;~~]

[~~(I) U.S. Air Force;~~]

[~~(J) U.S. Army;~~]

[~~(K) U.S. Coast Guard;~~]

[~~(L) U.S. Marine Corps; or~~]

[~~(M) U.S. Navy.~~]

[~~(4) Honorably discharged and retired. The following license plates may include the words "Honorably Discharged" or "Retired" if the applicant is a former member of one of the following branches of the U.S. Armed Forces and meets eligibility criteria as established in Transportation Code, Chapter 504:~~]

[~~(A) U.S. Air Force;~~]

[~~(B) U.S. Army;~~]

[~~(C) U.S. Coast Guard;~~]

[~~(D) U.S. Marine Corps; or~~]

[~~(E) U.S. Navy.~~]

[~~(c) Surviving spouse license plates.~~]

[~~(1) The surviving spouse of a deceased Disabled Veteran may apply for "Surviving Spouse Disabled Veteran" specialty license plates, if proof exists that Disabled Veteran License Plates were issued to the veteran prior to the time of death, and the surviving spouse remains unmarried. The first set of specialty license plates is $3 and no registration fee is collected. Registration fees and additional fees will be collected at the time of registration for additional sets.~~]

[~~(2) The surviving spouse of a deceased veteran who, prior to death, had been issued other military specialty plates, may apply for and continue to register one vehicle and pay the fee applicable for that military specialty license plate. The surviving spouse must remain unmarried to remain eligible.~~]

(c) [~~(d)~~] Application. Applications for military specialty license plates must be made to the department and include evidence of eligibility. The evidence of eligibility may include, but is not limited to:

(1) an official document issued by a governmental entity;

(2) a letter issued by a governmental entity on that agency's letterhead;

(3) discharge papers; [~~or~~]

(4) a death certificate; or[~~.~~]

(5) an identification card issued by any branch of the military under the jurisdiction of the United States Department of Defense or the United States Department of Homeland Security indicating that the member is retired.

(d) [~~(e)~~] Period.

[~~(1) Military Vehicle license plates and registration numbers are issued for a five-year period.~~]

[~~(2)~~] The registration for Congressional Medal of Honor license plates expires each March 31. All other specialty plates for the military may be replaced in accordance with §217.32 of this title (relating to Replacement of License Plates, Symbols, Tabs, and Other Devices).

(e) [~~(f)~~] Assignment and Transfer. Military plates may not be assigned and may only be transferred to another vehicle owned by the same vehicle owner.

(f) [~~(g)~~] Applicability. Section 217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) applies to military plates, symbols, tabs, or other devices as to:

(1) what is considered one set of plates per vehicle as determined by vehicle type;

(2) issuance of validation tabs and insignia;

(3) stolen or replaced plates;

(4) payment of other applicable fees;

(5) personalization, except that Congressional Medal of Honor plates may not be personalized;

(6) renewal, except that the owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department;

(7) refunds; and

(8) expiration.

§217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, [~~Vehicle,~~] Classic Travel Trailers, [~~Trailer, and~~] Custom Vehicles, Street Rods and Exhibition Vehicles. [~~Vehicle.~~]

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; and

(x) Military Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the spe-

cialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the Board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The Board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the Board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the Board will return the application as incomplete unless the Board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The Board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(7) Final approval.

(A) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the Board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is $10.

§217.46. Commercial Vehicle Registration.

(a) Eligibility. A motor vehicle, other than a motorcycle, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mails, must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination, Motor Bus, or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.56 of this title (relating to Registration Reciprocity Agreements).

(2) City bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a gross weight in excess of 10,000 pounds used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, may be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000 pounds. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles may not [~~are not required to~~] be registered in combination:

(i) trucks or truck tractors having a gross weight of less than 10,000 pounds or trucks or truck tractors to be used exclusively in combination with semitrailers having gross weights not exceeding 6,000 pounds;

(ii) semitrailers with gross weights of 6,000 pounds or less, or semitrailers that are to be operated exclusively with trucks or truck tractors having gross weight of less than 10,000 pounds;

(iii) trucks or truck tractors used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

(iv) trucks or truck tractors used exclusively in combination with travel trailers and manufactured housing;

(v) trucks or truck tractors to be registered with Farm Truck or Farm Truck Tractor license plates;

(vi) trucks or truck tractors and semitrailers to be registered with disaster relief license plates;

(vii) trucks or truck tractors and semitrailers to be registered with Soil Conservation license plates;

(viii) trucks or truck tractors and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

(ix) vehicles that are to be issued temporary permits, such as 72-Hour Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code, §502.094 and §502.095.

(B) Converted semitrailers. Semitrailers that are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies that are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

(i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck tractor and semitrailer combinations, are not required to be registered; however, the additional weight that is acquired by the use of such axle assemblies must be included in the combined gross weight of the combination.

(ii) Ready-mixed concrete trucks that have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that includes the axle assembly.

(D) Exchange of Combination license plates. Combination license plates shall not be exchanged for another type of registration during the registration year, except that:

(i) if a major permanent reconstruction change occurs, Combination license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

(ii) if the department initially issues Combination license plates in error, the plates will be exchanged for license plates of the proper classification;

(iii) if the department initially issues Truck or Trailer license plates in error to vehicles that should have been registered in combination, such plates will be exchanged for Combination and Token Trailer license plates; or

(iv) if a Texas apportioned carrier acquires a combination license power unit, the Combination license plates will be exchanged for Apportioned license plates.

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 and §217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 and §217.45 of this title.

(6) In Transit license plates. The department may issue an In Transit license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.255), or Apportioned (in accordance with Transportation Code, §502.091) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.094 and §623.011.

(C) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(D) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate unless the Texas Department of Licensing and Regulation has issued a permit for the tow truck under Occupations Code, Chapter 2308, Subchapter C. [~~to tow trucks that are not registered in compliance with Transportation Code, Chapter 643.~~]

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.055.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck tractor combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than 18,000 pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) After a truck or truck tractor is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year. The owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year and provided that the combined gross weight is not less than 18,000 pounds.

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Transportation Code, §623.011.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) prescribed local fees or other fees that are collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Transportation Code, §502.046 if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration);

(D) an application for Texas Title in accordance with Subchapter A of this chapter, or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the current permit issued in accordance with Occupations Code, Chapter 2308, Subchapter C, [~~Certificate of Registration issued in accordance with Transportation Code, Chapter 643,~~] if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of payment will be required when an application for Texas title and registration is accompanied by an out-of-state title that is recorded in the name of the applicant;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

(i) City Bus license plates;

(ii) Combination license plates; and

(iii) Motor Bus license plates.

(B) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(ii) Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registra-

tion fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) statutorily prescribed registration renewal fees;

(B) prescribed local fees or other fees that are collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Transportation Code, §502.046; and

(D) other prescribed documents or fees.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) Transfer between vehicles. Commercial vehicle license plates are non-transferable between vehicles.

(3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck license plates are non-transferable between persons or vehicles, and become void if the vehicle to which the license plates were issued is sold.

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates. An owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles, including trailers and semi-trailers, in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than twenty-five vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee for the vehicle inspections conducted in Texas; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below twenty-five at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle that is not in compliance with the inspection requirements under Transportation Code, Chapter 548 and the Texas Department of Public Safety rules regarding inspection requirements on the anniversary date(s) of the registration.

(3) A vehicle with a cancelled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department cancelled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration cancelled under paragraph 2 of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is only eligible for reinstatement of the registration within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a cancelled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately return the registration insignia to the department.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the invoice for the state's portion of the vehicle inspection fee for a vehicle inspection conducted in Texas.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles[, ~~a vehicle~~] owned by and used exclusively in the service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and[, ~~or~~] used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

~~*[(i)* Exempt registration may be issued for a vehicle that is owned or leased by a non-profit emergency medical service provider; a municipality or county; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code, §502.456.]~~

(i) [~~(ii)~~] The application for exempt registration must contain the vehicle description, the name of the emergency

medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) [~~(iii)~~] A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately [~~or~~] by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The affidavit must be executed by the person who has the proper authority and shall state either: [~~that:~~]

(i) the vehicle is [~~privately owned and is~~] designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt plate is lost, stolen, or mutilated, a properly executed application for exempt plates must be submitted to the county tax assessor-collector.

(2) An application for replacement exempt plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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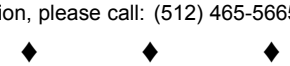

SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.88

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary

and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.88. Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle.

(a) With a non-repairable or salvage motor vehicle title. The ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone, except that an insurance company may sell, transfer, or release ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, only to:

(1) a salvage vehicle dealer;

(2) an out-of-state buyer;

(3) a buyer in a casual sale; or

(4) a metal recycler.

(b) Without a non-repairable or salvage motor vehicle title. If a non-repairable or salvage vehicle title or comparable out-of-state ownership document has not been issued for a non-repairable or salvage motor vehicle, only a salvage vehicle dealer, metal recycler, or governmental entity may sell, transfer, or otherwise release ownership of the motor vehicle. A salvage vehicle dealer, metal recycler, or governmental entity may only sell, transfer, or otherwise transfer ownership of a motor vehicle to which this subsection applies to:

(1) a salvage vehicle dealer;

(2) a metal recycler;

(3) a governmental entity;

(4) an insurance company; or

(5) an out-of-state buyer.

(c) Sale of self-insured non-repairable or salvage motor vehicle. The owner of a self-insured non-repairable or salvage motor vehicle that has been damaged and removed from normal operation shall obtain a non-repairable or salvage vehicle title before selling or otherwise transferring ownership of the motor vehicle.

(d) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company may sell up to five non-repairable or salvage motor vehicles, for which non-repairable or salvage vehicle titles have been issued, to a person in a casual sale during a calendar year.

(e) Records of casual sales.

(1) A salvage vehicle dealer, salvage pool operator, or insurance company must maintain records of each casual sale made during the previous 36 months, in accordance with Transportation Code, §501.108, [~~§501.105,~~] that at a minimum contain:

(A) the date of sale;

(B) the sales price;

(C) the name and address of the purchaser;

(D) a legible photocopy of the purchaser's government-issued photo identification;

(E) the form of identification provided, the identification document number, and the name of the jurisdiction that issued the identification document;

(F) the description of the motor vehicle, including the vehicle identification number, model year, make, body style, and model;

(G) a photocopy of the front and back of the properly assigned ownership document provided to the purchaser; and

(H) the purchaser's certification, on a form provided by the department, that the purchase of motor vehicles in a casual sale is not intended to circumvent the provisions of Transportation Code, Chapter 501 (relating to Certificates of Title) and Occupations Code, Chapter 2302 (relating to Salvage Vehicle Dealers).

(2) Records may be maintained on a form provided by the department or in an electronic format.

(3) Records must be maintained on the business premises of the seller, and shall be made available for inspection upon request.

(f) Export-only sales.

(1) In accordance with Transportation Code, §501.099, only a licensed salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity may sell a non-repairable or salvage motor vehicle to a person who resides outside the United States, and only:

(A) when a non-repairable or salvage vehicle title has been issued for the motor vehicle prior to offering it for export-only sale; and

(B) prior to the sale, the seller obtains a legible photocopy of a government-issued photo identification of the purchaser that can be verified by law enforcement, issued by the jurisdiction in which the purchaser resides that may consist of:

(i) a passport;

(ii) a driver's license;

(iii) consular identity document;

(iv) national identification certificate or identity document; or

(v) other government-issued identification that includes the name of the jurisdiction issuing the document, the purchaser's full name, foreign address, date of birth, photograph, and signature.

(2) The seller must obtain the purchaser's certification, on a form prescribed by the department, that the purchaser will remove the motor vehicle from the United States and will not return the motor vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(3) The seller must provide the buyer with a properly assigned non-repairable or salvage vehicle title.

(4) The seller must stamp FOR EXPORT ONLY and the seller's salvage vehicle dealer license number or the governmental en-

tity's name, whichever applies, on the face of the title and on any unused reassignments on the back of the title.

(g) Records of export-only sales.

(1) A salvage vehicle dealer or governmental entity that sells a non-repairable or salvage motor vehicle for export-only must maintain records of all export-only sales.

(2) Records of each sale must include:

(A) a legible copy of the stamped and properly assigned non-repairable or salvage vehicle title;

(B) the buyer's certified statement required by subsection (f)(2) of this section;

(C) a legible copy of the buyer's photo identification document;

(D) a legible copy of any other documents related to the sale of the motor vehicle; and

(E) a listing of each motor vehicle sold for export-only that states the:

(i) date of sale;

(ii) name and address of the seller;

(iii) name and address of the purchaser;

(iv) purchaser's identification document number;

(v) name of the country that issued the identification document;

(vi) the form of identification provided by the purchaser; and

(vii) description of the motor vehicle that includes the year, make, model, and vehicle identification number of the motor vehicle.

(3) The listing required by paragraph (2)(E) of this subsection must be maintained either on a form provided by the department or in an electronic format approved by the department.

(4) The salvage vehicle dealer or governmental entity shall submit the listing prescribed by paragraph (2)(E) of this subsection to the department within 30 days from the date of sale.

(5) Upon receipt of the listing prescribed by paragraph (2)(E) of this subsection, the department will place an appropriate notation on the motor vehicle record to identify it as a motor vehicle sold for export-only that may not be operated, retitled, or registered in this state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §217.123

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.123. Access to Motor Vehicle Records.

(a) Request for records. A person seeking motor vehicle record information shall submit a written request on the form required by the department. Information will be released in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code, Chapter 730, and Government Code, §552.130. 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 person may not apply for receipt of personal information unless the person 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; [~~or~~]

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

(5) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(c) Electronic access. The department may make motor vehicle record information 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 the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle record information;

(C) termination and default provisions;

(D) service hours for access to motor vehicle records for on-line access;

(E) the contractor's signature;

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

(i) in accordance with 18 U.S.C. §2721 et seq.[~~, Transportation Code, §502.008,~~] and Transportation Code, Chapter 730; and

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

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

(2) Agreements with governmental agencies.

(A) The written service agreement with an agency must contain:

(i) the specified purpose of the agreement;

(ii) method of payment;

(iii) notification regarding the charges;

(iv) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq.[~~, Transportation Code, §502.008,~~] and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

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

(vi) the signature of an authorized official; and

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

(B) Texas Law Enforcement Telecommunication System access is exempt from the payment of fees.

(d) Ineligibility to receive personal information. The department may prohibit a person, business, or agency 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to §217.23, Initial Application for Vehicle Registration; §217.24, Vehicle Last Registered in Another Jurisdiction; §217.29, Vehicle Registration Renewal via Internet; §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices; §217.52, Marketing of Specialty License Plates through a Private Vendor; §217.53, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle; and §217.72, Automated Equipment. The department also proposes new Subchapter I, Fees; §217.181, Purpose and Scope; §217.182, Registration Transaction; §217.183, Fee Amount; §217.184, Exclusions; and §217.185, Allocation of Processing and Handling Fee. In addition, the department proposes the repeal of §217.31, License Plate Reissuance Program.

EXPLANATION OF PROPOSED AMENDMENTS, NEW SUBCHAPTER AND REPEAL

House Bill 2202, 83rd Legislature, Regular Session, 2013, added new §502.1911 to the Transportation Code, which authorizes the department to establish a processing and handling fee to be collected to cover the expenses of collecting registration fees. House Bill 2202 further directs the Board of the Texas Department of Motor Vehicles (board) to "set the fee in an amount that..., is sufficient to cover the expenses associated with collecting registration fees[.]" The proposed rules set the allocation of the processing and handling fee to the department, county tax assessor-collectors, and deputies. The proposed rules also define the scope of a registration transaction and those transactions that are exempt from the processing and handling fee.

The purpose of these proposed rules is to support the department's mission to serve, protect, and advance the citizens and industries in this state with quality motor vehicle related services. To accomplish this mission, in this and related packages, the department proposes rules that will ensure accountability and transparency in the provision of services, combat fraud, streamline and standardize processes across the state, set service standards to enhance consumer confidence, allow for more funding to go toward transportation, establish structures that allow for cost-savings in the future, and modernize services to bring them in line with the needs of today's and tomorrow's consumers.

In concert with this proposal, but in a separate package, the department is also proposing rules to establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any

bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The proposed rules related to deputies reference the fee amounts that can be charged or retained by deputies; therefore, amendments to §217.161, and new sections §§217.162 - 217.168 are related to the fee rules proposed pursuant to Transportation Code, §520.0071, especially §217.185, Allocation of Processing and Handling Fee.

In developing the proposed fee amounts, the department considered information gathered over the past two years from multiple meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. Further, the department contracted with Texas A&M Transportation Institute (TTI) to conduct research regarding costs associated with processing vehicle registration and title transactions. The TTI report estimated costs for county tax assessor-collectors to process vehicle registration transactions using the average transaction times as: (1) walk-in vehicle registration transactions: $2.59; (2) online vehicle registration transactions: $1.36; and, (3) mail-in vehicle registration transactions: $1.97. The estimated costs contained in the TTI report did not anticipate the efficiencies and changes in service proposed in this rule package or any future efficiencies implemented by the counties or the state. The costs calculated by the report included costs associated with collection of local-only fees (e.g., scofflaw, county road and bridge), which are not statewide registration issues, and therefore not under the control of the department in these rules. The proposed compensation of $2.30 for a walk-in transaction, while slightly lower than the TTI conclusion, is higher than the current compensation of $1.90, and should be sufficient to cover the costs of performing the registration transactions when all other costs and efficiencies are considered, including the proposal for the state to perform all aspects of the fulfillment of online registration transactions. Additionally, the study concluded that mail-in vehicle registration transaction cost is $1.97, whereas compensation in the proposed rule is set at $2.30. Although county compensation for online transactions is reduced to $.25, the department is assuming all costs of fulfilling these online transactions at its expense, including payment of the $2 Texas Online fee, thus virtually eliminating costs to the county for these transactions. The counties will continue to hold the registration revenue for these transactions and will benefit from the interest for the 34 days the funds are maintained in county accounts.

The TTI report, available on the department's website, is the most recent and comprehensive collection and analysis of data available to the department regarding costs associated with processing registration and title transactions. The TTI report is available on the department's website at http://www.txdmv.gov/reports-and-data/doc_download/5121-estimating-the-cost-to-process-vehicle-registration-and-title-transactions-in-texas-counties and is hereby incorporated by reference into this preamble.

SECTION BY SECTION ANALYSIS

Amendments proposed to §217.23, Initial Application for Vehicle Registration, add a reference to the processing and handling fee to be established by proposed new §217.183, Fee Amount. In addition, language is added to address vehicle registration in situations where a county tax assessor-collector office is closed for more than a week, which aligns this rule with §217.4, Initial Application for Title.

Amendments proposed to §217.24, Vehicle Last Registered in Another Jurisdiction, add a reference to the processing and handling fee to be established by proposed new §217.183, Fee Amount.

Amendments proposed to §217.29, Vehicle Registration Renewal via Internet, remove language on fees and remove fulfillment responsibilities related to renewal registrations from the county tax assessor-collectors and transfers these obligations to the department. Based on recent actions by the Texas Department of Information Resources regarding Automated Clearing House (ACH) fees, the department plans to research possible implementation strategies for and fiscal impacts of acceptance of ACH transactions.

The department proposes the repeal of §217.31, License Plate Reissuance Program, because the section is unnecessary due to amendments to §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices.

Amendments are proposed to §217.32, to add language permitting replacement of a license plate if the license plate needs to be replaced for cosmetic or readability reasons.

Amendments are proposed to §217.52, Marketing of Specialty License Plates through a Private Vendor, to eliminate no-charge replacement of specialty plates if the plate is at least seven years old. The proposed amendments to this section permit optional replacement of plates at any time upon payment of the required fee. The proposed amendments also renumber subsections due to the elimination of a subsection.

Amendments are proposed to §217.53, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle, to correct a statutory citation and to delete a reference to §217.31, which is proposed for repeal.

Amendments proposed to §217.72, Automated Equipment, reduce the automated registration and titling system fee required by Transportation Code, §502.356 from $1 to $.50, and reiterates that the fee will be deposited into a subaccount of the Texas Department of Motor Vehicles fund.

Proposed new §217.181, Purpose and Scope, states the intention to prescribe the processing and handling fee authorized by Transportation Code, §502.1911.

Proposed new §217.182, Registration Transaction, defines registration transaction for purposes of the subchapter. Registration transaction includes all registration and registration renewal transactions under Transportation Code, Chapter 502, and other listed transactions.

Proposed new §217.183, Fee Amount, sets the amount of the processing and handling fee at $5 and requires that the processing and handling fee be collected with each registration transaction processed by the department, a tax assessor-collector, or a deputy appointed by a tax assessor-collector. This section also clarifies that if a transaction includes both registration and issuance of a license plate or specialty plate, the processing and handling fee shall be collected on the registration transaction only. The proposed fee amount may change depending upon comments received after publication of these proposed rules.

Proposed new §217.184, Exclusions, lists the transactions that are exempt from the processing and handling fee.

Proposed new §217.185, Allocation of Processing and Handling Fee, outlines the allocation of the processing and handling fee for all types of registration transactions. For walk-in transactions processed in person at the office of a county tax assessor-collector and mail-in transactions, the county retains $2.30 of the $5 processing and handling fee, and remits the remainder to the department. For registration transactions processed through the department's online portal, which are discounted by $1.25, counties retain $.25 per transaction, and $3.50 is remitted to the department. The department pays the $2 per credit card transaction fee to Texas Online, which is currently paid by the customer. Further, the proposed rule reduces the total online registration fee to an amount that is lower than the current fee for such a transaction by passing along the savings to the customer. For registration transactions processed by a deputy, the deputy retains $1 in addition to any convenience fees allowed by proposed §217.168 (in a separate rule package), and $1.30 is retained by the county. The portion of the processing and handling fee retained by the department, as set out in the proposed rule, is necessary to fill agency funding shortfalls not provided for by other department revenue collections allowed by statute. The new section also clarifies that the entity receiving the application and processing a temporary permit transaction under Transportation Code, §502.094 or §502.095, retains the entire processing and handling fee. The proposed fee allocation may change depending upon comments received after publication of these proposed rules.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments, new subchapter, and repeal as proposed are in effect, there will be fiscal implications for state and local governments. The fiscal implications are affected by a shift in some of the services provided for online registration renewals from counties to the department, and a shift in the distribution of fees received with vehicle registration renewals. The fiscal implications assume that for the first five years the rule is in effect, 20% more vehicle registrations will be renewed using online resources rather than another transaction method. In addition, it is assumed that total vehicle registrations will increase by 1.5% year to year. County tax assessor-collectors will see a reduction of in-person transactions, and a reduction in processing online renewal registrations. Those reductions will allow counties to reduce overall costs of operation. In addition, both counties and the state will see a savings as a result of discontinuing the mandatory seven-year plate replacement cycle. County tax assessor-collectors will see a reduction in processing and postage costs associated with the mandatory replacement of license plates. For state government, savings will result from a reduction in production costs associated with manufacturing license plates.

No reductions in costs to state government are expected as a result of enforcing or administering the proposed rules. For state government, the predicted effect of the proposed rules in the first year will be an increase in costs of approximately $6,447,899. In the second year, the predicted effect of the new rules will be an increase in costs to the state of approximately $12,351,478. In the third year, the predicted effect of the new rules will be an increase in costs to the state of approximately $15,108,514. In the fourth year, the predicted effect of the new rules will be an increase in costs to the state of approximately $19,262,930. In the fifth year, the predicted effect of the new rules will be an increase in costs to the state of approximately $23,537,837. Over the first five years the rules are in effect, the total increase in costs to the state will be approximately $76,708,658.

No additional costs to local (county) government are expected as a result of enforcing or administering the proposed rules. For local governments, specifically county tax assessor-collector offices, the predicted effect of the proposed rules in the first year will be a decrease in costs of approximately $4,980,533. This decrease in costs is an aggregate number for all 254 county tax assessor-collectors in Texas. In the second year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $9,156,210. In the third year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $10,901,976. In the fourth year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $13,509,423. In the fifth year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $16,166,976. Over the first five years the rule is in effect, the total reduction in costs to counties is approximately $54,715,117.

For local governments, specifically counties, the predicted effect of the new rules in the first year will be a decrease in revenues to counties of approximately $4,966,000. This decrease in revenues is an aggregate number for all 254 county tax assessor-collectors in Texas compared to anticipated current year revenues. In the second year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $10,656,000. In the third year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $13,957,000. In the fourth year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $18,949,000. In the fifth year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $23,822,000. Over the first five years the rule is in effect, the total decrease in revenue to counties will be approximately $72,349,000.

The predicted effect of the new rules in the first year will be an increase in revenues to the department of approximately $2,455,000. In the second year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $19,469,000. In the third year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $20,312,000. In the fourth year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $21,592,000. In the fifth year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $22,906,000. Over the first five years the rule is in effect, the total increase in revenue to the department will be approximately $86,734,000.

Additionally, the implementation of these rules will result in approximately $224,772,638 in a five year period flowing to State Highway Fund (Fund 0006) to support critical transportation needs for the state.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated significant impact on local economies or overall employment as a result of enforcing or administering the amendments, new subchapter, and repeal.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments, new subchapter, and repeal are in effect, the public benefit anticipated as a result of

enforcing or administering the proposed rules will be to provide faster, more convenient and cost-effective services to motorists, and an increase in funding for critical transportation needs. The public will benefit from a decrease in the dependency on in-person registration transactions during an entity's business hours by incentivizing online transactions and reducing the cost of delivering online services. Individuals who renew their registrations online will benefit from a discount to the total registration fee, and from the convenience of being able to renew without having to visit an office in person. Implementation of the rules will also standardize the costs for delivering registration services to the public regardless of where or in what manner the transaction is processed. Transparency of funding sources and amounts for the department will be an additional benefit to the public as the agency moves to a self-funded model through these rules. The public will also benefit by not having to replace a license plate on a registered vehicle that is in good condition for as long as the owner desires. To the extent there are minor overall increases in cost to the public as a result of the implementation of the processing and handling fee, this cost is required by statute, which states that the fee must be set in an amount sufficient to cover the costs of the department, county tax assessor-collectors, deputies, and other specified elements of providing the registration services. Moreover, if the processing and handling fee is not adopted, the department would suffer a shortfall in revenue to support agency operations and the level of service provided by the department to the public would be reduced.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code, Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the amendments, new subchapter, and repeal, since these proposed rules merely set processing and handling fees and distributions of fee amounts between the state and county governments. Counties have discretion to outsource vehicle transactions by deputizing entities to perform work on their behalf, and any such deputies are compensated under these rules out of the county's portion of the fees. Counties also have discretion to provide compensation in amounts above those contemplated in the rules.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments, new subchapter, and repeal may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on May 23, 2016. If any commenter submits written comments disagreeing with the department's position regarding economic impact, the department strongly recommends including documentation to support any stated negative financial, revenue, or cost implications. Such documentation will aid in the board's decision-making process and could include detailed financial statements, business plans, budgets, or other items necessary to demonstrate the stated impact. If a commenter considers any such information confidential, the information should be clearly marked "CONFIDENTIAL." If the department receives a request for this information, the department will comply with the requirements of the Public Information Act, Chapter 552 of the Texas Government Code, and request a ruling from the Office of the Attorney General for any information marked "CONFIDENTIAL."

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.24, 217.29, 217.32, 217.52, 217.53

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.23. Initial Application for Vehicle Registration.

(a) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(1) the signature of the owner;

(2) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, carrying capacity for commercial motor vehicles, and empty weight;

(3) the license plate number;

(4) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(5) the name and complete address of the applicant; and

(6) the name, mailing address, and date of any liens.

(b) The application must be accompanied by the following [~~documents~~]:

(1) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a non-

repairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(2) registration fees prescribed by law;

(3) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(4) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law; [~~and~~]

(5) the processing and handling fee prescribed by §217.183 of this title (relating to Fee Amount); and

(6) [~~(5)~~] any other documents or fees required by law.

(c) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except:

(1) an application for registration, as a prerequisite to filing an application for title, may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered; [~~or~~]

(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or[~~.~~]

(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.

§217.24. Vehicle Last Registered in Another Jurisdiction.

(a) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(b) Registration receipt.

(1) The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(2) Information to be included on the form. The form will include the:

(A) out-of-state title number, if applicable;

(B) out-of-state license plate number, if applicable;

(C) state or country that issued the out-of-state title or license plate;

(D) lienholder name and address as shown on the out-of-state evidence, if applicable;

(E) statement that negotiable evidence of ownership is not being surrendered; and

(F) signature of the applicant or authorized agent of the applicant.

(3) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(A) a completed application for registration, as specified in subsection (a) of this section;

(B) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title, a registration receipt that is not more than six months past the date of expiration, a non-negotiable title, or written verification from the other jurisdiction; [~~and~~]

(C) the processing and handling fee prescribed by §217.183 of this title (relating to Fee Amount); and

(D) [~~(C)~~] any other documents or fees required by law.

(4) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a title under Transportation Code, Chapter 501.

§217.29. Vehicle Registration Renewal via Internet.

(a) Internet registration renewal program. The department will maintain a uniform Internet registration renewal process. This process will provide for the renewal of vehicle registrations via the Internet and will be in addition to vehicle registration procedures provided for in §217.28 of this title (relating to Vehicle Registration Renewal). The Internet registration renewal program will be facilitated by a third-party vendor.

(b) County participation in program. All county tax assessor-collectors shall process registration renewals through an online system designated by the department.

(c) Eligibility of individuals for participation. To be eligible to renew a vehicle's registration via the Internet, the vehicle owner must meet all criteria for registration renewal outlined in this subchapter and in Transportation Code, Chapter 502.

[~~(d) Fees. A vehicle owner who renews registration via the Internet must pay:~~]

[~~(1) registration fees prescribed by law;~~]

[~~(2) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;~~]

[~~(3) a fee of $1 for the processing of a registration renewal by mail in accordance with Transportation Code, §502.197(a); and~~]

[~~(4) a convenience fee of $2 for the processing of an electronic registration renewal paid by a credit card payment in accordance with Transportation Code, §1001.009.~~]

(d) [~~(e)~~] Information to be submitted by vehicle owner. A vehicle owner who renews registration via the Internet must submit or verify the following information:

(1) registrant information, including the vehicle owner's name and county of residence;

(2) vehicle information, including the license plate number of the vehicle to be registered;

(3) insurance information, including the name of the insurance company, the name of the insurance company's agent (if applicable), the telephone number of the insurance company or agent (local or toll free number serviced Monday through Friday 8:00 a.m. to 5:00 p.m.), the insurance policy number, and representation that the policy meets all applicable legal standards;

(4) credit card information, including the type of credit card, the name appearing on the credit card, the credit card number, and the expiration date; and

(5) other information prescribed by rule or statute.

(e) [~~(f)~~] Duties of the county. A county tax assessor-collector shall:

(1) accept electronic payment for vehicle registration renewal via the Internet;

(2) execute an agreement with the department as provided by the director;

(3) process qualified Internet registration renewal transactions as submitted by the third-party vendor;

(4) communicate with the third-party vendor and applicants via email, regular mail, or other means, as specified by the director; and

[~~(5) promptly mail renewal registration validation stickers and license plates to applicants;~~]

[~~(6) ensure that all requirements for registration renewal are met, including all requirements set forth in this subchapter, and in Transportation Code, Chapter 502;~~]

[~~(7) reject applications that do not meet all requirements set forth in this chapter, and in Transportation Code, Chapter 502; and~~]

(5) [~~(8)~~] register each vehicle for a 12-month period.

(f) Duties of the department. The department shall promptly mail renewal registration validation stickers and license plates to applicants.

§217.32. Replacement of License Plates, Symbols, Tabs, and Other Devices.

(a) When a license plate, symbol, tab, or other registration device is lost, stolen, [~~or~~] mutilated, or needs to be replaced for cosmetic or readability reasons, a replacement may be obtained from any county tax assessor-collector upon:

(1) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007; and

(2) the provision of a signed statement, on a form prescribed by the department, that states:

(A) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, [~~or~~] mutilated, or needs to be replaced for cosmetic or readability reasons, and if recovered, will not be used on any other vehicle; and

(B) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(b) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the Board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the Board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The Board will review vendor specialty license plate applications. The Board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for

submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $50 for one year, $130 for three years, and $175 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

[~~(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:~~]

[~~(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and~~]

[~~(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.~~]

(3) [~~(4)~~] Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates [~~before the seventh anniversary after the date of issuance~~] by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) [~~(5)~~] Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) [~~(6)~~] Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $50.

§217.53. Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle.

(a) Purpose. Transportation Code, Chapter 502, Subchapter L and Chapter 504, Subchapter K, provide [~~I, provides~~] for the removal of the license plates and registration insignia when a motor vehicle is sold or transferred. Motor vehicles eligible for this process are limited to a passenger car or a light truck, as those terms are defined in Transportation Code, §502.001.

(b) Disposition of removed license plates. License plates removed from a motor vehicle by a licensed motor vehicle dealer or by a motor vehicle owner in a private transaction as provided in Transportation Code, §502.491, may be:

(1) transferred to another vehicle:

(A) that is titled or will be titled in the same owner name as the vehicle from which the license plates were removed;

(B) that is of the same vehicle classification (passenger car or light truck) as the vehicle from which the license plates were removed; and

[~~(C) if the age of the removed license plate is not greater than provided in §217.31 of this title (relating to License Plate Reissuance Program) which would require a new license plate to be issued; and~~]

(C) [~~(D)~~] upon acceptance of a request to transfer the license plate by the county tax assessor-collector in which the application is filed as provided by Transportation Code, §501.023 or §502.040, whichever applies;

(2) disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle; or

(3) retained by the owner of the motor vehicle from which the license plates were removed.

(c) Vehicle transit permit.

(1) Obtaining a vehicle transit permit. A person who obtains a motor vehicle in a private transaction may obtain one vehicle transit permit (temporary single-trip permit), through the department's website at www.txdmv.gov if the seller or transferor has removed the license plates and registration insignia.

(2) Restrictions. The permit, which is valid only for the period shown on the permit, may be used for operation of the motor vehicle only as provided in Transportation Code, §502.492, and must be carried in the vehicle at all times. The permit may only be used on passenger vehicles 6,000 pounds or less and light trucks with a gross vehicle weight of 10,000 pounds or less.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601645
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 465-5665

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43 TAC §217.31

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.31. License Plate Reissuance Program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §217.72

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.72. Automated Equipment.

(a) Initial allocation of automated equipment. When requested by resolution of the commissioners court of a county, and subject to the terms and conditions specified in subsection (d) of this section, the department will:

(1) make a fair share allocation of automated equipment available to that county to be used by its tax assessor-collector in implementing and operating RTS;

(2) provide the tax assessor-collector with computer programs and personnel training; and

(3) furnish official automated forms and, for the initial start-up of the system, automated equipment supplies.

(b) Additional automated equipment. At the request of the tax assessor-collector of a county, subject to the terms and conditions specified in subsection (d) of this section, and for an amount of consideration that will cover the department's costs, the department will enter into an agreement with the commissioners court of that county under which the department will lease automated equipment to that county in addition to the fair share allocation for that county. Leased equipment will remain the property of the department and will be used primarily for RTS.

(c) Automated Registration and Titling System fee [~~Fee~~]. The department will collect an additional fee of $.50 [~~$1~~] for each registration for the purposes set forth in Transportation Code, §502.356. The fee shall be deposited into a subaccount in the Texas Department of Motor Vehicles fund.

(d) Conditions of availability.

(1) A county must:

(A) meet electrical power supply criteria specified by the department prior to installation of the automated equipment;

(B) bear all costs incurred for 24-hour per day electrical power consumption for operation of the equipment;

(C) provide for the physical security and protection of the equipment and shall indemnify the department for any loss or damages to the equipment while in the custody and control of the county;

(D) provide the department's maintenance personnel access to the equipment during business hours of the involved county office; and

(E) notify the department not less than 30 working days prior to relocating or adding automation equipment, or of the closing or remodeling of an office, that may affect automated equipment operations.

(2) At the election of a county tax assessor-collector, automated equipment may be located at sites other than those of the tax assessor-collector, including privately owned, for-profit enterprises performing registration and title functions for the county tax office. With regard to equipment located at sites other than those of the tax assessor-collector, the department's responsibility will be limited to ensuring that the equipment remains operational. The county will be responsible for all training, user support, forms, supplies, user policy and procedures, and other support associated with this equipment.

(3) Automated equipment made available to a county pursuant to this section shall remain the property of the department and must be used by the county tax assessor-collector for operation of RTS; provided, however, that while not in RTS usage, the equipment may be utilized for another statutory duty or function of that office.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601647
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER I. FEES

43 TAC §§217.181 - 217.185

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.181. Purpose and Scope.

This subchapter prescribes the processing and handling fee authorized by Transportation Code, §502.1911, which includes the fee established under Transportation Code, §502.356(a), and is sufficient to cover the expenses associated with collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with Subchapter H of this chapter (relating to Deputies).

§217.182. Registration Transaction.

As used in this subchapter, a registration transaction is a registration or registration renewal under Transportation Code, Chapter 502, or a transaction to issue the following:

(1) a registration, registration renewal, or permit issued under Transportation Code, Chapter 502, Subchapter C (Special Registrations);

(2) a license plate issued under Transportation Code, §502.146;

(3) a temporary additional weight permit under Transportation Code, §502.434;

(4) a license plate or license plate sticker under Transportation Code, §§504.501, 504.502, 504.506, or 504.507; or

(5) a golf cart plate under Transportation Code, §551.402.

§217.183. Fee Amount.

Except as limited by §217.184 of this title (relating to Exclusions), a processing and handling fee in the amount of $5 shall be collected with each registration transaction processed by the department, the county tax assessor-collector, or a deputy appointed by the county tax assessor-collector. If a transaction includes both registration and issuance of a license plate or specialty plate, the processing and handling fee shall be collected on the registration transaction only.

§217.184. Exclusions.

The following transactions are exempt from the processing and handling fee established by §217.183 of this title (relating to Fee Amount). The processing and handling fee may not be assessed or collected on the following transactions:

(1) a replacement registration sticker under Transportation Code, §502.060;

(2) a registration transfer under Transportation Code, §502.192;

(3) an exempt registration under Transportation Code, §502.451;

(4) a vehicle transit permit under Transportation Code, §502.492;

(5) a replacement license plate under Transportation Code, §504.007;

(6) a registration correction receipt, duplicate receipt, or inquiry receipt;

(7) an inspection fee receipt; or

(8) an exchange of license plate for which no registration fees are collected.

§217.185. Allocation of Processing and Handling Fee.

(a) For registrations that expire on or after January 1, 2017, except for temporary permit transactions under Transportation Code, §502.094 or §502.095, the fee amount established in §217.183 of this title (relating to Fee Amount) shall be allocated as follows:

(1) If the registration transaction was processed in person at the office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(2) If the registration transaction was mailed to office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(3) If the registration transaction was processed through the department's online registration portal, the fee established in §217.183 is discounted by $1.25:

(A) Texas Online receives the amount set pursuant to Government Code, §2054.2591, Fees;

(B) the county tax assessor-collector may retain $.25; and

(C) the remaining amount shall be remitted to the department.

(4) If the registration transaction was processed by a deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy may retain:

(i) the amount specified in §217.168(c) of this title (relating to Deputy Fee Amounts). The deputy must remit the remainder of the processing and handling fee to the county tax assessor-collector; and

(ii) the convenience fee established in §217.168, if the registration transaction is processed by a full service deputy;

(B) the county tax assessor-collector may retain $1.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(b) For temporary permit transactions under Transportation Code, §502.094 or §502.095, the entity receiving the application and processing the transaction collects and retains the entire processing and handling fee established in §217.183. A full service deputy processing a temporary permit transaction may not charge a convenience fee for that transaction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER H. DEPUTIES

43 TAC §§217.161 - 217.168

The Texas Department of Motor Vehicles (department) proposes amendments to §217.161, Deputies. The department also proposes new sections §217.162, Definitions; §217.163, Full Service Deputies; §217.164, Limited Service Deputies; §217.165, Inspection Deputies; §217.166, Dealer Deputies; §217.167, Bonding Requirements; and §217.168, Deputy Fee Amounts.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

House Bill 2741 and House Bill 2202, 83rd Legislature, Regular Session, 2013, added Transportation Code, §520.0071 and repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092. As a result, the legislature directed the department to prescribe rules governing deputies performing titling and registration duties. The legislation authorized deputies to continue to perform services under §§520.008, 520.009, 520.0091, and 520.0092 until the effective date of the rules adopted by the board of the Texas Department of Motor Vehicles (board) regarding the types of deputies authorized to perform titling and registration duties under §520.0071. The proposed amendments and new sections are intended to fill the void created by the repeal of the former Transportation Code sections describing deputies and their duties and obligations, and to implement the legislative directive of House Bills 2202 and 2741.

As required by Transportation Code, §520.0071, the proposed rules establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The rules authorize deputies to continue to operate under the repealed statutes, as prescribed by current §217.161, through December 31, 2016. Beginning January 1, 2017, all deputies must be deputized in accordance with and comply with Subchapter H in full.

The purpose of these proposed rules is to support the department's mission to serve, protect, and advance the citizens and industries in this state with quality motor vehicle related services. To accomplish this mission, the department proposes rules that will ensure accountability and transparency in the pro-

vision of services, combat fraud, streamline and standardize processes across the state, set standards to enhance consumer confidence, allow additional funding to go toward transportation, establish structures that allow for cost-savings in the future, and modernize services to bring them in line with the needs of today's and tomorrow's consumers.

The board initially proposed rules as authorized by Transportation Code, §520.0071 on May 23, 2014, which were published in the *Texas Register* (39 TexReg 3974). Due to the great number of comments from the public expressing concern about the proposed rules, the board adopted only one rule, §217.111, which was published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7962). New §217.111 maintained the status quo for deputies that existed in statute, making clear that existing and newly appointed deputies would continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

In addition, as a result of a rule review conducted pursuant to Government Code, §2001.039, §217.111 was renumbered as §217.161 with no changes to the text.

In concert with this proposal, but in a separate proposal, the department is proposing rules related to the processing and handling fee authorized by Transportation Code, §502.1911. The proposed rules related to the processing and handling fee reference the fee amounts that may be retained by deputies.

SECTION BY SECTION ANALYSIS

The proposed amendments to §217.161, Deputies, change the section title to "Purpose and Scope," and state the intention to prescribe the classification types, duties, and obligations of deputies, the type and amount of bonds that deputies may be required to post, and the additional fees deputies may be authorized to charge, pursuant to Transportation Code, §520.0071.

Proposed new §217.162, Definitions, defines the different types of deputies and provides other definitions to clarify language in the new sections.

Proposed new §217.163, Full Service Deputies, prescribes the duties, obligations, and requirements of persons authorized to offer vehicle registration, registration renewal, and titling services in the same manner as a county tax assessor-collector. Full service deputies offer an alternative to obtaining titling and registration services from the county tax assessor-collectors. This section provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as a full service deputy, and requires full service deputies to offer and provide titling and registration services to the general public. This section also requires full service deputies to enter into a three-party agreement with the department and the county in which the full service deputy provides services beginning January 1, 2017. The department anticipates negotiating these agreements with the counties and existing full service deputies after the effective date of the rule, but prior to January 1, 2017, so that the agreements may be finalized by January 1, 2017. The agreement will outline the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. The agreement may contain additional terms and conditions specified by the county, and must be approved by the department. Key terms and conditions that will be reflected in the agreement include: (1) the full service deputy's agreement to cooperate with law enforcement in any investigation; (2) the understanding that the department will suspend the full service deputy's access to the registration and title system if the deputy or an employee of the deputy is the subject of a criminal investigation involving a crime of moral turpitude (generally, a crime involving conduct that is considered contrary to community standards of justice, honesty, ethics or good morals, including crimes involving dishonesty, fraud, deceit, misrepresentation, deliberate violence); and (3) certain audit rights for the county and the department to enable the county and department to ensure inventory is properly accounted for and to allow the department to determine if the fees being charged and collected are in compliance with rule and statute, among other contractual terms set forth in this rule.

Proposed new §217.164, Limited Service Deputies, prescribes the duties, obligations and requirements of persons authorized to accept and process registration renewals, but who do not offer titling services. This section provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as a limited service deputy, to provide registration renewals to the general public; for example, a supermarket business counter where customers may pay utility bills, obtain fishing licenses, or buy concert tickets may also provide registration renewal services. Alternately, limited service deputies may be authorized to provide registration renewal services restricted to itself or its customers only; for example, a business or an agency or subdivision of a governmental jurisdiction of the State of Texas that maintains a large fleet of vehicles may be authorized to process its own registrations. The scope of any such restriction must be determined when the limited service deputy is authorized.

Proposed new §217.165, Inspection Deputies, provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as an inspection deputy to accept and process registration renewals as a limited service deputy, with additional requirements and limitations.

Proposed new §217.166, Dealer Deputies, provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a motor vehicle dealer as a dealer deputy to provide motor vehicle titling and registration services, with limitations.

Proposed new §217.167, Bonding Requirements, provides that the county tax assessor-collector shall determine the amount of the surety bond that a deputy must post, subject to the minimum and maximum limits provided by this section. For full service deputies and dealer deputies, the minimum bond amount is $100,000 and the maximum is $2,000,000. For limited service deputies and inspection deputies, the minimum bond amount is $2,500 and the maximum is $1,000,000. This section also exempts an agency or subdivision of a governmental jurisdiction of the State of Texas from the bonding requirement, unless the county tax assessor-collector determines that a bond is appropriate. The proposed minimum and maximum limits of the bonds may change depending upon comments received after publication of these proposed rules.

Proposed new §217.168, Deputy Fee Amounts, provides that a county tax assessor-collector may allow a deputy to charge or retain certain fee amounts for providing the titling or registration service according to the type of deputy and transaction type. Proposed new §217.168 provides for some fees to be charged and retained by the deputy and other fees to be retained from the processing and handling fee established in proposed new §217.183 (part of a separate proposal). Specifically, proposed new §217.168 authorizes full service deputies and dealer deputies to charge customers up to $15 for title transactions and

retain that entire fee amount. Proposed new §217.168 authorizes all deputies to retain $1 from the processing and handling fee for each registration and registration renewal transaction. In addition, a full service deputy may charge a $4 convenience fee for each registration or registration renewal transaction and retain that entire fee amount. The convenience fee is subject to exclusions identified in proposed new §217.184 (part of a separate proposal). Proposed §217.168 also clarifies that the proposed new section does not limit a full service deputy's ability to charge and collect fees for other services provided by the full service deputy that are related to titles or registrations, but are not transactions that must be performed through the department's automated vehicle registration and title system. Proposed new §217.168 also requires full service deputies to prominently post a fee list at the physical location and on the full service deputy's website. Lastly, proposed new §217.168 clarifies that this section does not preclude or limit the ability of a county to provide additional compensation to a deputy from county funds. The proposed fee amounts may change depending upon comments received after publication of these proposed rules.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the amendments and new sections. If a tax assessor-collector elects not to authorize deputies in the county, these rules will have no impact on the county. If a tax assessor-collector chooses to authorize only limited service and/or dealer deputies in the county, there are no foreseeable economic implications relating to costs or revenues of local governments, specifically counties, as the proposed compensation for such deputies is consistent with current statutorily authorized compensation for the deputies. As such, there is no anticipated change in the number of transactions processed through deputies after the effective date of these rules. Lastly, if a tax assessor-collector chooses to authorize full service deputies in the county, there are no foreseeable economic implications to the counties. The department is aware that at present, only six counties authorize full service deputies to provide titling and registration services. Some of these counties have informed the department that if the deputies were to cease providing services in the county, the counties would be required to absorb an increased number of title and registration transactions, hire additional employees, and potentially increase office space. However, the vast majority of counties provide services to the motoring public without utilizing full service deputies. In addition, the compensation proposed for full service deputies, as more thoroughly discussed below, is consistent with the charges previously authorized by statute and is sufficient to cover the costs to process the transactions based on data provided. Currently, there is no specific authorized amount for deputies to charge for titling services, whereas this proposed rule specifically authorizes a $15 convenience fee. As such, there should be no significant change in the number of customers a full service deputy serves and, therefore, no foreseeable impact on the counties.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the standardization of fees for delivering titling and registration services to the public when the customer chooses a deputy for such services; and an increase in consumer confidence in the services provided by deputies by ensuring appropriate oversight of deputies by the counties and the department. Mr. Kuntz has also determined that for each of the first five years the proposed amendments and new sections are in effect, there are no anticipated significant economic costs for persons required to comply with the amendments and new sections as proposed. The cost of the convenience fee that a full service deputy may charge for registration is consistent with the amount currently allowed by statute, and the public may choose to avoid this fee by performing transactions online or dealing directly with a county tax assessor-collector or limited service deputy.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has been alerted that some or all of the 30 full service deputies in the state fit the definition of small or micro-businesses. For other categories of deputies potentially affected by the rules, the department has determined that either they are not small or micro-businesses, or there will be no adverse impact to these entities from the proposed rules.

Although the proposed rules establish specific compensation amounts for full service deputies, the amounts are consistent with what statute authorized the deputies to charge for registration-related transactions and what some full service deputies actually charge for title transactions, based on data reviewed and as discussed in more detail below. The department has therefore determined that there will be no adverse impact to small or micro-businesses operating in compliance with statute prior to these proposed rules. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department set the amount a full service deputy may charge for title transactions at an amount similar to what full service deputies currently charge, according to the data provided. Currently, there is no specific authorized amount for deputies to charge for titling services, whereas this proposed rule specifically authorizes a $15 convenience fee. As such, the department does not anticipate an adverse impact due to the full service deputy compensation amount for title transactions.

The fee structure proposed in the rule places the full service deputy compensation for registration and registration renewal transactions at a rate equal to what these deputies were allowed to charge under former Transportation Code, §520.009. As such, the impact will be neutral to positive, in that deputies across the state will operate on a level playing field and with a clear understanding of their duties and obligations and the rates they may charge. To the extent any full service deputies have been charging more than what was allowed by statute, any adverse economic impact would not be a result of the rule, since the rule establishes a fee that is the same as was allowed by statute.

The proposed rules do not impact any fees a full service deputy may charge for any service that is not performed through the department's automated registration and titling system. For example, the department is aware that full service deputies often offer a wide variety of services in addition to processing title and registration transactions--services including notary, insurance, title pick-up and delivery to and from dealerships, surety bonds, and other services and products to ensure a sufficient volume of business to generate an adequate return on investment. The proposed amendment and new rules do not impact the fees that may be charged for any such service or product.

In developing the proposed fee amounts, the department considered information gathered over the past two years from multiple meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. The department also contracted with Texas A&M Transportation Institute (TTI) to conduct research regarding costs associated with processing vehicle registration and title transactions. In conducting its research, TTI requested information from, and met with and observed, full service deputies to determine costs associated with processing registration and title transactions. TTI's research noted that full service deputy operations are currently based on a business model that includes profit. TTI also determined that the estimated cost for full service deputies to process vehicle registration and title transactions using an average transaction time is $4.06 for walk-in registration transactions and $12.88 for title transactions. The amount that full service deputies are authorized to charge and retain for title and registration transactions under the proposed rules is more than the estimated cost of those transactions, and thus should be sufficient to account for fluctuations across the state. The TTI report, available on the department's website, is the most recent and comprehensive collection and analysis of data available to the department regarding costs associated with processing registration and title transactions. The TTI report is available on the department's website at http://www.txdmv.gov/reports-and-data/doc_download/5121-estimating-the-cost-to-process-vehicle-registration-and-title-transactions-in-texas-counties and is hereby incorporated by reference into this preamble.

Lastly, former Transportation Code, §520.0091 required full service deputies to post a bond payable to the county tax assessor-collector in an amount determined by the assessor-collector. The proposed new rule keeps this bond requirement, but establishes a minimum and maximum amount that is consistent with bond amounts previously required of full service deputies and deemed sufficient by county tax assessor-collectors. The bond amounts previously considered in an earlier draft of the proposed rules was based on a percentage of the deputy's net collections of motor vehicle sales and use taxes and motor vehicle registration and title fees during a calendar year. During a stakeholder meeting, full service deputies expressed concern that such bond amounts would create substantial hardship for the businesses. After due consideration and in response to these concerns, the department changed the proposed required bond amounts and believes the proposed amounts will not result in a negative fiscal impact to the deputies. This conclusion was based on the department's review of known current bond amounts of existing deputies.

The amendments to the Transportation Code by House Bill 2741 and House Bill 2202 were specifically intended by the Texas Legislature to allow the department to prescribe the type and amounts of bonds the deputies must obtain and the fees a deputy may charge or retain. To the extent any of the small or micro-businesses who operate as full service deputies contend there is an adverse economic impact, an alternative regulatory method could not achieve the purpose of the proposed rule while minimizing any adverse effects and thus would not be consistent with the health, safety, and environmental and economic welfare of the state. There are no new substantive compliance or reporting requirements as a result of the proposed rules, there are no performance standards or design standards required of small businesses or micro-businesses as a result of the proposed rules, and if businesses were exempt from any provision of the proposed rules, those businesses would not have authority to serve as full service deputies. The legislature mandated that the department prescribe the classification types of deputies and the duties and obligations of those deputies. As such, the authority to serve as a deputy is through compliance with the department's rules establishing such deputy. Any exemption from these rules would render a business ineligible from operating as a deputy.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new sections may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* If any commenter submits written comments disagreeing with the department's position regarding economic impact, the department strongly recommends including documentation to support any stated negative financial, revenue, or cost implications. Such documentation will aid in the board's decision-making process and could include detailed financial statements, business plans, budgets, or other items necessary to demonstrate the stated impact. If a commenter considers any such information confidential, the information should be clearly marked "CONFIDENTIAL." If the department receives a request for this information, the department will comply with the requirements of the Public Information Act, Chapter 552 of the Texas Government Code, and request a ruling from the Office of the Attorney General for any information marked "CONFIDENTIAL."

The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; Transportation Code, §520.003, which provides the department may adopt rules to

administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which provides the department by rule shall establish standards for uniformity and service quality for counties and dealers; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§501.076, 502.191, 502.1911, 502.197, and 520.007.

§217.161. Purpose and Scope [~~Deputies~~].

Pursuant to Transportation Code, §520.0071, a county tax assessor-collector, with the approval of the commissioners court of the county, may appoint deputies to perform designated motor vehicle titling and registration services. This subchapter prescribes the classification types, duties, and obligations of deputies; the type and amount of any bonds that deputies may be required to post; and the fees that deputies may be authorized to charge or retain. A deputy appointed under Transportation Code, §520.0071, on or before December 31, 2016, may continue to perform services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357). Beginning January 1, 2017, all deputies must be deputized in accordance with and comply with the provisions of this subchapter.

[~~(a) A county assessor-collector with the approval of the commissioners court of the county may deputize a person to perform services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.~~]

[~~(b) A deputy appointed under Transportation Code, §520.0091, may perform the services authorized under former Transportation Code, §§520.008, 520,009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.~~]

§217.162. Definitions.

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

(1) Board--Board of the Texas Department of Motor Vehicles.

(2) Dealer deputy--A motor vehicle dealer, as defined by Transportation Code, §503.001(4), who is deputized to process motor vehicle titling and registration transactions, and who may be authorized to provide registration renewal services. Dealer deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the dealer deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

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

(4) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of this subchapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.

(5) Full service deputy--A deputy appointed to accept and process applications for motor vehicle title transfers and initial registrations, and process registration renewals and other transactions related to titling and registration. Full service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the full service deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

(6) Inspection deputy--A limited service deputy who is also a certified inspection station providing motor vehicle inspection services under Transportation Code, Chapter 548.

(7) Limited service deputy--A deputy appointed to accept and process motor vehicle registration renewals. Limited service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the limited service deputy to serve as the deputy's agent in performing motor vehicle registration renewals.

(8) Person--An individual, business organization, governmental subdivision or agency, or any other legal entity.

§217.163. Full Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a full service deputy in the same manner and with the same authority as though done in the office of the county tax assessor-collector, subject to the criteria and limitations of this section, including entering into the agreement specified in subsection (j) of this section.

(b) A full service deputy must offer and provide titling and registration services to the general public, and must accept any application for registration, registration renewal, or title transfer that the county tax assessor-collector would accept and process, unless otherwise limited by the county.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a full service deputy in addition to those set forth in this section. The additional obligations or requirements must be reflected in the agreement specified in subsection (j) of this section.

(d) To be eligible to serve as a full service deputy, a person must be trained, as approved by the county tax assessor-collector, to perform motor vehicle titling, registration, and registration renewal services, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(e) To be eligible to serve as a full service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(f) A person applying to be a full service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title, registration, or registration renewal applications may occur.

(g) A full service deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(h) A full service deputy shall keep a separate accounting of the fees collected and remitted to the county and a record of daily receipts.

(i) A full service deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(j) Beginning January 1, 2017, a person may not serve as a full service deputy unless the person has entered into and executed an agreement with the county and the department. An agreement described by this subsection is required for each location at which the full service deputy operates. The agreement will have an effective date no earlier than January 1, 2017, and will outline the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. The agreement must be approved by the department, and must include, at a minimum, the following terms and conditions:

(1) The full service deputy must identify all owners, regardless of ownership percentage, including contact information, and must notify the county and the department of any change in ownership within 30 days of the change.

(2) The full service deputy must identify all personnel who will access the registration and titling system. If an individual who has been given access to the registration and titling system is no longer associated with the full service deputy, the full service deputy must notify the county and department in order to terminate that individual's access. The full service deputy must request access for new or additional personnel in writing to the county and department.

(3) The full service deputy agrees to cooperate with any investigation by law enforcement.

(4) If the full service deputy is the subject of a criminal investigation involving a crime of moral turpitude, the full service deputy's access to the registration and titling system will be suspended until such time as the investigation has concluded and the full service deputy is cleared of any allegations or upon the county's written request to the department, but only if the department approves the request.

(5) A full service deputy must reject any transaction that appears irregular on its face and report any such transaction to the county and the department within 72 hours of presentation of the transaction. The full service deputy must cooperate with the county's or department's reasonable requests for information related to any irregular transaction.

(6) The county must conduct an inventory of license plates, secure paper, and any other accountable items provided to the full service deputy at least once per month and provide a copy of the inventory report to the department within 30 days of the report's completion.

(7) The full service deputy understands and agrees that the department may conduct an inventory of state assets and accountable items provided by the state via the county.

(8) The full service deputy understands and agrees that the department may conduct an audit of the full service deputy's operations. The full service deputy must maintain and retain all documentation pertaining to operations as a full service deputy for a period of four years following the transaction date and provide the department with prompt access to requested records during normal business hours.

(9) The full service deputy must make its audited financial statement available to the department for review only on request.

(10) The agreement must be for an initial term of five years, and may be renewed for additional five-year periods.

(11) The agreement may be terminated for cause by the county or the department at any time. Cause for termination includes violation of any term of the agreement or any department rule, including, but not limited to, Chapter 217, Subchapters H and I. The agreement may be terminated for convenience by the full service deputy or the county on 30 days written notice to the other two parties.

§217.164. Limited Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a limited service deputy. A limited service deputy may only process registration renewals, except as limited by this section, and may not prepare or accept an application for title transfer or initial registration.

(b) A limited service deputy offering registration renewal services to the general public must accept and process any proper application for registration renewal that the county tax assessor-collector would accept and process.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a limited service deputy in addition to those set forth in this section. The county tax assessor-collector may, at the time of deputation or upon renewal of deputation, impose specified restrictions or limitations on a limited service deputy's authority to provide registration renewal services.

(d) A limited service deputy may be authorized by the county tax assessor-collector to provide registration renewal services only for the members, officers, employees, affiliates and customers of the deputy, and not to the public generally. If a limited service deputy does not provide services to the general public, the scope of the deputy's authority to provide registration renewal services to itself and its members, officers, employees, affiliates, and customers must be defined by the county tax assessor-collector as part of the authorization to act as a limited service deputy.

(e) To be eligible to serve as a limited service deputy, a person must be trained to accept and process registration renewals, as approved by the county tax assessor-collector, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(f) To be eligible to serve as a limited service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(g) A person applying to be a limited service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any registration renewals may occur.

(h) If a limited service deputy offers services to the general public, the deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(i) A limited service deputy shall keep a separate accounting of the fees collected and remitted to the county, and a record of daily receipts.

(j) A limited service deputy may retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

§217.165. Inspection Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as an inspection deputy. An inspection deputy must meet all of the requirements of a limited service deputy, as outlined in §217.164 of this title (relating to Limited Service Deputies), and additional requirements as follows:

(1) an inspection deputy must maintain current certification as an inspection station under Transportation Code, Chapter 548, and rules adopted by the Texas Department of Public Safety regarding inspection stations; and

(2) any additional requirements of the county tax assessor-collector.

(b) An inspection deputy is considered a limited service deputy for compensation purposes, and may retain fees consistent with the provisions of §217.168(c)(2) of this title (relating to Deputy Fee Amounts).

§217.166. Dealer Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a motor vehicle dealer to act as a dealer deputy to provide motor vehicle titling and registration services in the same manner and with the same authority as though done in the office of the county tax assessor-collector, except as limited by this section.

(b) A dealer deputy must hold a valid general distinguishing number (GDN) under Transportation Code, Chapter 503, Subchapter B, and may act as a dealer deputy only for a type of motor vehicle for which the dealer holds a GDN. A dealer may not continue to act as a dealer deputy if the GDN is cancelled or suspended.

(c) A county tax assessor-collector may impose reasonable obligations or requirements upon a dealer deputy in addition to those set forth in this section. The county tax assessor-collector may, at the time of deputation or upon renewal of deputation, impose specified restrictions or limitations on a dealer deputy's authority to provide certain titling or registration services.

(d) Upon the transfer of ownership of motor vehicles purchased, sold or exchanged by the dealer deputy, the dealer deputy may process titling transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise provide titling services to the general public.

(e) Upon the transfer of ownership of a motor vehicle purchased, sold or exchanged by the dealer deputy, the dealer deputy may process initial registration transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise offer initial registration services to the general public.

(f) The county tax assessor-collector may authorize a dealer deputy to provide motor vehicle registration renewal services. A dealer deputy offering registration renewal services must offer such services to the general public, and must accept and process any proper application for registration renewal that the county tax assessor-collector would accept and process.

(g) To be eligible to serve as a dealer deputy, a person must be trained to perform motor vehicle titling and registration services, as approved by the county tax assessor-collector, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(h) To be eligible to serve as a dealer deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(i) A person applying to be a dealer deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title or registration transactions may occur.

(j) If a dealer deputy offers registration renewal services to the general public, the deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(k) A dealer deputy shall keep a separate accounting of the fees collected and remitted to the county, and a record of daily receipts.

(l) A dealer deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(m) This section does not prevent a county tax assessor-collector from deputizing a dealer as a full service deputy under §217.163 of this title (relating to Full Service Deputies), a limited service deputy under §217.164 of this title (relating to Limited Service Deputies), or an inspection deputy under §217.165 of this title (relating to Inspection Deputies) instead of a dealer deputy under this section.

§217.167. Bonding Requirements.

(a) A deputy appointed under this subchapter shall post a surety bond payable to the county tax assessor-collector.

(b) A deputy is required to post a single bond for a county in which the deputy performs titling, registration, or registration renewal services, regardless of the number of locations in that county from which that deputy may provide these services.

(c) A full service deputy or dealer deputy must post a bond in an amount between $100,000 and $2,000,000, as determined by the county tax assessor-collector.

(d) A limited service deputy or inspection deputy must post a bond in an amount between $2,500 and $1,000,000, as determined by the county tax assessor-collector.

(e) A deputy that is an agency or subdivision of a governmental jurisdiction of the State of Texas is not required to post a bond pursuant to this section, unless the county tax assessor-collector determines that a bond should be required in an amount consistent with subsection (d) of this section.

§217.168. Deputy Fee Amounts.

(a) Fees. A county tax assessor-collector may authorize a deputy to charge or retain the fee amounts prescribed by this section according to the type of deputy and transaction type.

(b) Title transactions. For each motor vehicle title transaction processed:

(1) A full service deputy may charge the customer a fee of up to $15, as determined by the full service deputy and approved by

the tax assessor-collector. The full service deputy retains the entire fee charged to the customer.

(2) A dealer deputy may charge the customer a fee of up to $15, as determined by the dealer deputy and approved by the tax assessor-collector. The dealer deputy retains the entire fee charged to the customer. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(c) Registration and registration renewals. For each registration transaction processed:

(1) A full service deputy may:

(A) retain $1 from the processing and handling fee established by §217.183 of this title (relating to Fee Amount); and

(B) charge a convenience fee of $4, except as limited by §217.184 of this title (relating to Exclusions).

(2) A limited service deputy may retain $1 from the processing and handling fee established by §217.183.

(3) A dealer deputy may retain $1 from the processing and handling fee established by §217.183. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(d) Temporary permit transactions under Transportation Code, §502.094 or §502.095. For each temporary permit transaction processed by a full service deputy, the full service deputy may retain the entire processing and handling fee established by §217.183.

(e) Full service deputy convenience fee. The convenience fee authorized by this section is collected by the full service deputy directly from the customer and is in addition to the processing and handling fee established by §217.183. A full service deputy may not charge any additional fee for a registration or registration renewal transaction.

(f) Related transactions by a full service deputy. The limitations of subsections (b), (c), (d), and (e) of this section do not apply to other services that a full service deputy may perform that are related to titles or registrations, but are not transactions that must be performed through the department's automated vehicle registration and title system. Services that are not transactions performed through the department's automated vehicle registration and title system include, but are not limited to, the additional fees a full service deputy may charge for copying, faxing, or transporting documents required to obtain or correct a motor vehicle title or registration. However, the additional fees that a full service deputy may charge for these other services may be limited by the terms of the county tax assessor-collector's authorization to act as deputy.

(g) Posting of fees. At each location where a full service deputy provides titling or registration services, the deputy must prominently post a list stating all fees charged for each service related to titling or registration. The fee list must specifically state each service, including the additional fee charged for that service, that is subject to subsections (b), (c), (d), or (e) of this section. The fee list must also state that each service subject to an additional fee under subsection (b), (c), (d), or (e) of this section may be obtained from the county tax assessor-collector without the additional fee. If the full service deputy maintains a website advertising or offering titling or registration services, the deputy must post the fee list described by this subsection on the website.

(h) Additional compensation. The fee amounts set forth in this section do not preclude or limit the ability of a county to provide additional compensation to a deputy out of county funds.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601658
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 465-5665

SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §§217.201 - 217.207

The Texas Department of Motor Vehicles (department) proposes new Subchapter J, Performance Quality Recognition Program: §217.201, Purpose and Scope; §217.202, Definitions; §217.203, Recognition Criteria; §217.204, Applications; §217.205, Department Decision to Award, Deny, Revoke, or Demote a Recognition Level; §217.206, Term of Recognition Level; and §217.207, Review Process.

EXPLANATION OF PROPOSED NEW SUBCHAPTER

Transportation Code, §520.004 requires the department to establish standards for uniformity and service quality for county tax assessor-collectors regarding vehicle titles and registration. The proposed new Subchapter J prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program (Recognition Program).

The department will use the Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions. The recognition criteria contain the standards for uniformity and service quality, such as processing transactions in a timely fashion and consistently applying statutes, rules, and policies governing motor vehicle transactions.

Proposed new §217.203, Recognition Criteria, states the department will establish criteria for multiple levels of recognition for performance. Proposed new §217.206, Term of Recognition Level, establishes the length or term for a recognition level, including triggers that will cause the recognition level to terminate or expire.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new subchapter as proposed is in effect, there will be no major fiscal implications for state or local governments as a result of administering the proposed new subchapter. To the extent the administration of the proposed new subchapter causes county tax assessor-collectors to timely remit registration fee collections, motor sales tax, and penalties to the state, there may be a minor positive fiscal impact for the state; however, the deadlines for these remittances are provided by statute, rather than the proposed new subchapter. Since the program is voluntary, the proposed new Subchapter J will not cause a negative fiscal impact to the counties.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the new subchapter.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed new subchapter is in effect, the public benefit anticipated as a result of enforcing or administering the subchapter will be the uniformity and quality of service provided by county tax assessor-collectors in processing title and registration transactions. There are no anticipated economic costs for persons required to comply with the subchapter as proposed.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code, Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the new subchapter.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new subchapter may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §520.003, which states the department may adopt rules to administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which states the department by rule shall establish standards for uniformity and service quality for counties.

CROSS REFERENCE TO STATUTE

Transportation Code, §520.004.

§217.201. Purpose and Scope.

Transportation Code, §520.004, requires the department to establish standards for uniformity and service quality for counties. This subchapter prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program. The department will use the Performance Quality Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions.

§217.202. Definitions.

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

(1) Department--The Texas Department of Motor Vehicles.

(2) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of Subchapter H of this chapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.

(3) Office--The county tax assessor-collector office(s) for each county, including the office(s) of any deputy.

§217.203. Recognition Criteria.

(a) Levels of recognition. The department will establish criteria for multiple levels of recognition for performance.

(b) Recognition criteria for minimum recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) timely remits registration fee collections;

(2) timely remits motor vehicle sales tax and penalties;

(3) consistently applies statutes, rules, and policies governing motor vehicle transactions; and

(4) maintains bonds as required by statute or administrative rule.

(c) Recognition criteria for a higher recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) performs efficiently and with low error rates;

(2) processes transactions in a timely fashion;

(3) has customer feedback programs; and

(4) has fraud, waste, and abuse awareness and prevention programs.

(d) Possible additional criteria for a higher recognition level. In addition to the recognition criteria listed in subsection (c) of this section, the department may include recognition criteria, such as the following, that indicate whether the office:

(1) implements cost-saving measures; and

(2) has customer feedback metrics to measure customer satisfaction.

(e) Posting recognition criteria. The department shall post the recognition criteria on its website.

§217.204. Applications.

(a) Application deadline. If a county tax assessor-collector chooses to apply for a recognition level or to apply for a higher level of recognition under the Performance Quality Recognition Program, the county tax assessor-collector must submit an application to the department during any year of the county tax assessor-collector's term of office. The application must be received by the department or postmarked no later than October 31st.

(b) Application from a successor county tax assessor-collector. A successor county tax assessor-collector is not eligible for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year, which is September 1st through August 31st.

(c) Application for a higher level of recognition.

(1) If a county tax assessor-collector obtains a recognition level and chooses to apply for a higher level of recognition during the term of the existing recognition level, the county tax assessor-collector is not eligible to apply for a higher level until after serving as the county

tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year for which the existing recognition level was awarded.

(2) If the department demotes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a higher level of recognition until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the existing recognition level was demoted.

(d) Application for a recognition level after revocation of recognition level. If the department revokes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a recognition level during the remainder of the county tax assessor-collector's term of office during which the revocation occurred.

(e) Application form. The application must be submitted on a form prescribed by the department.

(f) Signature on application. The county tax assessor-collector must sign the application.

(g) Additional information, documentation, or clarification. At the department's discretion, the department may request additional information, documentation, or clarification from the county tax assessor-collector after the department receives an application. The department shall provide the county tax assessor-collector with a deadline to respond to the request.

§217.205. Department Decision to Award, Deny, Revoke, or Demote a Recognition Level.

(a) Award of recognition level. The department may award a recognition level based on the following for the time frame of September 1st through August 31st immediately preceding the application deadline:

(1) information and documents contained in the application;

(2) any additional information, documentation, or clarification requested by the department; and

(3) information and documentation from department records.

(b) Denial of recognition level. The department may deny an award of recognition if:

(1) the application contains any incomplete or inaccurate information;

(2) the applicant fails to provide requested documents;

(3) the application contains incomplete documents;

(4) the application was not received by the department or postmarked by the department's deadline;

(5) the county tax assessor-collector who applied for recognition no longer holds the office of county tax assessor-collector;

(6) the county tax assessor-collector did not sign the application; or

(7) the department discovers information which shows the applicant does not comply with the criteria to receive a recognition level.

(c) Revocation of recognition level or demotion of recognition level. The department may revoke a recognition level or demote a recognition level if the department discovers information which shows the applicant no longer complies with the criteria for the recognition level.

(d) Notice of department decision to award, deny, demote, or revoke a recognition level. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.

(e) Deadline for department decision to award or to deny a recognition level. No later than 90 calendar days after receiving the application for recognition, the department shall send a written notice to the applicant stating:

(1) the department's decision to award or to deny a recognition level; or

(2) there will be a delay in the department's decision.

§217.206. Term of Recognition Level.

(a) Expiration of recognition level. Except as provided in subsections (b), (c), (d), and (e) of this section, the recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition was awarded or the one-year anniversary of the start of their re-election term of office.

(b) Demoted recognition level. If a recognition level is demoted during the term of a recognition level, the demoted recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition level was demoted or the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c), (d), and (e) of this section.

(c) Revoked recognition level. A recognition level that is revoked will terminate on the effective date of the revocation.

(d) Decision on application for a higher level of recognition. If a county tax assessor-collector chooses to apply for a higher level of recognition, the existing recognition level terminates once the department makes a decision on the application for a higher level of recognition.

(e) County tax assessor-collector no longer holds office. The recognition level awarded to a county tax assessor-collector expires when the county tax assessor-collector no longer holds the office of county tax assessor-collector.

§217.207. Review Process.

(a) Request for review. A county tax assessor-collector may request the department to review its decision by submitting a written request for review as prescribed by the department:

(1) if an application for recognition is denied;

(2) if the county tax assessor-collector is not satisfied with the awarded level of recognition; or

(3) if a level of recognition is revoked or demoted.

(b) Deadline for request for review. The written request for review must be received by the department or postmarked no later than 90 calendar days after the date listed in the department's notice to the county tax assessor-collector of the department's decision for which review is requested.

(c) County tax assessor-collector's request for review. The department will not consider a request for review submitted by someone other than the county tax assessor-collector who signed the application for recognition or who obtained the recognition level at issue. The request must:

(1) specifically identify the basis for the county tax assessor-collector's disagreement with the department's decision; and

(2) include any evidence or legal authority that supports the request for review.

(d) Deadline for department decision on request for review. The department shall make a decision on the written request for review no later than 90 calendar days after receiving the written request for review.

(e) Notice of department decision on request for review. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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