

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 5, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted with changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3807). The section describes the state accountability rating system and annually adopts the most current accountability manual. The amendment adopts applicable excerpts of the *2016 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION. The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2016 Accountability Manual* into rule as a figure. The excerpts, Chapters 2-9 of the *2016 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. The TEA will issue accountability ratings under the procedures specified in the *2016 Accountability Manual* by August 15, 2016. Distinction designations will be awarded by September 16, 2016. Ratings and distinction designations may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

In 2016, campuses and districts will be evaluated using a performance index framework. The framework includes four indices. These indices include performance on the State of Texas Assessments of Academic Readiness (STAAR®) assessments for Grades 3-8 and end-of-course, longitudinal graduation rates, four-year Recommended High School Program/Distinguished Achievement Program (RHSP/DAP) graduation rate, four-year Foundation High School Program (FHSP) with endorsement/distinguished level of achievement graduation rate, and annual dropout rates. These indices incorporate the various criteria mandated by statute as set out in the statutory authority section. In 2016, the distinction designations system will award seven distinctions to eligible campuses that receive a *Met Standard* rating: Academic Achievement in English Language Arts/Reading, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25 Percent Student Progress, Top 25 Percent Closing Performance Gaps, and Postsecondary Readiness. Districts will be eligible for a distinction designation for Postsecondary Readiness.

There are four substantive changes to the accountability system for 2016. First, results of STAAR® assessments for mathematics, Grades 3-8, are included. These assessments were excluded from the 2015 accountability ratings due to the implementation of the new mathematics Texas Essential Knowledge and Skills (TEKS) at Grades 3-8 in 2014-2015. Second, the results of STAAR® A are included in all four indices and STAAR® Alternate 2 results are included in Index 1, Index 2, and Index 3. These assessments were excluded from the 2015 accountability ratings because they were administered for the first time in 2014-2015. Third, the calculation for the graduation plan component of Index 4 now includes students who graduate under the FHSP. This year, two percentages are calculated: the percentage of students graduating under the RHSP/DAP; and the percentage of students graduating under either the RHSP/DAP or the FHSP with an endorsement (FHSP-E) or the distinguished level of achievement (DLA).

The percentage that contributes the most points to the Index 4 score will be used.

This change was made so that districts with students graduating under the FHSP sooner than required would not be disadvantaged.

Fourth, and finally, the Texas Success Initiative (TSI) assessment is replacing the exit-level Texas Assessment of Knowledge and Skills (TAKS) in the postsecondary component of Index 4. This change is being made because the results of the exit-level TAKS are no longer available.

The adopted amendment to 19 TAC §97.1001 includes minor technical changes such as date changes and new language in Chapter 2 that explains the special processing rules that will be

applied to tests affected by the spring 2016 testing issues. It also includes the following changes in response to public comment.

The chart on page 63 was updated to show that Grade 6 Mathematics Performance (Level III) is included in distinction designation calculations for elementary schools with students who take the Grade 6 mathematics test. This modification was made to reflect the use of assessment results in distinction designation calculations.

Language was revised on pages 20, 60, 77, 81, 82, 84, 85, and 89 to reflect the updated schedule for the release of accountability ratings, the release of data tables and other accountability reports, and the deadline for appealing accountability ratings. This modification was made to ensure that affected parties are aware of the new timetable put in place because of the delays in reporting the spring 2016 assessment results by the test contractor, Educational Testing Service (ETS).

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 27, 2016, and ended June 27, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System.

Comment. The Texas Parents' Educational Rights Network (TPERN) suggested adding the following language to §97.1001: No state assessment instrument may be used in the determination of district or campus accountability ratings unless such assessment complies with the requirements of the TEC, Texas Administrative Code, and any applicable federal law or regulation. TPERN contended that the STAAR® assessment administered during the 2015-2016 school year did not comply with completion-time requirements specified in the TEC. Twelve parents and two individuals submitted similar comments.

Agency Response. The agency disagrees. The agency complied with House Bill (HB) 743, 84th Texas Legislature, 2015, by making modifications intended to shorten all the relevant assessment instruments so that 85% of the students in Grades 3-5 would be able to complete the test in two hours and 85% of the students in Grades 6-8 would be able to complete the assessment instruments in three hours, while still maintaining valid and reliable assessment instruments. The agency removed all embedded field test items, which reduced the length of each assessment by five to eight questions. This resulted in a significant reduction in the amount of material on the assessments. The agency also shortened the 2016 STAAR® Grades 4 and 7 writing tests so that these tests will be completed in one testing administration instead of two administrations over two days. The agency also collected timing data on all the shortened assessment instruments in order to assess whether any assessment instrument needs additional modification.

Comment. Eight district personnel, five parents, and the Texas School Alliance (TSA) expressed concern about testing irregularities associated with the administration of the STAAR® and STAAR® A assessments, including examples such as lost documents, students attributed to the wrong school district, assessment questions with no correct answers, and other technical issues. Commenters questioned whether the results will be accurate. Some commenters asked that the ratings be withheld, that a not-rated rating be issued, that the agency allow districts with results lower than in the previous year to be held harmless, and that the ratings be information only. Other

commenters suggested that the district decide whether or not to include data from the affected tests in the accountability determinations. Other commenters suggested that no new interventions be taken based on the results. Other commenters asked that STAAR® A results be withheld from accountability calculations.

Agency Response. The agency disagrees. The agency understands the concerns that have been raised regarding using STAAR® results in accountability ratings. The agency's testing contractor, Educational Testing Service, has conducted additional quality checks and verifications to ensure that results for all students for which answer documents or online records were submitted are reported error-free and attributed to the correct campus and district. The agency has worked closely with the testing contractor to ensure that the data files used to calculate and assign accountability ratings are reliable. Furthermore, the agency has revised the schedule for releasing accountability ratings and related reports in order to ensure that the accountability ratings are reliable.

Comment. An individual requested that the criteria for campus comparison groups be reconfigured to include the percentage of students served by special education programs.

Agency Response. The agency disagrees. The campus comparison groups that are constructed annually for the distinction designations are based on the student demographic characteristics of a campus (e.g., mobility rates, percent English language learners (ELLs), and percent economically disadvantaged) rather than student participation rates in program areas such as special education, gifted/talented, or bilingual/English as a second language. TEA has taken this approach since campus comparison groups were first created for the comparable improvement acknowledgements in 1998. Within certain parameters, districts and campuses determine locally how best to serve their respective student populations in the various program areas. The campus comparison group methodology is designed to select comparable schools based on the student demographic indicators, which are not determined by local policy, rather than program areas that are determined by local policy.

Comment. An individual requested that TEA identify schools that have an advantage due to selection bias in their student population such as charters, early college high schools, and magnet schools.

Agency Response. The agency understands the concern and plans to explore options that address this issue in future accountability cycles. At this point, the agency does not have a definitive way to identify these campuses, particularly open-enrollment charter campuses that have a specific set of student recruitment procedures and admission policies that warrant evaluation as a separate group of campus types. Therefore, the campus comparison group methodology is unchanged for 2016.

Comment. An individual requested the creation of separate targets for accountability, Public Education Grant (PEG), and Performance-Based Monitoring Analysis System (PBMAS) for three types of schools: (1) schools that have an advantage due to selection bias, (2) schools that serve all students in their communities, and (3) schools that are disadvantaged due to selection bias.

Agency Response. The agency understands the concern regarding the accountability system and plans to explore options that address this issue in future accountability cycles. For the

PEG program, state law that establishes the PEG program (TEC, Chapter 29, Subchapter G, §§29.201-29.205) describes how a PEG campus is identified: less than 50% of its students passed a STAAR® assessment in any two of the prior three years or it has been rated *Improvement Required* anytime in the prior three years. TEA does not have the statutory authority to modify these criteria. The comment regarding PBMAS is outside the scope of the proposed rulemaking.

Comment. An individual requested that TEA, the regional education service centers, local districts, and institutions of higher education conduct studies of the effect of student recruitment and admission policies on student performance to quantify the extent to which ratings, distinction designations, PEG list status, and PBMAS interventions are determined by selection bias rather than the quality of instruction or other relevant factors.

Agency Response. The comment is outside the scope of the proposed rulemaking.

Comment. Two parents requested the reconsideration of how students served by special education and ELL programs are included in accountability calculations. The commenters contended that accommodations allowable during STAAR® testing do not meet the accommodations outlined in Section 504 plans and Individualized Education Programs developed to ensure children who have a disability receive appropriate specialized instruction, related services, and/or accommodations.

Agency Response. The comment is outside the scope of the proposed rulemaking. Districts decide which STAAR® assessment will be administered and which accommodations will be allowed during the administration of the test based on input from parents and staff during 504 and admission, review, and dismissal meetings.

Comment. A parent requested that the TEA push the legislature to broaden accountability indicators to include additional sources of data beyond STAAR® (e.g., teacher turnover rates; level of experience of teachers; level of experience of administrators; satisfaction ratings by parents; whether a school has physical education, music, and art programs; special education referral rates; how many kids go on to pass classes at the next level; discipline statistics; and whether a counselor, nurse, librarian, or social worker is on the campus).

Agency Response. The comment is outside the scope of the proposed rulemaking. Legislation has already been broadened by HB 2804, 84th Texas Legislature, Regular Session, 2015. New indicators will be implemented in the 2017-2018 school year.

Comment. Two principals, one district administrator, and one teacher requested that Grade 6 mathematics performance be included as an indicator for the distinction designation in mathematics for elementary campuses.

Agency Response. The agency agrees. The chart on page 63 of the *2016 Accountability Manual* was updated at adoption to reflect that Grade 6 mathematics performance is included as an indicator for the distinction designation in mathematics for elementary schools with students who take the Grade 6 mathematics test.

Comment. The TSA requested that, for 2016, the agency not issue PEG identification on the basis of preliminary ratings.

Agency Response. The agency agrees and has changed the release of the 2017-2018 PEG schools to December 2016, after the resolution of the 2016 accountability rating appeals.

Comment. A district administrator requested that 2016 state accountability ratings not be cancelled.

Agency Response. The agency agrees. State accountability ratings and distinction designations will be issued for 2016.

Comment. A principal made suggestions for additional wording in the *STAAR® Test Administrator Manual*.

Agency Response. The comment is outside the scope of the proposed rulemaking, but the comment has been provided to the TEA Division of Student Assessment.

Comment. A district administrator recommended excluding all "New to Texas" student results from district and campus accountability calculations for 2016 and subsequent years.

Agency Response. The agency disagrees. HB 2349, 84th Texas Legislature, Regular Session, 2015, required the commissioner to report the results of state assessments for students who recently moved from another state separately from the results of other students. The agency met the requirements of this statute by reporting the results for students identified as "New to Texas" on the assessment summary reports produced by the testing contractor. For accountability purposes, Texas public schools are only accountable for students who have been enrolled in their district or campus as of the fall Public Education Information Management System snapshot date regardless of whether the student moved to their school from another public school district in Texas or from another state.

Comment. A district administrator recommended including Final Level II results on the "PDF summary reports" because Final Level II has been consistent since its inception.

Agency Response. The comment is outside the scope of the proposed rulemaking assuming the referenced reports are the assessment summary reports produced by the testing contractor. Final Level II results are provided in the accountability data tables and data downloads.

Comment. The Texas Charter Schools Association (TCSA) contended that the proposed rule item limits the ratings appeal process as described in Chapter 7 by stating that the basis upon which a ratings appeal would be granted is narrow and limited and does not address concerns of unintended consequences.

Agency Response. The agency disagrees. A school district or charter school can appeal a rating for any reason, but the rule allows a change in rating for only certain specific reasons.

Comment. TCSA proposed that when a charter school receives an accountability rating that is low due to a data calculation or entry error made by the school, it should have the opportunity to fully appeal that rating, including the opportunity to demonstrate to the commissioner, with supporting evidence, that it should receive a higher accountability rating if the error is corrected.

Agency Response. The agency disagrees. Because accurate data is the foundation of a meaningful accountability system, TEA must take the approach that most encourages accurate data submission. The responsibility for accurate data submission lies with the district or charter school; accordingly, the appeals process is not the appropriate avenue to correct data reported inaccurately by a district or charter school. Districts and charter schools are responsible for providing accurate information to the agency, including information provided on student answer documents. School districts and charter schools have several opportunities to confirm and correct data submitted for accountability purposes. Once these opportunities have passed,

data must be considered final to effectuate the purposes of the academic accountability and accreditation systems.

The following public feedback was received outside the comment period. However, the agency has elected to provide brief responses.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein, LLP, contended that the proposed rule item limits the ratings appeal process as described in Chapter 7 by stating that the basis upon which a ratings appeal would be granted is narrow and limited and does not address concerns of unintended consequences.

Agency Response. The agency disagrees. A school district or charter school can appeal a rating for any reason, but the rule allows a change in rating for only certain specific reasons.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that the rule item does not meet the statutory requirement for Required Improvement under TEC, §39.053(e).

Agency Response. The agency disagrees. In 2015, results of STAAR® assessments in mathematics for Grades 3-8 and STAAR® A and STAAR® Alternate 2 for all subjects and grade levels were excluded from accountability. Because of this, and the inclusion of these assessments in 2016 accountability, a separate required improvement calculation at the index level for districts and campuses that do not meet the accountability target for the index cannot be calculated. Required improvement will be considered when the underlying indicators can be more appropriately used for year-to-year comparisons. Furthermore, TEC, §39.053(e), was repealed by HB 2804, 84th Texas Legislature, Regular Session, 2015.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that in Index 3, economically disadvantaged students are held to higher standards of performance than any other student in the state.

Agency Response. The agency disagrees. The agency does not hold economically disadvantaged students to a higher standard than other students.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that there is a redundancy in index calculations that weights the performance of economically disadvantaged, minority, special needs, and limited English proficient (LEP) students more than other students. Furthermore, the firm stated that economically disadvantaged and minority students failing to meet the standard for Index 1 are counted against the school two more times in Index 3. The firm stated that small schools targeting populations of high-needs students, such as economically disadvantaged, minority, and underserved students, are not only held to higher standards for larger proportions of their student populations than other schools (Index 3), but are also penalized more for students not meeting standards since high-needs students are counted more often in the accountability system. Additionally, the firm contended that small schools serving primarily high-needs students are held to higher standards and the students' test scores count more times in the calculations than other schools.

Agency Response. The agency disagrees. Districts and campuses earn points toward their Index 3 score for not only students who score at the advanced Level III standard, but also those who meet the Level II Satisfactory Standard. Index 3 measures performance from a different perspective than does Index 1. In

2015, most schools with a student population that is more than 90% economically disadvantaged and missed the target for Index 1 did meet the target for Index 3. The performance of special needs, LEP, low socio-economic, and minority students are not calculated at a higher weight than any other statutorily required subpopulation. Furthermore, including an index that measures the performance of students who have historically performed lower than the general student population encourages districts to work to close the performance gap.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that small-numbers analysis penalizes the smallest of schools for previous years' performances and is contradictory to the agency's stance on required improvement.

Agency Response. The agency disagrees. The use of small-numbers analysis provides a three-year average performance used at the indicator level to calculate indicators for small districts and campuses that do not meet minimum-size criteria using current-year data. Furthermore, small-numbers analysis is just as likely to help campuses and districts that performed well in previous years.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein stated that the rule item provides a limited growth metric that recognizes growth only at the satisfactory level of performance and does not recognize growth toward the college readiness or advanced levels of performance. The firm added that schools with large populations of underserved students exhibit growth but are still penalized for underperformance in Indexes 3 and 4.

Agency Response. The agency disagrees. Index 2 measures growth but does not measure growth toward a specific standard. All students, regardless of whether they meet the satisfactory standard, are included in Index 2, and the growth of those students is measured against growth expectations, not against either the satisfactory or college-readiness standard. Additionally, distinction designations for English language arts/reading and mathematics award credit for greater than expected growth. It is possible for a campus or district, regardless of the demographics of its population, to meet the target for Index 2 (exhibit acceptable growth) and not meet the targets for Index 3 and/or Index 4. The accountability system uses four indices, each measuring a different aspect of performance, and campuses and district must show acceptable performance in three of these aspects (either performance or growth and closing performance gaps and post-secondary readiness).

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein expressed concerns that the rule item disproportionately affects small schools. The firm contended that schools labeled *Improvement Required* have been smaller and served more minority and economically disadvantaged students than schools labeled *Met Standard*, which they attribute to a bias in accountability calculations rather than actual performance.

Agency Response. The agency disagrees. The same standards and minimum-size criteria are applied to all districts and campuses. Furthermore, alternative education campuses and charter districts with large populations of at-risk students are evaluated under alternative education accountability provisions.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each

school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.0535, which provides a temporary provision that the commissioner shall assign each district and campus a performance rating not later than August 15 of each year; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in Chapter 39; TEC, §39.0545, which requires each school district to evaluate and report to the agency its own performance and the performance of each of its campuses in community and student engagement; TEC, §29.081(e), which defines criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes charter districts and campuses that earn a *Met Standard* rating eligible for distinction designations; and TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§39.052(a) and (b)(1)(A), 39.053, 39.0535, 39.054, 39.0545, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), and 12.104(b)(2)(L).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A), 39.053, 39.0535, 39.054, 39.0545, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2016 are based upon specific criteria and calculations, which are described in excerpted sections of the *2016 Accountability Manual* provided in this subsection. Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner of education and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

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19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the May 20, 2016 issue of the *Texas Register* (41 TexReg 3595) and will not be republished. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The amendment adopts the 2016 PBMAS Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION. House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

The TEA has adopted its PBMAS Manual in rule since 2005. The PBMAS is a dynamic system that evolves over time, so the specific criteria and calculations for monitoring performance and program effectiveness may differ from year to year. The intent is to update 19 TAC §97.1005 annually to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the current rule by adopting the 2016 PBMAS Manual, which describes the specific criteria and calculations that will be used to assign 2016 PBMAS performance levels.

The 2016 PBMAS includes several key changes from the 2015 system. The ongoing transition to the State of Texas Assessments of Academic Readiness (STAAR®) is reflected in the 2016 PBMAS with the incorporation of STAAR® performance standards in accordance with 19 TAC §101.3041, Performance Standards. Any STAAR® mathematics data from the 2015 PBMAS used in the 2016 PBMAS for aggregation or required improvement purposes reflect the new Grades 3-8 STAAR® mathematics performance standards. Additionally, the 2016 PBMAS includes STAAR® data based on the Student Success Initiative grade-advancement requirements that were reinstated for mathematics in the 2015-2016 school year. New cut points that reflect the ongoing STAAR® transition were implemented for the STAAR® end-of-course (EOC) indicators, and performance level assignments were added for the STAAR® EOC English language arts (ELA, i.e., English I and English II) indicators.

New cut points were implemented for the annual dropout rate and graduation rate indicators in all four program areas to account for statutory changes in graduation requirements and expectations. The Recommended High School Program and Distinguished Achievement Program indicators in all four program areas were deleted since these indicators no longer correspond with current state graduation requirements and expectations.

In addition to the new cut points for the graduation rate indicators referenced above, the graduation rate in the Bilingual Education/English as a Second Language program area is determined based on students identified as an English language learner (ELL) at any time while attending Grades 9-12 in a Texas public school rather than determined only based on students identified as ELLs in their last year in a Texas public school. This change provides a more comprehensive evaluation of ELL graduation rates and increases the number of students included in the indicator, thereby increasing the number of districts meeting minimum size requirements and evaluated under the indicator.

For the 2015 PBMAS, special performance level (PL) provisions were added to the Career and Technical Education (CTE) EOC indicator that evaluates students served in special education (SPED): Indicator #4(i-iv) (CTE SPED STAAR EOC Passing Rate). These provisions were designed to address the inclusion of STAAR® A and STAAR® Alternate 2 results. For the 2016 PBMAS, the targeted hold harmless component of those provisions was discontinued, and PL assignments will be based on the new cut points applicable to the other CTE EOC indicators.

For the 2015 PBMAS, special PL provisions were added to SPED Indicator #1(i-v) (SPED STAAR 3-8 Passing Rate) and SPED Indicator #3(i-iv) (SPED STAAR EOC Passing Rate). These provisions were designed to address the inclusion of STAAR® A and STAAR® Alternate 2 results. For the 2016 PBMAS, the targeted hold harmless component of those provisions was discontinued. However, the PL 4 assignment added in the 2015 PBMAS will continue to be assigned in the 2016 PBMAS. Additionally, the PL 3 and PL 4 assignments for SPED Indicator #1(i-v) are based on adjusted cut points.

The 6-11 and 12-21 age groups that were used for the SPED Regular Class ≥80% Rate and SPED Regular Class <40% Rate indicators have been combined into one 6-21 age group, resulting in the deletion of two indicators. To meet federal requirements under 20 U.S.C. §1418(d) and 34 Code of Federal Regulations §300.646, the two remaining 6-21 age group indicators include Report Only designations of significant disproportionality based on race or ethnicity.

Additionally, the 2016 PBMAS marks the beginning of a transition to a new PL structure for SPED Indicator #11 (SPED African American [Not Hispanic/Latino] Representation), SPED Indicator #12 (SPED Hispanic Representation), and SPED Indicator #13 (SPED LEP Representation). This new structure aligns with the transition already made in the 2015 PBMAS for the special education discipline indicators' PL structure and will, beginning with the 2017 PBMAS, replace the current percentage point difference with a disproportionality rate. Changes to the PBMAS indicators for 2016 are marked in the manual as "New!" for easy reference.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 20, 2016, and ended June 20, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System.

Comment. The Texas Council of Administrators of Special Education (TCASE), the Texas Association of School Administrators (TASA), and the Texas Elementary Principals and Supervisors Association (TEPSA) stated their agreement with proposals in the 2016 PBMAS Manual related to the (1) PL 4 assignments for the SPED Indicators #1(i-v) and #3(i-iv); (2) deletion of the Recommended High School Program and Distinguished Achievement Program indicators; (3) combining of the 6-11 and 12-21 age groups that were used for the SPED Regular Class ≥80% Rate and SPED Regular Class <40% Rate indicators into one 6-21 age group, resulting in the deletion of two indicators; (4) assignment of Report Only designations of significant disproportionality based on race or ethnicity for the 6-21 age groups; and (5) modification of the SPED African American (Not Hispanic/Latino) Representation indicator to include African American students reported with only one race as African American. The Texas School Alliance (TSA) expressed support for this comment.

Agency Response. The agency agrees those proposals in the 2016 PBMAS Manual are appropriate.

Comment. TCASE, TASA, and TEPSA recommended aligning the PBMAS PL 0 cut points for SPED Indicators #1(i-v), #2(i-v), and #3(i-iv) with a 60% Index 1 target used in the state accountability system, contending it is unfair, unaligned, and disjointed to have conflicting thresholds for the same data element. TSA expressed support for this comment.

Agency Response. The agency agrees that the PLs proposed for use in the 2016 PBMAS are different from the Index 1 target proposed in the 2016 state accountability system but disagrees that the PBMAS and the state accountability system are measuring the same data elements. Because the PBMAS and the state accountability systems are designed differently, and the indicators evaluated are substantially different, each system includes targets or PLs appropriate for the purposes, goals, design, and requirements of the particular system. One of the critical differences between the two systems is evident in the distinction between a single, pass/fail accountability index target and a range of PBMAS PL assignments. The comment related to the alignment of standards incorrectly equates a single-standard, pass/fail system (the state accountability system) with a multi-level PL system (PBMAS). Because of this fundamental difference between a single standard/target in the accountability system and a range of PLs in PBMAS, the agency disagrees that

the values associated with assigning PBMAS PLs are unfair. In fact, compared to the single 60% Index 1 target, only districts with passing rates less than 20% on Indicator 1(i-v), 50% on Indicator 2(i-v), and (depending on subject area) less than 19% to 35% on Indicator 3(i-iv) are assigned the lowest PL in the 2016 PBMAS.

Comment. TCASE, TASA, and TEPSA recommended moving SPED Indicator #4 to Report Only to comply with the Every Student Succeeds Act (ESSA), contending ESSA specifically prohibits setting a cap on local districts for the percentage of students who can take an alternate assessment. TSA expressed support for this comment.

Agency Response. The agency disagrees that SPED Indicator #4 sets a cap on local districts for the percentage of students who can take an alternate assessment. Comparisons between the ESSA requirements regarding alternate assessments and SPED Indicator #4 are not appropriate given the purpose, definitions, and methodology are significantly different between ESSA and PBMAS. SPED Indicator #4 does not set a cap on local districts for the percentage of students who can take an alternate assessment, and regardless of how many students are administered the STAAR® Alternate 2 in any district, there are no limits in PBMAS on the number or percent of those results that may be included in other PBMAS indicators that evaluate districts' STAAR® subject-area proficiency rates.

Independent from ESSA's provisions related to alternate assessments, however, there are state and federal requirements that SPED Indicator #4 is specifically designed to meet. These include state statute (TEC, §39.057) that requires the agency to determine when "excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through instruments developed or adopted under Section 39.023(b) [alternate assessments]." Additionally, a key component of the U.S. Department of Education (USDE) state assessments peer review process requires each state to monitor (1) the administration of its state assessments to ensure standardized test administration procedures are implemented with fidelity across districts and schools; and (2) test administration in its districts and schools to ensure appropriate assessments, with or without appropriate accommodations, are selected for students with disabilities under the Individuals with Disabilities Education Act (IDEA), students covered by Section 504, and English language learners so that they are appropriately included in assessments and receive accommodations that are consistent with the state's policies for accommodations; appropriate for addressing a student's disability or language needs for each assessment administered; consistent with accommodations provided to the students during instruction and/or practice; consistent with the assessment accommodations identified by a student's Individualized Education Program (IEP) team or 504 team for students with disabilities, or another process for an ELL; and administered with fidelity to test administration procedures.

The agency is also required to ensure it has implemented a state data audit system that assesses data quality, validity, and reliability of individual student data, including student assessment data. Furthermore, in making state determinations under IDEA, §616(d), USDE holds states accountable for the percentage of children with disabilities who participate in regular statewide assessments compared to the percentage who participate in alternate assessments.

SPED Indicator #4 enables the agency to respond to these, and other, diverse state and federal requirements while at the same time allowing districts make appropriate assessment decisions for students based on individual students' needs and the extent to which students meet the eligibility requirements for a particular assessment or accommodation. Moreover, because the STAAR® Alternate 2 does have specific eligibility requirements, and districts evaluated by the agency's monitors for their students' participation in the STAAR® Alternate 2 have not always been able to provide evidence that justified the administration of the alternate assessment, SPED Indicator #4 will continue to be an important component of the agency's monitoring system.

Comment. TCASE, TASA, and TEPSA recommended that Report Only designations be assigned for SPED Indicators #5, #6, and #7 if, for example, a district earns a PL 0 or 1 on SPED Indicators #1, #2, and #3, contending this would recognize and balance achievement and compliance ratings. The commenters stated that Disability Rights Texas (DRTx) agrees with this recommendation. TSA expressed support for this comment.

Agency Response. The agency disagrees. By design, PBMAS is comprised solely of indicators of student performance and program effectiveness. Additionally, irrespective of a district's performance on SPED Indicators #1, #2, and #3, the PBMAS ensures that districts are held accountable for the extent to which their special education programs effectively ensure that students with disabilities have access to the least restrictive environment (LRE).

Comment. TCASE, TASA, and TEPSA recommended consolidating SPED Indicators #5, #6, and #7 into one indicator with sub-indicators resulting in one PL while changing all sub-indicators to Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. SPED Indicators #5, #6, and #7 are designed to meet federal requirements specific to certain discrete education environments and, as applicable, specific racial and ethnic student groups.

Comment. TCASE, TASA, and TEPSA recommended replacing the current calculations for SPED Indicators #8 and #9 and using Senate Bill (SB) 1867, 84th Texas Legislature, 2015, to calculate graduation and dropout rates or to create an appeals process for PL assignments to be adjusted based on data analysis using SB 1867 rate calculations. Additionally, TCASE offered a general recommendation regarding the use of endorsement data in future iterations of PBMAS. The commenters stated that DRTx agrees with these recommendations. TSA expressed support for this comment.

Agency Response. The agency disagrees. SPED Indicators #8 and #9 are designed to meet federal requirements specific to dropout and graduation rates. Provisions under SB 1867 do not meet federal requirements. The comment about future iterations of the PBMAS is outside the scope of the current rule proposal.

Comment. TCASE, TASA, and TEPSA recommended consolidating Indicators #10, #11, #12, and #13 into one Representation and Disproportionality indicator resulting in one PL with sub-indicators as Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. However, as noted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70*, available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/, the agency is engaged in an ongoing process of integrating and aligning its special education mon-

itoring responsibilities and as part of that process will continue the phase-in transitional approach to indicator redevelopment evident in previous years' PBMAS releases. While the 2016 PBMAS includes an initial redevelopment of the SPED representation indicators, the agency anticipates it will be the 2017 PBMAS before additional considerations could be implemented with existing agency resources.

Comment. TCASE, TASA, and TEPSA recommended clarifying the identification of a Hispanic student to one in which that is his/her only race in order to align with the new changes proposed for African American identification. TSA expressed support for this comment.

Agency Response. The agency disagrees. Hispanic is an ethnicity, not a race. Commenters may wish to review the USDE's final guidance on the collection and reporting of racial and ethnic data published in the Federal Register on October 19, 2007 (72 Fed Reg 59267).

Comment. TCASE, TASA, and TEPSA recommended consolidating SPED Indicators #14, #15, and #16 into one discipline and disproportionality indicator, resulting in one PL with sub-indicators as Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. However, as noted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70*, available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/, the agency is engaged in an ongoing process of integrating and aligning its special education monitoring responsibilities and as part of that process will continue the phase-in transitional approach to indicator redevelopment evident in previous years' PBMAS releases. While an initial redevelopment of the SPED discipline indicators began with the 2015 PBMAS, the agency anticipates it will be the 2017 PBMAS before additional considerations could be implemented with existing agency resources.

Comment. TCASE, TASA, and TEPSA recommended continuing SPED Indicators #14, #15, and #16 as Report Only indicators for two more years. TSA expressed support for this comment.

Agency Response. The comment is outside the scope of the current rule proposal.

Comment. TCASE, TASA, and TEPSA recommended adding an appeals process to incentivize greater student achievement and allow use of the most current data. The commenters stated that DRTx agrees with this recommendation. TSA expressed support for this comment.

Agency Response. The agency disagrees. The data used in the monitoring system are the most current data available to the agency. Districts, however, have earlier access to their data than the agency does. Therefore, districts that engage in robust and ongoing self-monitoring prior to the agency's annual PBMAS reporting can best assure the data the agency uses in its monitoring system reflect, as closely as possible, the most recent state of performance and program effectiveness at the district level. Additionally, although districts have always been able to request a review of incorrect PL assignments, more specific information detailing the process for doing so was formally adopted beginning with the 2010 PBMAS. The agency will continue to make appropriate adjustments to any PL assignments that are determined to be assigned erroneously.

Comment. TCASE, TASA, and TEPSA offered general recommendations concerning the PEIMS, proposed USDE risk ratio

calculations, user-friendly communication tools, the State Performance Plan, and residential facilities monitoring. The commenters stated that DRTx agrees with the recommendations related to PEIMS and user-friendly communication tools. TSA expressed support for this comment.

Agency Response. This comment is outside the scope of the current rule proposal.

Comment. DRTx commented that the PBMAS provides a wealth of information regarding students with disabilities; that, in general, it helps hold school districts serving students with disabilities accountable; and that the organization appreciates that the agency has considered changes and updates to the PBMAS Manual over time.

Agency Response. The agency agrees the PBMAS provides a wealth of information regarding students with disabilities and that it helps hold school districts serving students with disabilities accountable.

Comment. DRTx commented that it sees no benefit to changing the number of years' data available for analysis under SPED Indicator #5 from one to two.

Agency Response. The agency disagrees that there is no benefit to increasing the number of years' data available for analysis under SPED Indicator #5 from one to two. As articulated in the proposed rule's guiding principles, PBMAS evaluates a maximum number of school districts by using appropriate alternatives to analyze the performance of districts with small numbers of students. Allowing districts to meet the minimum size requirement (MSR) based on two years of data increases the number of districts that can be evaluated under SPED Indicator #5 each year. The agency anticipates, for example, that nearly 100 more districts will be evaluated under SPED Indicator #5 in the 2016 PBMAS when the number of years' data available for analysis increases from one to two.

Comment. Regarding SPED Indicator #6 and SPED Indicator #7, DRTx commented that maintaining the age reporting categories of 6 to 11 and 12 to 21 better ensures compliance with IDEA's mandate that students with disabilities be educated and served in the LRE. DRTx further stated, given the distribution of students with disabilities by age is not even, and there is a far greater number of students with disabilities ages 12 to 21, blending the four age-based indicators is likely to mask the experiences of younger students with disabilities as those students will be underrepresented in the proposed aggregated indicator. DRTx maintained that ensuring compliance with the LRE mandate necessitates two indicators for mainstreaming by age groupings. One individual commented that elementary school versus middle school versus high school is very different, and putting the indicators together does not give that representation.

Agency Response. The agency disagrees that maintaining the age reporting categories of 6 to 11 and 12 to 21 better ensures compliance with IDEA's mandate that students with disabilities be educated and served in the LRE. The proposed 6-21 age category for SPED Indicator #6 and SPED Indicator #7 is directly aligned with the federally defined age category for LRE.

Comment. DRTx commented that the disproportionality rate calculation proposed under SPED Indicators #6 and #7 for subgroups of students with disabilities from minority backgrounds will be beneficial.

Agency Response. The agency agrees the proposed disproportionality rate calculation for disaggregated racial and ethnic groups will be beneficial.

Comment. DRTx commented that there is no authority to include SPED Indicator #10 and that the indicator is contrary to TEC, §29.010(f).

Agency Response. The agency disagrees. In addition to a wide range of state and federal authority authorizing the agency to monitor districts' special education programs, IDEA, §612(a)(24), requires states to have a process in place to prevent not only the disproportionate representation of children by race and ethnicity, but also the over-identification of children with disabilities. Like all SPED indicators in the 2016 PBMAS, SPED Indicator #10 is consistent with both federal law and TEC, §29.010(f).

Comment. DRTx expressed a grave concern that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate and that the indicator does not account for school districts that do not identify enough students with disabilities. DRTx indicated it has received numerous complaints over the years about referrals not being made because of a concern about this indicator affecting districts' choices.

Agency Response. The agency disagrees that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that districts have not initiated referrals because of a concern about any PBMAS indicator and has evidence of a violation of processes and procedures resulting in the denial of special education services to an eligible student, it should file a special education complaint with the agency.

Comment. The Texas Charter Schools Association (TCSA) commented that all schools have a federal responsibility to evaluate and identify all students suspected of having a disability, that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of students identified as a student with a disability even though they may believe more students should be receiving services, and that SPED Indicator #10 is at odds with the federal Child Find mandate. TCSA further commented that by accepting all students who were identified by previous school districts, by attracting families with children with disabilities, and by having geographic boundaries that often overlap more than one school district, some charter schools may have higher than average special education representation and that SPED Indicator #10, therefore, unfairly penalizes charter schools. TCSA stated that SPED Indicator #10 could directly result in the non-renewal or closure of a charter school as a result

of the Charter School Performance Framework. TCSA recommended that SPED Indicator #10 be changed to a Report Only indicator.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of their students identified as a student with a disability even though they may believe more students should be receiving services. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure students are placed in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications and provide protections against evaluation measures that are racially or culturally discriminatory.

The agency disagrees that SPED Indicator #10 unfairly penalizes charter schools, noting there is no evidence that charters in general are unfairly assigned the lowest PLs for the indicator or that when a charter is assigned the PLs, it is because the charter accepted all students who were identified by previous school districts, attracted families with children with disabilities, or has geographic boundaries that overlap more than one school district. Additionally, the agency notes that although the Charter School Performance Framework is outside the scope of the proposed rule action, it is not aware of any circumstances whereby charter revocation or nonrenewal ensues from a charter school appropriately meeting its obligation to identify and provide a free appropriate public education to all students with disabilities who require special education.

Comment. TCSA recommended that PBMAS offer greater flexibility for school districts and charter schools that are under the Alternative Education Accountability (AEA) system so that the agency's measure of student success matches the mission of the school. TCSA requested a distinction between standard accountability and alternative accountability in the PBMAS, as seen with the AEA.

Agency Response. The agency disagrees. The PBMAS is designed to align with the program requirements and priorities of state and federal programs that apply to all districts serving students in those programs, irrespective of district type or "mission." Additionally, although the AEA system is only applicable to the state accountability system, because the PBMAS was specifically developed to be different from a pass/fail system, it appropriately takes into consideration the diversity that exists across districts, not only in terms of charter districts, but also the considerable diversity that exists among non-charter districts. This diversity is accommodated in the PBMAS through a variety of unique components, including ranges of PL cut points, special analysis, minimum size requirements, and required improvement. Moreover, any district (regardless of type or mission) performing at the lower end of the PBMAS indicators is likely to benefit from the implementation of local improvement efforts given the strong alignment between the PBMAS and other federal accountability measures.

Comment. TSCA commented that, unlike the proposed 2016 *Accountability Manual*, the 2016 PBMAS Manual does not address the various issues raised during the administration of the 2016 STAAR®.

Agency Response. The agency disagrees. As noted in Section II of the 2016 PBMAS Manual in the section entitled *Data Sources*, "a data source used in the PBMAS may be unintentionally affected by unforeseen circumstances, including natural disasters or test contractor administration issues. Should those circumstances occur, [the agency] will consider how or whether that data source will be used to ensure PBMAS calculations, performance level assignments, and interventions are implemented appropriately and in alignment with the system's guiding principles." The commissioner of education clarified, in correspondence dated April 29, 2016, that March 2016 test results affected by online testing issues will only be included in the PBMAS if the student meets or exceeds the applicable standard for Satisfactory Academic Performance (http://tea.texas.gov/taa_letters.aspx). Districts received further information from the test contractor on June 1, 2016, regarding the identification of students affected by online testing issues in March 2016.

Comment. TSCA commented that the 2016 PBMAS STAAR® and EOC assessment indicators set a higher cut score than the 2016 *Accountability Manual* and that the PBMAS indicators penalize schools that receive anything less than 65% on the mathematics, science, social studies, reading, and writing assessments.

Agency Response. The agency agrees that the PLs proposed for use in the 2016 PBMAS are different from the Index 1 target proposed in the 2016 state accountability system but disagrees that the PBMAS and the state accountability system are measuring the same data elements or that the PBMAS PL cut points are higher and penalize schools that receive anything less than 65% on mathematics, science, social studies, reading, and writing assessments. Because the PBMAS and the state accountability systems are designed differently, and the indicators evaluated are substantially different, each system includes targets or PLs appropriate for the purposes, goals, design, and requirements of the particular system. One of the critical differences between the two systems is evident in the distinction between a single, pass/fail accountability index target and a range of PBMAS PL assignments. The comment related to the alignment of standards incorrectly equates a single-standard, pass/fail system (the state accountability system) with a multi-level PL system (PBMAS). In fact, compared to the single 60% Index 1 target, only districts with passing rates less than 20% on Indicator 1(i-v), 50% on Indicator 2(i-v), and (depending on subject area) less than 19% to 35% on Indicator 3(i-iv) are assigned the lowest PL in the 2016 PBMAS.

Comment. The Arc of Texas (The Arc) commented that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education services and requested the agency reconsider using it as a PL. The Arc suggested the indicator had a significant impact on the number of students enrolled in special education services and that enrollment mirrored the national average at 11.5% in 2006, but quickly dropped to 8.5% after the PL was implemented, which to The Arc indicates school districts are using it as a hard line determinate for the number of students permitted to be enrolled in special education. The Arc stated that roughly 3% of students in Texas are not getting the supports and services they need and that school

districts are working to meet the 8.5% rather than identifying students with disabilities.

The Arc further commented that having unidentified students with special needs contributes to the strain on teachers and the consequential teacher shortage. Lastly, The Arc stated that if students are not getting the supports they need and teachers are not prepared to support them, this will be reflected in test scores, dropout rates, and graduation levels.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.

Comment. A representative of the Coalition of Human Rights Policy Advocates commented that she has attended many admission, review, and dismissal (ARD) committee meetings where there was a clear indication a student would qualify for special education services and a parent requested an independent evaluation to further advocate for that and that children should receive services if they qualify, not based on an 8.5% cap or limit.

Agency Response. If the commenter has evidence that, during any initial evaluation, a school district engaged in a violation of processes and procedures resulting in the denial of special education services to an eligible student, she should file a special education complaint with the agency. The agency agrees that children should receive services if they qualify and notes that there are many reasons a student may not be eligible based on the considerable amount of evidence the ARD committee is required to consider in making that determination. The agency disagrees there is an 8.5% cap or limit. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Comment. An individual commented that we need to assess our students and decide whether they belong in special education based on the student, not based on an indicator that places the school in trouble for going over 8.5%. The individual further com-

mented that there are a lot of bad outcomes for not identifying 1 out of 3 students.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.

Comment. DRTx commented that the MSR for SPED Indicators #14, #15, and #16 adopted under the 2015 PBMAS are more appropriate and beneficial to ensure that students with disabilities are not unfairly assigned to disciplinary placements and that the organization sees no benefit to change the MSR numerator to 30. DRTx further stated there is no justification to move away from special analysis for those indicators and that the adoption of a disproportionality rate calculation does not appear to require a larger numerator.

Agency Response. The agency disagrees that the MSR adopted for SPED Indicators #14, #15, and #16 adopted under the 2015 PBMAS are more appropriate and beneficial than the MSR proposed for those indicators in the 2016 PBMAS. While the MSR under the 2015 PBMAS was based on both the number of placements and the number of students, the 2016 MSR for those indicators is based on the number of placements irrespective of the number of students. Prioritizing the number of placements over the number of students recognizes that students with disabilities are not only disproportionately placed in disciplinary settings generally relative to their non-disabled peers, but they are also more likely to be placed repeatedly. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

The agency disagrees that there is no justification to move away from special analysis. The initial redevelopment of the SPED discipline indicators began with the 2015 PBMAS and continues with the 2016 PBMAS. When the redevelopment process has been fully implemented, the agency anticipates it will propose reinstating the special analysis process for these indicators as it has done with other redeveloped PBMAS indicators in the past.

Comment. Enabled Advocacy commented that the number of students for the SPED discipline indicators MSR had tripled and that change was not in alignment with the stated purpose of PBMAS to include as many districts as possible.

Agency Response. The agency disagrees that the number of students for the SPED discipline indicators MSR has tripled. While the MSR under the 2015 PBMAS was based on both the number of placements and the number of students, the 2016 MSR for those indicators is based on the number of placements irrespective of the number of students. Prioritizing the number of placements over the number of students recognizes that students with disabilities are not only disproportionately placed in disciplinary settings generally relative to their non-disabled peers but are also more likely to be placed repeatedly. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

Comment. Enabled Advocacy commented that the PBMAS MSR for the SPED indicators are not in alignment with the stated purpose of PBMAS to include as many districts as possible and that one quarter of districts do not meet the MSR for any of the PBMAS special education indicators. Enabled Advocacy further commented that for the SPED EOC, graduation, and dropout indicators, as many as 60% do not meet MSR.

Agency Response. The agency disagrees that the PBMAS MSR for the SPED indicators are not in alignment with the stated purpose of PBMAS to include as many districts as possible. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

Comment. Enabled Advocacy commented that special analysis does not apply to 14 out of the 16 SPED indicators.

Agency Response. The agency recognizes that the proposed rule's guiding principle of system evolution creates a dynamic in which indicators are added, revised, or deleted in response to changes and developments that occur outside of the system, including new legislation and the development of new assessments. The 2016 PBMAS will be implemented not only within the context of ongoing changes to the assessment system but also within the context of a phased-in, transitional approach to indicator redevelopment in the SPED program area resulting from recommendations adopted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70*, available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/. Given those contexts, it is not surprising there will be fewer indicators eligible for the special analysis process (which requires multiple years of comparable data) until all of those changes have been fully implemented.

Comment. One individual requested an analysis of an IEP goal directly correlated to a STAAR® Alternate 2 test item to monitor how well IEPs are being implemented.

Agency Response. This comment is outside the scope of the current rule proposal.

Comment. A school district special services director recommended that all PBMAS indicators that rely on state assessment data be revised to Report Only in light of the ongoing concerns with the STAAR® and STAAR® Accommodated test administrations.

Agency Response. The agency disagrees. As noted in Section II of the 2016 PBMAS Manual in the section entitled *Data Sources*, "a data source used in the PBMAS may be unintentionally affected by unforeseen circumstances, including natural

disasters or test contractor administration issues. Should those circumstances occur, [the agency] will consider how or whether that data source will be used to ensure PBMAS calculations, performance level assignments, and interventions are implemented appropriately and in alignment with the system's guiding principles." The commissioner of education clarified, in correspondence dated April 29, 2016, that March 2016 test results affected by online testing issues will only be included in the PBMAS if the student meets or exceeds the applicable standard for Satisfactory Academic Performance (http://tea.texas.gov/taa_letters.aspx). Districts received further information from the test contractor on June 1, 2016, regarding the identification of students affected by online testing issues in March 2016.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations; TEC, §29.001(5), which authorizes the agency to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.010(a), which authorizes the agency to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the agency to monitor the effectiveness of LEA programs concerning students with limited English proficiency; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.054(b-1), which authorizes the agency to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §§39.056-39.058, which authorize the commissioner to adopt procedures relating to on-site and special accreditation investigations; and TEC, §39.102 and §39.104, which authorize the commissioner to implement procedures to impose interventions and sanctions for school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.028, 29.001(5), 29.010(a), 29.062, 39.051, 39.052, 39.054(b-1), 39.056-39.058, 39.102, and 39.104.

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

Filed with the Office of the Secretary of State on July 20, 2016.

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For further information, please call: (512) 475-1497



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

The Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on June 20, 2016 adopted the repeal of §§65.90 - 65.94 and new §§65.90 - 65.99 concerning Chronic Wasting Disease - Movement of Deer. New §§65.90 - 65.92 and 65.94 - 65.98 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2853). The repeals, new §65.93, and new §65.99 are adopted without changes and will not be republished.

Change to Definitions

The change to §65.90, concerning Definitions, adds a definition for "Interim Breeder Rules." The rules as adopted, include provisions predicated upon compliance with previous rules. Therefore, a definition of "Interim Breeder Rules" was added to provide a shorthand reference for those rules.

Changes to General Provisions

The change to §65.91, concerning General Provisions, alters subsection (a). As proposed, the subsection provided that to the extent any provision of the proposed new rules conflicted with any other provision of Chapter 65, the new rules would control; however, Chapter 65, Subchapter B, Division 1 contains provisions regarding Chronic Wasting Disease (CWD) management zones that are intended to function on their own terms. Therefore, it is necessary to clarify that fact.

The change to §65.91 also adds new subsection (d) to clarify that a deer breeding facility is prohibited from moving deer out of the breeding facility if such movement is prohibited under a hold order or quarantine imposed on the breeding facility by the Texas Animal Health Commission (TAHC). Under the rules as proposed, and as adopted, the lawful movement of breeder deer is predicated on a facility's designation as Movement Qualified (MQ). Although the provisions of §65.99 as adopted, concerning Violations and Penalties, provide that a person who possesses or receives white-tailed deer or mule deer pursuant to a Triple T permit, DMP or a deer breeder permit is subject to the provisions of TAHC regulations regarding Chronic Wasting Disease, subsection (d) was clarified to state that if a facility is prohibited from moving deer under a hold order or quarantine issued by TAHC, movement of deer under those circumstances is prohibited.

In addition, a change was made to §65.91(e) (which was §65.91(d) as proposed) to modify the cross-reference to the subsection regarding receipt of deer by a release site. The rules as adopted adjust the time period for release site testing. As a result, it is more appropriate to reference the entirety of §65.95(c) regarding release sites, rather than the more specific §65.95(c)(1)(D).

Changes to CWD Testing

The change to §65.92, concerning CWD Testing, clarifies who may collect the tissue upon which ante-mortem tests are to be conducted and provides additional detail to ensure that a valid sample is collected. As proposed, §65.92(b) required ante-mortem test samples be collected "by or under the supervision of a qualified licensed veterinarian." However, to ensure compliance with statutory requirements regarding the practice of veterinary medicine, as well as regulatory requirements of TAHC and the Texas Board of Veterinary Medical Examiners regarding the collection of ante-mortem samples, the change to §65.92(b) provides that ante-mortem samples must be collected by a "licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC." In addition, to ensure that samples are sufficient to accommodate ante-mortem testing, §95.92(b) was modified to require that at least six lymphoid follicles be collected.

The change to §65.92(b) also eliminates the 16-month residency requirement for ante-mortem testing of breeder deer imposed by proposed subsection (b)(2). The intent of proposed subsection (b)(2) was to ensure that animals subjected to ante-mortem testing had been in a facility long enough to have contracted CWD if it were present. However, while a deer with a residency in a facility of less than 16 months may not have had sufficient incubation time to detect CWD if it was contracted in that facility, a test of that deer would provide information about any previous facility in which the deer was held. Therefore, the residency requirement was eliminated.

Another change to §65.92 reduces the interval of ante-mortem testing eligibility established in subsection (b)(3) from 36 months to 24 months. The intent of proposed subsection (b)(3) was to ensure that the epidemiological value of ante-mortem testing is not compromised. Repeated testing of a single animal for which "not detected" test results have been obtained would compromise the value of ante-mortem testing within a deer herd. In addition, ante-mortem testing is an invasive procedure that removes tissues and those tissues do not immediately regenerate; therefore, after several biopsies, sample quality may diminish. However, because most breeding facilities contain fewer than 50 deer, the rule as proposed would have made compliance with the 36-month interval between testing difficult for small herds. In addition, veterinarians have indicated that testing a deer every 24 months can be accomplished without significantly compromising sample quality. Therefore, the department reduced the testing frequency interval.

The change to proposed §65.92 also removes proposed subsection (c)(3), which imposed a five-month "window" for ante-mortem test results to be submitted to the department for purposes of increasing status. The rules as proposed included a mechanism to enable a deer breeding facility to achieve Transfer Category (TC) 1 by annually submitting "not detected" ante-mortem CWD 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. As a result, the proposal included a testing "window" to preserve administrative efficiency by restricting testing for the purpose of "upgrading" from a lower status to the time of year when deer breeders are typically handling deer for other purposes. However, because this option for "upgrading" has been eliminated as described in the discussion of changes to §65.95,

the department has determined that year-round submission of ante-mortem test results can be sustained.

The change to §65.92 also clarifies who may collect tissue samples for post-mortem CWD testing. As proposed, §65.92(c) (proposed §65.92(d)) stipulated that to be valid for testing, an obex had to be collected by a qualified licensed veterinarian or other person certified by TAHC, and that a medial retropharyngeal lymph node collected by a qualified licensed veterinarian or other person approved by the department could be submitted in addition to or in lieu of an obex. In the interests of simplification, the provision has been altered to state that a sample is not valid unless it was collected by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

Finally, the change to §65.92 alters the ratio of ante-mortem test results that may be substituted for post-mortem test results in subsection (d)(proposed subsection (e)). As proposed, the ratio was two ante-mortem test results for every required post-mortem test result, provided at least two eligible mortalities had occurred in the facility during the corresponding reporting year and post-mortem test results equivalent to 50 percent of the total required results had been submitted. In other words, ante-mortem test results could be substituted for no more than 50 percent of the required post-mortem test results. As adopted, that ratio is three ante-mortem test results for every required post-mortem test result (i.e., a 3:1 ratio), but there is no limit on the number of post-mortem tests for which ante-mortem tests can be substituted. An ante-mortem to post-mortem ratio that is higher than 1:1 is necessary to compensate for the fact that deer that have died from natural causes are far more epidemiologically valuable than live and apparently healthy deer selected for ante-mortem testing. A deer that has died naturally, by definition, died as a result of some causal agent. As a result, it is more likely that a deer that has died naturally would test positive for CWD than an apparently healthy deer. During the public comment period, there was discussion of eliminating the maximum use of ante-mortem substitution. However, if no mortalities are tested, a higher number of ante-mortem tests would be required to achieve the same epidemiological benefits as post-mortem tests, perhaps as much as 6:1. There was stakeholder input suggesting a 4:1 substitution if less than 50 percent of mortalities were tested, and retaining the 2:1 ratio if the number of post-mortem tests submitted was equal to at least 50 percent of eligible mortalities. The department also received public comment and discussion suggesting the simplification of the regulations wherever possible. Therefore, in an effort to simplify this requirement, an ante-mortem substitution ratio of 3:1 was selected. From an epidemiological perspective, while more testing is preferred, a substitution ratio of 3:1 was determined to be adequate.

Changes to Breeding Facility Minimum Movement Qualifications (§65.94) and Movement of Breeder Deer (§65.95) - Generally

With regard to the changes to §65.94, concerning Breeding Facility Minimum Movement Qualification, and §65.95 concerning Movement of Breeder Deer, several changes were made in response to comments, stakeholder input, and public testimony.

The rules as proposed and as adopted (as well as the Emergency and Interim Breeder Rules) establish three categories of breeding facilities based on level of epidemiological risk, with Transfer Category 1 (TC 1) representing the lowest risk of harboring or transmitting CWD and TC 3 representing the highest risk. Similarly, three levels of release sites (sites onto which breeder deer had been liberated) are established, also based on

the level of epidemiological risk, with Class I release sites representing the lowest risk of harboring or transmitting CWD and Class III release sites representing the highest risk.

The Emergency Rules and the Interim Breeder Rules required testing of hunter-harvested deer from sites on which breeder deer had been released, except for release sites that received deer only from Transfer Category 1 (TC 1) facilities. Under the Emergency and Interim Breeder Rules, only breeding facilities that had achieved "fifth year" or "certified status" in the TAHC CWD Herd Certification Program were TC 1 facilities.

As the department worked with stakeholders to develop the proposed rules, deer breeders continued to state that the elimination or reduction of testing at release sites was important to them. Out of the facilitated process, described elsewhere herein, came additional options for achieving TC 1 status that also incorporated ante-mortem testing. More specifically, three additional options were developed to enable breeding facilities that were not "fifth year" or "certified status" facilities to obtain TC 1 status and to provide for the use of ante-mortem tests to achieve TC 1 status more quickly.

As with previous rules, the proposed rules also established minimum testing requirements that a deer breeder must meet to transfer deer to another facility, including a release site. A breeding facility that met the minimum requirements for the transfer of deer (i.e., a breeding facility that was "movement qualified" or "MQ") but did not meet the requirements for being a TC 1 facility (and was not a TC 3 facility) would be classified as TC 2 facility. Because TC 2 represented a higher risk of harboring or transmitting CWD than a TC 1 breeding facility, under the proposed rules, a release site (which was not a Class III release site) onto which a deer from a TC 2 facility was liberated (classified as a Class II release site) would be required to submit CWD tests for hunter-harvested deer as provided in the rules.

During the public comment period and in testimony before the Commission, concerns continued to be raised about the continuation of required testing at release sites that received deer from TC 2 facilities (Class II release sites). As a result of those comments and additional discussions among stakeholders, the rules, as adopted, provide for the elimination of release site testing at Class II release sites after the 2018-2019 hunting year. To accomplish the elimination of Class II release site testing, it was necessary to adjust the provisions for classifying a facility as MQ or NMQ so that the probability of detection of CWD in all breeding facilities would increase to an acceptable level by the time no release site testing (except for Class III release sites) was required. As a result, changes were made in the rules as adopted to §65.94 concerning Breeding Facility Minimum Movement Qualifications and to §65.95 concerning Movement of Breeder Deer. In the rules as proposed and as adopted, the classification of TC 3 for breeding facilities and Class III for release sites is reserved for those breeding facilities and release sites that have been 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 have not been released from a TAHC hold order).

Changes to Breeding Facility Minimum Movement Qualifications (§65.94)

Changes were made to §65.94 concerning Breeding Facility Minimum Movement Qualifications to clarify the MQ requirements

applicable upon the rules' effective date, to incorporate the modified MQ requirements that will go into effect April 1, 2017, and to make minor clarifying changes.

With regard to §65.94(a)(1)(A), under the proposed rules as well as the adopted rules, upon the rule's effective date, a breeding facility will be MQ if it has complied with the historic CWD testing requirement which required submission of CWD "not detected" test results for at least 20 percent of the total number of eligible mortalities that occurred in the facility since May 23, 2006. However, to accommodate facilities (mostly newer facilities) that had experienced a low number of mortalities, a provision was added that incorporated §65.604(d)(2) of the previous MQ requirements to provide that no testing was required if a breeding facility has had less than five eligible mortalities from May 23, 2006 through March 31, 2016.

The change to §65.94(a)(1)(B) sets out the MQ testing standard that will be effective with the reporting year beginning April 1, 2017. Under the rules as proposed, a deer breeder seeking to be MQ would be required to submit a number of "not-detected" post-mortem test results equal to least 50 percent of the total number of eligible mortalities in the facility each year, and beginning April 1, 2021, a minimum number of post-mortem "not detected" results for each of the previous five years of 2.25 percent of the eligible-aged population in the breeding facility. This standard is replaced with a requirement that to be MQ, a deer breeder must submit "not detected" test results for at least 80 percent of the eligible mortalities that occurred in the facility during the previous reporting year (i.e., the report year that ended March 31), with a minimum annual number of post-mortem "not detected" results for facilities that have been permitted for six months or more that is equal to at least 3.6 percent of the eligible aged population in the breeding facility. As explained below, 3.6 percent is 80 percent of the average expected annual mortality in a breeding facility. In addition, a provision was added to clarify that a breeding facility that had achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program meets the testing requirements to be considered MQ.

The change to §65.94 also inserts the word "or" after subsection (a)(3) because the list of criteria in subsection (a) is intended to be a list of criteria that are individually grounds for being designated NMQ.

The change to §65.94 also alters subsection (a)(4) to clarify that in addition to the recordkeeping and reporting provisions of 31 TAC §65.608, a permittee must be compliant with the recordkeeping and reporting provisions of the rules as adopted.

Finally, the change to §65.94 alters subsections (b) and (c) to clarify that "facility" as used in those subsections means deer breeding facility, and alters subsection (d) by replacing the word "received" with the phrase "have been in possession of," which is intended to clarify that the provision applies to deer that were ever in a facility as well as to deer that are within the facility at the current time.

Changes to Movement of Breeder Deer

The changes to §65.95, concerning Movement of Breeder Deer, consists of several alterations. As noted in the general discussion of the changes to §65.94 and §65.95, as a result of public comment and extensive outreach to the regulated community and stakeholders, the rule as adopted provides a testing program that eventually eliminates release site testing for all release sites (except for Class III release sites), and offers an ante-mortem testing component as a pathway for TC 2 breed-

ing facilities to achieve TC 1 status (which would eliminate release-site testing obligations immediately).

Proposed §65.95(b)(1) would have assigned TC 1 status to a breeding facility if it satisfied one of three testing regimes: (1) submission of "not detected" post-mortem test results for at least 80 percent of eligible mortalities in each of the preceding five report years and then 80 percent of eligible mortalities annually thereafter, provided the "not detected" post-mortem test results for the five-year period were equal to or greater than the annual sum of the eligible-aged population and the eligible mortalities during the five-year period, multiplied by 3.6 percent; (2) a one-time ante-mortem "not detected" test result for 80 percent of the population of eligible-aged deer in the facility, followed by annual "not detected" post-mortem testing of 80 percent of eligible mortalities, provided that after April 1, 2021, "not detected" post-mortem test results for the preceding five-year period are equal to or greater than the sum of the eligible-aged population in the facility at the end of each report year and the eligible mortalities during the five-year period, multiplied by 3.6 percent; or (3) the annual submission of "not detected" ante-mortem test results for 25 percent of the facility's eligible-aged population and 50 percent of eligible mortalities.

In response to comments, §65.95(b)(1) was modified to simplify the mechanisms for obtaining TC 1 status by providing two methods of achieving TC 1 status, in addition to the "fifth year" or "certified" TAHC herds. The first method recognizes that there are some deer breeding facilities that, although not "fifth year" or "certified status," have been testing at a high level for a number of years. Under the first method, a breeding facility will be designated as a TC 1 breeding facility if it has submitted "not detected" test results for at least 80 percent of the total number of eligible mortalities over the preceding five report years, provided the number of "not detected" results is equivalent to or greater than the sum of the eligible-aged population in the facility at the end of each report year and the eligible mortalities during the five-year period, multiplied by 3.6 percent. This option is similar to the option provided in §65.95(b)(1)(A)(ii) of the proposed rules. However, the rule as adopted allows TC 1 status to be attained by providing "not detected" test results for 80 percent of the *total* number of eligible mortalities over the preceding five-year period, rather than 80 percent of eligible mortalities in *each year* of the preceding five-years.

In lieu of the other two options contained in proposed §65.95(b)(1)(A)(iii) and (iv) for achieving TC 1 status more quickly, the rules as adopted provide a simplified option for achieving TC 1 status more quickly. Under this option, a deer breeder can obtain TC 1 status by submitting "not detected" ante-mortem test results for at least 50 percent of the eligible-aged deer in the facility as of the date on which ante-mortem testing begins. However, to facilitate the transition to the new rules, and recognizing that in anticipation of the adoption of these rules some deer breeders may have already begun conducting ante-mortem testing but not yet tested 50 percent of eligible-aged deer, a temporary provision is included to allow a breeding facility that submits "not detected" ante-mortem test results for at least 25 percent of the eligible aged deer in the facility to be temporarily classified as TC 1; however, the facility must provide the balance of the required tests by May 15, 2017.

In addition, the change eliminates proposed §65.95(b)(1)(B) regarding the failure to comply with TC 1 testing requirements. Under the rules as proposed, a TC 1 breeding facility that ante-mortem tested 80% of the eligible deer in the facility but failed

to submit the required post-mortem test results to retain its TC 1 status would be reduced in status to a TC 2 facility, but would have been given a 60-day window to submit the substitution test results necessary to regain TC 1 status. If, however, a TC 1 breeding facility that had been reduced in status for failure to provide sufficient post-mortem test results did not provide sufficient substitution test results within the 60-day period to regain TC 1 status, the breeding facility would not be eligible to regain TC 1 status for two years. This was necessary due to the higher minimum post-mortem testing standard set forth for TC 1 status as opposed to the lower standard for basic MQ testing requirements. Conversely, the MQ requirements in §65.94(b), as proposed and as adopted, provide that a breeding facility that has been designated as NMQ for failure to comply with the MQ testing requirements, would be restored to MQ upon submission of the required test results. Because the adopted rule applies a standard MQ testing requirement to all facilities, it is unnecessary to retain the requirement for regaining TC 1 status within 60-days, as the provisions for regaining MQ status will suffice, so long as lower status breeder deer are not introduced into the TC 1 facility.

The change to §65.95(b) also modifies proposed paragraph (3)(A) and (C) to add the word "quarantine" to the list of TAHC actions that could result in the designation of a breeding facility as a TC 3 facility. A TAHC quarantine would prevent movement of deer. As a result, it is necessary to include quarantine, in addition to other TAHC actions impacting the movement of deer.

Several changes are made to §65.95(c), which addresses release sites. As proposed, §65.95(c)(1)(A) stipulated that a release site consisted solely of the specific tract of land to which deer are released and acreage designated as a release site. However, commenters were concerned that this provision would prevent a landowner from altering the release site by removing cross-fencing or making other changes following changes in ownership. The department has determined that such release site modifications need not be prohibited, although any testing obligations should also apply to the new acreage. Therefore, the change allows modification of the release site description provided the department is notified prior to the physical modification.

As proposed, §65.95(c)(1)(B) stipulated that liberated breeder deer must have complete, unrestricted access to the entirety of the release site. This provision was intended to ensure clarity regarding the sites on which release site testing obligations apply. As a result of public comment, the department determined that there are circumstances under which a landowner legitimately should be able to exclude deer from certain areas, such as landing strips and crops. Therefore, the change allows the exclusion of deer for purposes of human safety or the protection of agricultural resources.

As proposed, §65.95(c)(1)(C) stipulated that breeder deer could be liberated only to release sites surrounded by a fence capable of retaining deer at all times and that the owner of the release site was required to ensure the integrity of gates and fencing. As a result of public comment, the department determined that it was necessary to acknowledge that the provision is subject to mitigating circumstances such as natural disasters and other unintentional disruptors. Therefore, the change specifies that infrastructure integrity be maintained under "reasonable and ordinary" circumstances.

As proposed, §65.95(c)(1)(D) would have release-site testing requirements continue in effect for five consecutive years following

the date of each liberation that resulted in release-site testing. With the elimination of the proposed release-site testing requirements after March 1, 2019 (except for sites that have not submitted the required test results), the five-year time period is no longer necessary. In addition, for consistency with subsection (c)(3), a statement was added regarding the requirement that a release site submit release site test results until the release site's testing obligations have been satisfied, regardless of the March 1, 2019 general expiration of Class II release site testing.

The change to §65.95 also rewords subsection (c)(2) to provide that a facility will be considered a Class I release site if (in addition to not being a Class II or Class III release site), it receives deer only from a TC 1 facility after August 15, 2016. As noted elsewhere in this preamble, the department intends for the rules to go into effect August 15, 2016. Under the provisions of §65.98 as adopted, a release site that is in compliance with the provisions of the Interim Breeder Rules as of August 15, 2016 will not be subject to release site testing until deer are liberated onto the release site that would trigger release site testing under the rules as adopted. Since release sites that were compliant with the Interim Rules will be "reset," it is necessary to clarify that the release of deer from other than a TC 1 facility prior to August 15, 2016 will not result in a compliant release site being considered other than a Class I release site, so long as the only breeder deer released on the release site after August 15, 2016, are from TC 1 facilities.

The change to §65.95 also alters (c)(3) to replace the testing obligations for Class II release sites with a less complicated standard and to provide for the expiration of Class II release site testing. As discussed earlier in this preamble, the changes to the proposed rulemaking are intended to address public comment and reflect intensive interactions with the regulated community and stakeholder groups, particularly the desire to minimize or eliminate release-testing obligations. Therefore, the change to §65.95(c) requires Class II release sites to test the first deer harvested and every deer harvested after the first deer, with no release-site owner required to test more than 15 deer in a single season for each year that release site testing is required. As proposed, Class II release site owners would have been required to provide "not detected" test results for 50 percent of harvested liberated breeder deer or, if no liberated breeder deer were harvested, 50 percent of hunter-harvested deer, and would have been required to test for a minimum of five years following any release of TC 2 deer. However, in an effort to simplify the requirements, which will in turn facilitate compliance and enforcement, the rules as adopted provide for testing up to the first 15 deer harvested at the release site. After analyzing 2015-2016 harvest data at Class II release sites, the department concluded that requiring every deer harvested at a site (but not more than 15) to be tested would enhance the level of release site testing at most sites. Thus, the change results in a simpler standard that is easier to comply with and enforce while remaining epidemiologically efficacious.

The change to §65.95(c)(3) also provides for the expiration of release site testing for Class II release sites in subparagraph (C). As discussed above, in response to comments and concerns about release site testing, required release site testing is being eliminated after March 1, 2019. However, the expiration of release site testing does not obviate the requirement that release sites provide required tests. Therefore, §65.95(c)(3)(C) provides that release site testing for Class II release sites expires on March 1, 2019, for release sites that are in compliance with the release site testing requirements. For release sites that

are not compliant with release site testing requirements, the requirements shall continue until the required tests have been submitted.

Finally, the change to §65.95 adds an inadvertently omitted pronoun "it" and to add the term "quarantine" in subsection (c)(4)(A)(ii), for the same reason discussed in the change to §65.95(b) previously in this preamble.

Changes to Movement of DMP Deer

The change to §65.96, concerning Movement of DMP Deer, replaces the CWD testing obligations in proposed paragraph (1)(B) with a requirement for the landowner of the release site to test the first hunter-harvested deer and every hunter-harvested deer thereafter, but no more than 15 hunter-harvested deer are required to be tested in a single season. The change is made for the same reasons discussed in the change to testing requirements for Class II release sites discussed in the changes to §65.95(c).

The change to §65.96(1) also adds subparagraph (C) to clarify the expiration of release site testing on March 1, 2019, and the obligation to continue to provide test results until test result submission requirements have been met, regardless of the March 1, 2019 release site testing expiration. The reason for this change is the same as was discussed in connection with the changes to §65.95(c)(3)(C), above.

The change to §65.96 also alters paragraph (2) to clarify that the department will not authorize the transfer of deer to a DMP facility from a Class III release site or from a release site or breeding facility that is not in compliance with the testing requirements of the section. As proposed, the transfer of a deer to a DMP facility from a TC 3 breeding facility would not be authorized. However, like deer in a TC 3 breeding facility, deer from a Class III release site or a release site that is not in compliance with applicable rules also pose a higher risk of having been exposed to CWD. A Class III release site is an unsuitable source of deer for DMP activities because it has received exposed deer or is under a hold order or quarantine issued by TAHC. Also, under §65.97 as proposed and as adopted, the department will not issue a Triple T permit for any trap site that has received breeder deer within the previous five years. A Triple T permit is the only method by which deer may be introduced to a DMP facility other than by deer breeder permit or by trapping of free-ranging deer resident on the property for which the DMP is issued. Additionally, any source of deer that is delinquent or deficient in complying with CWD testing obligations should not be authorized to transfer deer because of the possibility of spreading CWD. The change to §65.96(2) will provide greater consistency with the provisions regarding Triple T permits in §65.97.

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

The change to §65.97(a)(1) stipulates that "unless expressly provided otherwise in this section," the disease detection provisions of 31 TAC §65.102 cease effect upon the effective date of the new section. Because of the change to §65.97(a)(5) to reference the marking requirements of §65.102, it is necessary to recognize that a provision of §65.102 will continue to apply.

The change to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, alters subsection (a)(5) to clarify that the tagging requirements imposed by the rule as adopted are in addition to existing identification requirements imposed by current regulation at 31 TAC §65.102. The depart-

ment received several comments concerning the tagging of deer released pursuant to a Triple T permit. This change is necessary to ensure clarity. In addition, as a result of public comment, the testing requirement for Triple T release sites was eliminated. As a result, provisions requiring or referencing release site testing in subsection (a)(9)-(12) have been removed. The requirement to conduct trap site testing, in addition to the limitations on the sites from which deer may be trapped, has been determined to be epidemiologically sufficient to dispense with required Triple T release site testing.

Changes to Transition Provisions

The change to §65.98, concerning Transition Provisions, alters the provisions of proposed subsection (c) to harmonize the rule with the changes made to §65.94 and §65.95, discussed earlier in this preamble. The change allows Class I release sites that receive breeder deer from a TC 2 breeding facility after the effective date of the rule to be designated Class I at the close of the 2016/17 hunting year if release site complies with all testing requirements in that season and the source breeding facility or facilities have subsequently become TC 1 or all deer received from TC 2 source facilities are harvested and tested with "not detected" test results. In addition, subsection (d)(1) (subsection (c)(1) as proposed) was modified to specify that noncompliant release sites must comply with the adopted rules' requirements for three "consecutive" years. In addition, subsection (d)(2) (subsection (c)(2) as proposed) was modified to clarify that noncompliant release sites would be ineligible to receive deer transferred pursuant to a DMP, in addition to a Triple T permit.

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. 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 approximately 1,200 permitted deer breeders (operating more than 1,250 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, 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.

The new rules include requirements regarding the release, retention and movement of deer pursuant to DMPs, Triple T permits, TTP permits, and deer breeder permits.

CWD Background

The department and TAHC have been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. 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).

As a result, the department and the TAHC have worked closely to protect susceptible species of exotic and native wildlife from CWD, and developed a Chronic Wasting Disease Management Plan (the Plan) to guide the department and TAHC in addressing risks, developing management strategies, and protecting big game resources from CWD in captive or free-ranging cervid populations. The most recent version of the Plan was finalized in March 2015. Much of the information provided in this preamble is also contained in the Plan.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, black-tailed deer, elk, red deer, sika, moose, 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, found in humans). 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 it is a progressive, fatal disease with no known immunity or treatment. CWD is known to occur via natural transmission in white-tailed deer, mule deer, black-tailed deer, red deer, sika deer, elk, and moose (Sohn et al. 2011, CWD Alliance 2012, Saunders et al. 2012). There are two primary sources of exposure to CWD for uninfected deer: (1) CWD infected deer, and (2) CWD contaminated environments (Williams et al. 2002, Miller et al. 2004, Mathiason et al. 2009). It is believed that some TSE prions may appear spontaneously and sporadically, but there is no evidence of spontaneous CWD (Chesebro 2004). The presence of infected deer over time increases the number of infectious CWD prions in the environment. As CWD becomes established in an area, environmental contamination may become the primary source of exposure for uninfected deer. Conversely, in areas where CWD is not established, and where the environment is relatively uncontaminated, direct animal contact is considered the most likely source of transmission of CWD to uninfected deer.

CWD is an additional mortality factor in deer populations, and data indicate that mortality rates can surpass fawn recruitment in local populations with high CWD prevalence. This additive mortality can result in declining population trends. CWD does not have the immediate short-term impacts to deer populations that may be seen with some other diseases such as anthrax or

epizootic hemorrhagic disease (EHD); however, insidious, persistent diseases that increase in prevalence in early years with no noticeable impacts, such as CWD, may be more likely to influence long-term population dynamics. CWD prevalence is much higher and has increased more rapidly in some populations than what is often proclaimed. For example, the Wyoming Game and Fish Department has been monitoring an infected mule deer population in southeast Wyoming since 2001, when there were an estimated 14,393 mule deer and a CWD prevalence of 15%. Ten years later, the disease prevalence was 57% and the mule deer population was estimated at less than 7,500 deer.

In addition, studies have found that CWD-positive deer were much more likely to die as compared to their uninfected counterparts. While CWD-positive deer in the studies that did survive to the clinical stages of the disease did eventually succumb to CWD, preclinical CWD-positive animals were also shown to be more vulnerable to other mortality factors such as predation, hunter harvest, and vehicle collisions.

In early stages of infection, limiting the growth of environmental contamination through the reduction of infected individuals may offer some control in limiting disease prevalence and distribution (Wasserberg et al. 2009, Almqvist et al. 2011). However, infected individuals on the landscape serve as a reservoir for prions which will be shed into the environment. Prions are shed from infected animals in saliva, urine, blood, soft-antler material, and feces (Gough et al. 2009, Mathiason et al. 2009, Saunders et al. 2012). There are no known management strategies to mitigate the risk of indirect transmission of CWD once an environment has been contaminated with infectious prions. This makes eradication of CWD very difficult, if not impossible in areas where CWD has been established for a long period before initial detection. Although the incubation period for CWD is not fully understood, a susceptible species infected with CWD is expected to display symptoms within five years after infection.

As CWD is invariably fatal, a high prevalence of the disease in free-ranging populations has been correlated to deer population declines. Human dimensions research suggests that hunters will avoid areas of high CWD prevalence (See, e.g. Duda 2011, Needham et al. 2007, Vaske 2009, Zimmer 2012). 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.

The number of states and provinces in which CWD has been discovered has steadily increased in the past decade, forcing many state and provincial wildlife agencies, hunters, and stakeholders to confront the myriad of consequences and implications this disease presents. Implications of CWD are often centered on the anticipated, or unknown potential impacts to wild cervid populations, most notably concerns for population declines resulting from infected herds. Disease eradication is expected to become less attainable as CWD becomes more established in a population, emphasizing the criticality of a sound CWD surveillance and response plan. Of course, disease prevention is the best approach to protecting cervid populations and avoiding social and economic repercussions resulting from CWD or other wildlife diseases (Sleeman & Gillin 2012).

In addressing CWD, the CWD Management Plan sets forth three major goals: (1) Minimize CWD risks to the free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas; (2) Establish and maintain support for prudent CWD management with hunters, landowners, and other stakeholders;

and (3) Minimize direct and indirect impacts of CWD to hunting, hunting related economies, and conservation in Texas. The department is guided by these three goals in the development of rules needed to address CWD. The intent of the new rules is to increase the probability of detecting and containing CWD where it exists.

Discovery of CWD

As noted above, 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 45,000 "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 five years preceding the discovery of CWD in the index facility, the index facility had 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 25 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 index facility. Five 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 breeding facility located on the same ranch. While this 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 another Medina County deer breeding facility and subsequent testing revealed an additional thirteen CWD positive deer from the same facility, totaling 14. A free-ranging hunter-harvested mule deer in Hartley County was also confirmed to have CWD, as well as another hunter-harvested deer in the Hueco Mountains.

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 re-

quirements 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).

Current Rulemaking

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 (CPPDR) 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.

Following the publication of the proposed rules in the *Texas Register*, on April 22, 2016, as part of the process for soliciting public comment, the department staff, as well as a facilitator from CP-PDR continued to engage stakeholders. At the May 26, 2016 Commission meeting, the Commission heard public testimony regarding the rules. However, the Commission postponed action on the proposed rules in order to facilitate additional efforts to arrive at consensus with stakeholders and the regulated community. A special Commission meeting was held on June 20, 2016, at which time the Commission heard additional public testimony.

In addition to the facilitated process, and responses to comments and public testimony, the new rules, as adopted, are 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).

Although a lasting consensus among all participants was not achieved through the facilitated rulemaking, the basis for the rules as proposed was developed through this process.

The rules being repealed were intended to function as interim rules (referred to herein as Interim Deer Breeder Rules) in order to maintain regulatory continuity for the duration of the 2015-16 deer season and the period immediately thereafter. As stated in previous rulemakings, the department's intent was to review the interim rules, as well as the emergency rules regarding Triple T and TTP permits and DMP, and, based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free ranging deer herds, guidance from TAHC, and input from stakeholder groups, present the results of that review to the Commission in the spring of 2016 for possible modifications. The rules adopted herein resulted from that process.

New §65.90, concerning Definitions, sets forth the meanings of specialized words and terms in order to eliminate ambiguity and enhance compliance and enforcement.

New §65.90(1) defines "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.

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

New §65.90(3) defines "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 new rules but cumbersome to repeat.

New §65.90(4) defines "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.

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

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

New §65.90(7) defines "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 new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the new rules but cumbersome to repeat.

New §65.90(8) defines "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 new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the new rules but cumbersome to repeat.

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

New §65.90(10) defines "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 the purpose of propagation." The new rules 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.

New §65.90(11) defines "eligible-aged deer." This definition provides two standards for determining if a deer is an "eligible-aged deer." Under §65.90(11)(A), "if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program" an eligible-aged deer is a deer that is "12 months of age or older." However, for any other deer, an eligible-aged deer is a deer that is "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 the United States Department Agriculture (USDA) use a standard of 12 months.

New §65.90(12) defines "eligible mortality" as "an eligible-aged deer that has died." Because the rules provide for post-mortem testing of deer, it is necessary to define an "eligible" mortality from which a valid post-mortem sample can be collected and tested. As mentioned earlier, CWD is difficult to detect in younger animals; therefore, the test results required to engage in cer-

tain activities under the new rules must be obtained from eligible aged deer.

New §65.90(13) defines "exposed deer." This definition replaces the former definition used in the Interim Breeder Rules for "Tier 1," which proved to be easily confused with other terms used in the rules, such as "TC 1." The definition provides 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 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.

New §65.90(14) defines "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 new rules apply, rather than having to enumerate a cumbersome list of sites. (As explained below, TWIMS is the department's Texas Wildlife Information Management Services online application.)

New §65.90(15) defines "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.

New §65.90(16) defines "hunting year." Because the new rules 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 tags issued pursuant to the Managed Lands Deer program; therefore, "hunting year" is 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)."

New §65.90(17) defines "Interim Breeder Rules" as "rules regarding Chronic Wasting Disease-Movement of Deer, approved by the Commission on November 5, 2015, and published in the *Texas Register* on January 29, 2016 (41 TexReg 815)." The definition is necessary because the new rules reference compliance with the Interim Breeder Rules; therefore, a definition is necessary to establish a shorthand term for a phrase that is used in the new rules but cumbersome to repeat.

New §65.90(18) defines "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 new rules set forth testing requirements and other obligations for persons who own land where breeder deer are released.

New §65.90(19) defines "landowner's authorized agent (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 new §65.90(18).

New §65.90(20) defines "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 new rules, in certain circumstances, require the testing of hunter-harvested deer that could be identified as deer that have been liberated.

New §65.90(21) defines "Movement Qualified (MQ)" as "a designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer." The new rules impose requirements, including a minimum level of testing, that deer breeding facilities must meet in order to be authorized by the department to transfer breeder deer under the rules. It is therefore necessary to create a shorthand term to reference that ability.

New §65.90(22) defines "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 new rules prohibit the movement of deer from any facility that is not MQ, a definition for that condition is necessary.

New §65.90(23) defines "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 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.

New §65.90(24) defines "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." The new rules impose certain requirements, restrictions, or prohibitions, based on the status of the property or facility from which deer are moved. Therefore, a shorthand definition is necessary to ensure clarity.

New §65.90(25) defines "post-mortem test" as "a CWD test performed on a dead deer," which is necessary in order to delineate post-mortem testing from ante-mortem testing. The new rules impose requirements and restrictions based on the type of test being performed.

New §65.90(26) defines "properly executed." Because the new rules 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 new rules define "properly executed" as "a form or report required by this division on which all required information has been entered."

New §65.90(27) defines "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. Herd reconciliation is a necessary component of disease management.

New §65.90(28) defines "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 new rules impose CWD testing and other requirements for certain tracts of land where breeder deer are liberated or transferred.

New §65.90(29) defines "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 new rules condition the eligibility of deer breeders to transfer and release deer on the completeness and accuracy of those reports. In addition, the new rules contain provisions that begin or end with a specified reporting year. Therefore, it is necessary to clarify the definition of "reporting year."

New §65.90(30) defines "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 new rules require certain breeder deer and Triple T deer released to release sites to be tagged with either an RFID or NUES tag.

New §65.90(31) defines "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 deer breeder is Transfer Category 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 new rules categorize breeding facilities and release sites based on relative risk. The definition is necessary because the new rules include regulatory requirements that are predicated upon the status of a breeding facility or release site.

New §65.90(32) defines "submit." In order to eliminate lengthy repetition throughout the 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."

New §65.90(33) defines "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 by the National Veterinary Service Laboratories of the United States Department of Agriculture. Because the new rules 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" is defined as "an initial CWD test result of "detected" that has not been confirmed."

New §65.90(34) defines "TAHC" as "Texas Animal Health Commission." As noted elsewhere in this preamble, the Texas Animal Health Commission is the Texas 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). Because the new rules include provisions that are based on determinations or actions of TAHC, a short-hand reference to the agency is necessary.

New §65.90(35) defines "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 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.

New §65.90(36) defines "TAHC Herd Plan" as "a set of requirements for disease testing and management developed by TAHC for a specific facility." In response to the discovery of a disease

over which TAHC has jurisdiction, including CWD, the TAHC may issue a herd plan which imposes certain testing requirements and movement restrictions. The 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.

New §65.90(37) defines "Test, Test Result(s), or Test Requirement" as "a CWD test, CWD test result or CWD test requirement as provided in this division." This definition is provided to ensure clarity regarding the type of test referenced whenever the word "test" is used without the acronym "CWD."

New §65.90(38) defines "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 new rules impose testing and reporting requirements on trap sites under various permits.

New §65.90(39) defines "Triple T permit." Because the new rules 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 new rules, a reference to Triple T permit is limited to a Triple T permit for activities involving white-tailed and mule deer.

New §65.90(40) defines "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.

New §65.90(41) defines "TWIMS" as "the department's Texas Wildlife Information Management Services (TWIMS) online application." TWIMS is the system that is required to be used to file required notifications and reports under the rules.

New §65.91, concerning General Provisions, sets forth a number of provisions that are applicable to the transfer or release of deer.

New §65.91(a) stipulates that in the event that a provision of the new rules conflicts with any other provision of 31 TAC Chapter 65, other than Division 1 of Subchapter B (regarding Disease Detection and Response), the new rules apply. This provision is necessary to avoid confusion resulting from a conflict between the new rules and the agency's existing rules governing white-tailed deer and mule deer. Provided, however, in the event of a conflict between the new rules and Division 1 of Subchapter B of Chapter 65, Division 1 would control. Division 1 addresses the establishment of zones within which movement and testing requirements apply to minimize the risk of CWD expanding beyond the area(s) in which it currently exists in free-ranging deer populations. Although the new rules are intended to be independent of the rules in Division 1, there may be instances in which the new rules would appear to authorize an activity that is prohibited by Division 1. In such a case, the provisions of Division 1 would control.

New §65.91(b) prohibits the transfer of live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP for any pur-

pose except as provided by the 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.

New §65.91(c) prohibits 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. New §65.91(c) also stipulates that such prohibition takes effect immediately upon the notification of a CWD "suspect" test result and continues in effect until the department expressly authorizes the resumption of permitted activities at that facility. The new provision is necessary because CWD is an infectious disease, which makes it necessary to prohibit certain activities that could result in the spread of the disease while test results are confirmed. If a "suspect" test result is determined to be "not detected" then the department may authorize resumption of permitted activities. However, if the result is "confirmed" then provisions of the rule regarding exposed facilities would govern.

New §65.91(d) provides that notwithstanding any provisions of the division, a facility may not move deer to any location if prohibited by a TAHC herd plan associated with a TAHC hold order or TAHC quarantine. As noted elsewhere in this preamble, 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). In accordance with that authority, TAHC may issue a hold order or quarantine preventing the movement of deer. New §65.91(c) clarifies that movement of deer in violation of a TAHC hold order or quarantine is not authorized.

New §65.91(e) provides 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) of this title (relating to Movement of Breeder Deer). The 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 new rules 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 stipulates a duration for the application of continued testing requirements.

New §65.91(f) provides 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 new subsection is necessary for the same reasons addressed in the discussion of new §65.91(e).

New §65.91(g) provides that the designation of status by the department in and of itself does not authorize the transfer or movement of deer. New §65.91(g) also prohibits 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.

New §65.91(h) requires 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.

New §65.91(i) provides 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.

New §65.92, concerning CWD Testing, establishes the general provisions regarding the collection and submission of CWD test samples.

New §65.92(a) requires 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 provides for Texas Veterinary Medical Diagnostic Laboratory (TVMDL), an accredited laboratory that performs CWD testing, to notify the department of test results electronically. By 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 upload of test results by the permitted deer breeder and manual data entry by the department after the test results have been received.

New §65.92(b) sets forth the requirements for valid ante-mortem testing, including the identification of the specific tissues that may be used. New §65.92(b) also requires that tissue samples be collected by a licensed veterinarian, that the testing be done by an accredited laboratory, that at least six lymphoid follicles be collected, and that samples be submitted within six months of submission from a live deer that is at least 16 months of age and that has not been the source of a "not detected" ante-mortem test result submitted within the previous 24 months. To ensure consistency with the Texas Veterinary Practices Act (Occupations Code, Chapter 801), regulations applicable to the practice of veterinary medicine in Texas, and regulations of the TAHC, this subsection requires that ante-mortem samples be collected by a licensed veterinarian authorized to do so by the referenced statutes and regulations. Additionally, in order to be epidemiologically valuable, tissue samples must be extracted from deer older than 16 months of age. 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 24-month interval to increase the likelihood that sufficient host tissues are available for testing and to

prevent the continued use of a single deer to provide tests. 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 may cause the subject animal to be euthanized and subjected to post-mortem testing for confirmation.

New §65.92(c) sets 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 or the medial retropharyngeal lymph node of an eligible mortality and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department. 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 deer 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 new rules require all CWD tests to be performed by a laboratory approved by USDA. Additionally, the new subsection specifies 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. To ensure that valid samples are collected, the new subsection also stipulates that the sample may only be collected by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

New §65.92(d) allows ante-mortem tests to be substituted for required post-mortem tests at a ratio of 3:1. The department acknowledges that natural mortality is unpredictable and that there will be time periods when test results for a sufficient number of mortalities cannot be submitted; therefore, the new rule allows substitution of ante-mortem tests for post-mortem tests. For reasons noted earlier in this preamble, test results from natural mortalities have a higher epidemiological value than ante-mortem tests; therefore, if ante-mortem tests are being conducted in lieu of post-mortem tests, the new rules provide that three "not detected" ante-mortem test results are required for each "not detected" post-mortem test result required.

New §65.92(e) prohibits 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 in disease mitigation because the different ante-mortem testing requirements were developed to be used in combination, and to submit one test to meet two independent criteria does not provide the probability of detection anticipated by the department and on which the rules were based.

New §65.92(f) stipulates 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 new rules should not be able to avoid compliance simply by selling, donating, or trading property to another person related to the seller for the purpose of avoiding the requirements of the rules.

New §65.92(g) provides 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 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 new rule establishes a date certain for reporting test results to the department.

New §65.93, concerning Harvest Log, sets forth the elements and requirements for on-site harvest documentation. The new rules require a harvest log to be maintained on Class II and Class III release sites. For each deer harvested from a Class II or Class III release site for which a harvest log is required, the new rules 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 new provision will 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 new paragraph also requires 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 also provides for the format and retention of the harvest log.

New §65.94, concerning Breeding Facility Minimum Movement Qualification, sets forth the testing requirements necessary for a breeding facility to be able to transfer deer to other deer breeders or for purposes of liberation.

New §65.94(a) provides that a breeding facility will be NMQ (Not Movement Qualified--prohibited from transferring breeder deer anywhere for any purpose) if it has not met the testing, inventory, reporting, and recordkeeping, and TAHC Herd Plan requirements set forth in that subsection.

New §65.94(a)(1) sets forth the CWD testing requirements that must be met to avoid being NMQ. Pursuant to new §65.94(a)(1)(A), from the effective date of the rules through March 31, 2017, a breeding facility must have either had less than five eligible mortalities from May 23, 2006 through March 31, 2016, or obtained "not detected" test results for at least 20 percent of the eligible mortalities that occurred in the facility since May 23, 2006. The provisions of §65.94(a)(1)(A) are essentially the same as that provided in the deer breeder movement rules that existed prior to the June 2015 discovery of CWD in a deer breeding facility. Although this standard provides a very low statistical confidence of detecting CWD if it exists in a facility, this standard is the standard contained in previous rules, as well as the Interim Rules. In addition, the department reasons that any breeding facility not in compliance with this standard should not be allowed to move breeder deer until it has "tested out," or submitted sufficient test samples of "not detected" to provide a higher level of confidence that CWD will not be transmitted from the facility.

New §65.94(a)(1)(B)(i) provides that beginning April 1, 2017, and each April 1 thereafter, a breeding facility that has achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program will be considered to have met the testing re-

quirements necessary to be considered MQ. In order to achieve and maintain "fifth-year" or "certified" status, a deer breeder must comply with certain disease monitoring protocols, including the testing of 100% of eligible mortalities and not receiving deer from facilities that have not obtained that "fifth year" or "certified" status. See, 4 TAC §40.3. For breeding facilities that have not achieved "fifth-year" or "certified status," beginning April 1, 2017 and each April 1 thereafter, annual CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year must be submitted. However, the department recognizes that if a breeding facility has an unusually low number of eligible mortalities, this provision could result in the submission of few test results. Therefore a provision is included to require that for breeding facilities that have been permitted at least six months, the number of "not detected" post-mortem test results submitted during each reporting year must be equal to or greater than the eligible-aged population in the breeding facility at the end of the reporting year, plus the eligible mortalities that occurred within the breeding facility in the reporting year, multiplied by 3.6 percent. This provision is intended to provide a minimum number of tests that must be submitted each year to achieve the epidemiological goals of the rules. To develop this number, the department considered that the average natural mortality in a deer breeding facility is approximately 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility that has an average natural mortality rate among eligible-aged deer 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. As explained elsewhere in this preamble, the rules provide for ante-mortem substitution for these test results at ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

New §65.94 also provides additional criteria for designating NMQ status. Section 65.94(a)(2) - (3) provides that a breeding facility may be NMQ if it is not authorized to transfer deer pursuant to a TAHC Herd Plan associated with a TAHC hold order or quarantine, does not have a reconciled herd inventory, or is not in compliance with reporting and recordkeeping requirements. Department rules at §65.608 of this title (relating to Annual Reports and Records) require deer breeders to submit an annual report. The annual report must include a herd reconciliation that accounts for every breeder deer held, acquired, or transferred by a breeding facility, as well as births and mortalities. A breeding facility that is not in compliance with the reporting requirements or has submitted incomplete or inaccurate records frustrates efforts to determine the source and/or disposition of every deer in the facility, as a reconciled herd inventory is a necessary component of disease management. Also, as noted elsewhere in this preamble, a TAHC Herd Plan may contain provisions that impose movement restrictions in which case the TAHC Herd Plan will control. In addition, to ensure compliance with applicable regulatory provisions, it is imperative that the facility have an accurate herd inventory that accounts for the movement of breeder deer into and out of the breeding facility, as well as deaths and births within the facility.

New §65.94(b) provides that a breeding facility that has been designated NMQ for failure to comply with testing requirements will 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 status should be restored, so long as all other requirements for MQ status are met. The "not detected" test results

can be provided through ante-mortem substitution as provided in §65.92(d) or by the submission of additional post-mortem test results. It should be noted, however, that if post-mortem test results are being submitted to satisfy the requirement to submit "not detected" post-mortem test results for 80% of the annual mortalities, the creation of additional mortalities will alter the calculation (i.e., the total number of mortalities will change, which will, in turn, alter the number of post-mortem tests required to achieve 80%).

New §65.94(c) requires a breeding 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 new rule requires facilities that are not in compliance with movement qualification requirements to report all mortalities immediately, rather than at the end of the reporting year.

New §65.94(d) provides that immediately upon the notification that a facility has received a "suspect" test result, all facilities that have been in possession of deer that were held in the suspect facility within the previous five years will be designated NMQ until a determination is made 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 new rules are intended to detect CWD if it is present and prevent the spread of CWD once it is detected; therefore, once a "suspect" test result has been returned, all movement to and from all connected facilities should be stopped until the "suspect" test is either confirmed or determined to be non-positive.

New §65.95, concerning Movement of Deer, establishes the various status levels and attendant testing requirements for breeding facilities and release sites.

New §65.95(a) allows a TC 1 or TC 2 breeding facility designated MQ and in compliance with the applicable provisions of the division 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. This subsection is necessary to set out the types of transfers that may be authorized by the rules.

New §65.95(b) establishes three categories of breeding facilities based on level of epidemiological risk: Transfer Category (TC) 1, TC 2, and TC 3. As noted in the discussion of the definition of "status" earlier in this preamble, the highest level/status (i.e., the level with the least risk for CWD) for a breeding facility is TC 1 and the lowest level is TC 3.

Under new §65.95(b)(1)(A), a breeding facility will be classified as a TC 1 facility if it has achieved "fifth-year" or "certified" status in the TAHC Herd Certification Program. Under new §65.95(b)(1)(B)(i), a breeding facility will be classified as a TC 1 facility if it has obtained "not detected" CWD test results for at least 80% of total eligible mortalities over the last five report years, with a minimum number of post-mortem test results over that five-year period equal to at least 3.6% of the eligible-aged population during that period. The 3.6% minimum testing requirement is calculated as 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 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 av-

erage 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 breeding facility with an average number of natural mortalities among eligible-aged deer 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 plus eligible-aged mortalities for each of the previous five report years is added together, and that sum is then multiplied by 3.6 percent. The resulting number is 80 percent of the average expected eligible-aged mortality for a deer breeding facility over a five-year period.

Alternatively, under new §65.95(b)(1)(B)(ii), a breeding facility that has submitted ante-mortem "not detected" CWD test results for 50% of eligible-aged deer in the breeding facility will be considered a TC 1 facility. The department understands that in anticipation of being able to use ante-mortem test results to achieve TC 1 status, some deer breeders may already have been conducting ante-mortem tests. Therefore, to facilitate the transition to the new rules for the report year beginning April 1, 2016 and ending March 31, 2017, a breeding facility that has submitted "not detected" ante-mortem test results for at least 25% of eligible-aged deer in the facility will be temporarily considered a TC-1, so long as the remaining "not detected" results are submitted by May 15, 2017.

New §65.95(b)(2) establishes that the testing requirements for TC 2 breeding facilities are 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.

New §65.95(b)(3) establishes provisions regarding classification and requirements for TC 3 breeding facilities. A TC 3 breeding facility is any breeding facility registered in TWIMS that is under a TAHC hold order, quarantine 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 breeding facilities are the facilities with the highest risk of harboring and spreading CWD. Therefore, the 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 the 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. The tagging requirement is necessary because breeder deer translocated from a TC 3 breeding facility are epidemiologically valuable. Should a released breeder deer test positive, the department and TAHC can use the eartag to quickly identify the source facility and initiate necessary epidemiological investigations and responses to prevent additional spread of CWD.

New §65.95(c) sets forth provisions governing release sites. New §65.95(c)(1)(A) provides 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. In order to determine where release site testing requirements apply, and 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 locations where breeder deer are authorized to be released. However, this provision does allow a release site owner to modify the registered release site

in order to reflect changes in acreage (such as the removal of cross-fencing), so long as the release site owner notifies the department of such modifications prior to the acreage modification. Any release site requirements provided in this subsection will also fully apply to the modified release site.

New §65.95(c)(1)(B) requires that liberated breeder deer have complete, unrestricted access to the entirety of the release site. Such a provision is necessary to ensure that released deer are not confined in smaller enclosures within a permitted release site. The testing requirements are based on the assumption that liberated deer commingle with the rest of the population, to which testing requirements apply. To keep the populations segregated defeats the purpose of release-site testing on the larger site. Additionally, for potential epidemiological investigations it is necessary that the release site information registered with the department be an accurate reflection of the acreage on which the deer were released. However, a release site owner is not prohibited from fencing areas that may be considered part of the release site, but from which deer should be excluded for safety reasons (e.g., air strips) or to prevent depredation (e.g., crops, ornamental plants).

New §65.95(c)(1)(C) stipulates 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 under reasonable and ordinary circumstances. In addition, the owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances. 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.

New §65.95(c)(1)(D) provides that any testing requirements of the division continue in effect until all required "not detected" test results are submitted and that a release site not in compliance with the testing requirements of the subsection is ineligible to receive deer and must continue to submit testing results until the testing requirements are satisfied. The epidemiological value of release site testing is compromised if release site tests are not submitted. Therefore, the department reasons that release sites should not be allowed to obtain liberated breeder deer until the release site demonstrates compliance with existing or previous requirements.

New §65.95(c)(1)(E) prohibits any intentional act that allows any live deer to leave or escape from a release site. As noted elsewhere in this preamble, it is important to ensure that breeder deer do not escape from the acreage onto which the deer have been liberated.

New §65.95(c)(1)(F) requires the owner of a Class II or Class III release site to maintain a harvest log. The requirements for the harvest log are set out in new §65.93. A harvest log is necessary to ensure that the release site keeps accurate records of deer harvested on the property.

New §65.95(c)(2) - (4) establishes classes of release sites. New §65.95(c)(2) establishes that a Class I release site is a release site that has received deer only from TC 1 facilities since August 15, 2016 (the effective date of the new rules). Class I release sites represent the lowest risk of harboring or spreading CWD and are therefore not required to perform CWD testing.

New §65.95(c)(3) establishes criteria and requirements for Class II release sites. New §65.95(c)(3)(A) provides that 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). New §65.95(c)(3)(B) requires that for each hunting year following the release of deer from a TC 2 breeding facility, the owner of the release site must submit "not detected" post-mortem test results for the first deer harvested and every deer harvested thereafter up to the first 15 deer harvested. Because a Class II release site has received breeder deer that represent a higher risk of harboring or transmitting CWD, some level of testing is necessary. However, as described elsewhere in this preamble, as a result of changes to the MQ requirements, the rules as adopted provide for the elimination of release-site testing at Class II release sites after the 2018-2019 hunting year. Therefore, §65.95(c)(3)(C) provides that the Class II testing requirements contained in §65.95(c)(3)(B) expire March 1, 2019 for Class II release sites that have submitted all of the required test results. For release sites that have not submitted the required test results, testing obligations continue until all required test results are submitted.

New §65.95(c)(4) establishes criteria and requirements regarding Class III release sites. New §65.95(c)(4)(A) establishes that a Class III release site is a 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. Class III release sites represent the highest level of risk of harboring or transmitting CWD. As a result, new §65.95(c)(4)(B) requires 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 site 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 provides that the minimum harvest and testing provisions may be as prescribed in a TAHC herd plan. Similarly, new §65.95(c)(4)(C) prohibits 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. Since deer released onto a Class III release site pose a much higher epidemiological risk, it is important that such deer be easily identifiable as liberated deer.

New §65.96, concerning Movement of DMP Deer, sets forth the movement and testing requirements associated with DMP activities. The new rule requires 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 for the first deer harvested and every deer harvested thereafter up to the first 15 deer harvested. 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 the first 15 deer harvested each year through March 1, 2019, provides a reasonable assurance that CWD will be detected if it were present. The new rule prohibits the transfer of deer from a TC 3 breeding facility, Class III release site or from a release site or deer breeding facility that is not in compliance with applicable testing requirements. Breeder deer in a TC 3 breeding facility, deer in a Class III release site and deer from breeding facilities and release sites that are not in compliance with the applicable regulatory requirements pose an unacceptable risk of spreading CWD to free-rang-

ing populations. The rule does 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.

New §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, sets forth general provisions and testing requirements applicable to the movement of deer under a Triple T or TTP permit.

New §65.97(a)(1) stipulates that unless expressly provided otherwise, the disease detection provisions of 31 TAC §65.102 cease effect upon the effective date of the new section. This is necessary to prevent regulatory conflict.

New §65.97(a)(2) provides 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.

New §65.97(a)(3) further enumerates the criteria under which the department will not authorize deer to be trapped for Triple T purposes, 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 or quarantine.

Further, new §65.97(a)(4) provides that in addition to the reasons for denying a Triple T permit listed in 31 TAC §65.103(c) (concerning Trap, Transport, and Transplant Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so creates 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, new §65.97(a)(5) requires all Triple T deer to be tagged prior to release in one ear with a button-type RFID tag approved by the department, in addition to the marking required by §65.102 (relating to Permits for Trapping, Transporting, and Transplanting Deer - Disease Detection Requirements) and for the RFID tag information to be submitted to the department. The new provision enables the department to identify all released deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary.

New §65.97(a)(6) further stipulates 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.

New §65.97(a)(7) requires 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, new §65.97(a)(8) clarifies that this requirement does not apply to permits issued for the removal of urban deer, for which test samples may be collected between April 1 and the time of application.

New §65.97(b)(1) establishes the testing requirements for Triple T trap sites. At a Triple T trap site, the new rule requires 15 "not detected" post-mortem test results to be submitted prior to permit issuance. The department is confident that a sample of 15 deer from a prospective trap site that is not otherwise prevented from being a trap site by the new rules is sufficient to establish that CWD is not present and will not be spread.

New §65.97(b)(2) stipulates 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. The department does not believe that deer trapped from a free-ranging population to be released elsewhere within that same population represent a significant disease-transmission risk.

New §65.97(c) sets forth the testing requirements for TTP permits. The new provision requires "not detected" test results for at least 15 eligible-aged deer from the trap site to be submitted and requires 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 new rule also requires 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

New §65.98, concerning Transition Provisions sets forth provisions to clarify enforcement of regulations with respect to the effective dates of various provisions and stipulates 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.

New §65.98(a) provides that offenses committed before the effective date of the new rules will be governed by the law in effect at the time, which is necessary to provide clear guidance for enforcement and judicial processes.

New §65.98(b) provides that a release site in compliance with the Interim Breeder Rules as of August 15, 2016 (the effective date of the new rules) is not subject to the testing requirements of the new rules until deer are liberated onto the release site.

New §65.98(c) provides that if a Class I release site becomes a Class II release site as a result of the release of deer onto the release site on or after August 15, 2016, the release site will be designated a Class I release site if all TC 2 breeding facilities that provided deer to the release site achieve TC 1 status by May 15, 2017, or if all breeder deer released on the release site between August 15, 2016 and October 1, 2016 are harvested during the 2016-2017 hunting season and return "not detected" CWD results and no deer from a TC 2 or TC 3 facility are released on the release site after October 1, 2016. This provision is intended to provide breeding facilities and release sites an opportunity to "test up" to a level sufficient to eliminate the requirement for future release-site testing. However, it should be noted that the "reset" will occur after the 2016-2017 hunting season and that release sites will be required to fulfill the release-site testing requirements for the 2016-2017 hunting season.

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NOTE: Between the publication date of the proposed rules (April 22, 2016) and the Commission meeting held on May 26, 2016, the department received a total of 605 comments regarding adoption of the proposed new rules (501 comments submitted via the department's website, 77 comments in writing, and 27 comments submitted in person at the May 26, 2016 Commission meeting).

A total of 414 comments opposing adoption were received, including a form letter submitted by 72 commenters. At the June 20, 2016, special Commission meeting, an additional 52 comments opposing adoption were received. The department notes that because many individual comments contained multiple statements, and multiple individuals made similar comments, the number of responses does not equal the total number of comments.

Perceived Emergency

Seventy-three commenters opposed adoption and stated that the rules were based on a perceived emergency. The department disagrees with the comments and responds that if the comments refer to the previously adopted emergency CWD breeder rules, since the rules being adopted herein are not being adopted as emergency rules, the issue of whether an emergency exists or existed is not germane to the adopted rules. If the commenters intend to suggest that the rules are unnecessary, the department disagrees and notes that CWD is a communicable, fatal disease that has the potential to profoundly alter the dynamics of deer hunting and deer management. Because there is no question that CWD exists in captive cervid populations in Texas and has been spread by the movement of captive cervids in Texas, there

continues to be an immediate danger to Texas deer populations that warrants regulatory action by the department. No changes were made as a result of the comments.

Scientific Methodology

Four commenters opposed adoption and stated that the department should use or follow science to develop rules, two commenters opposed adoption and stated that the department should listen to the experts, and one commenter opposed adoption and stated that the department should look at history and facts. The department agrees with the comments and responds that, as explained elsewhere in this preamble, the importance of the role of science was paramount in the development of the rules as adopted. The department sought the expertise of numerous highly qualified veterinarians, epidemiologists, and wildlife disease specialists to advise and guide the department in the development of the rules. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that more research is needed before making rules. The department disagrees with the comment and responds that there is sufficient scientific evidence to conclude that CWD is a credible and potent threat to native wildlife and that the use of the regulatory process to protect native cervid species from that threat is justified. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department should "look into genetics." The department agrees that there is value and promise in continued research into the role of genetics in contracting CWD. However, the department disagrees with the comment and responds that although there appears to be a predisposition to susceptibility for the contraction of CWD in certain white-tailed deer genotypes, genetics is not germane to the intent of the rulemaking, which is to implement a reasonable surveillance program to detect CWD if it exists so that it can be contained. No changes were made as a result of the comment.

One commenter opposed adoption and stated that by restricting CWD testing to deer breeders, the "sample survey" was "too small for scientific study." The department disagrees with the comment and responds that the rules are intended to address disease mitigation in processes involving the unnatural movement of deer by human agency (deer breeder, Triple T, DMP), are based on epidemiological models for disease-testing and propagation in captive populations, and produce meaningful data that allow the department to characterize and qualify the status of captive populations with regard to risk for the spread of CWD. The department also notes that voluntary CWD testing by landowners and hunters has been more than sufficient in most parts of the state to establish confidence that if CWD exists on the landscape, it is at extremely low prevalence. No changes were made as a result of the comment.

Epidemiology

Seventy-four commenters opposed adoption and stated that the department doesn't know how CWD spreads. The department disagrees with the comments and responds that scientific studies have demonstrated that CWD can be transmitted by animal-to-animal contact, by contact with bodily fluids, and by environmental contamination. No changes were made as a result of the comments.

Seventy-four commenters opposed adoption and stated that the department doesn't know where CWD originated. The depart-

ment agrees with the comments and responds that although CWD has been detected in three free-ranging mule deer, 24 white-tailed deer from four deer-breeding facilities, and one white-tailed deer that had been liberated from one of the four positive breeding facilities, the source of CWD is unknown. However, although the exact source of CWD is unknown, given the high interconnectivity of breeding facilities in Texas, only those facilities with rigorous testing histories can categorically be excluded as disease reservoirs. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and stated that CWD cannot be either controlled or stopped. The department disagrees with the comments. The department acknowledges that stopping, containing, or attenuating CWD is very difficult once an environment has been contaminated with infectious prions and where CWD has been established for a long period before initial detection. As a result, for disease management and control, early detection of CWD infected animals is paramount. The time between introduction and detection of the disease is the most critical factor impacting the ability to control and possibly eradicate the disease before it can become established. Therefore, the rules provide for enhanced surveillance in an effort to detect CWD. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that CWD isn't a problem, has no impact, and deer herds in states where CWD has been detected are thriving and growing. The department disagrees with the comments and responds that in most states where CWD has been detected in free-ranging deer, its prevalence has increased over time, and in some cases is exerting measurable negative impacts on deer populations and hunting behaviors. The long-term results of CWD are pernicious, because prions (the infectious agent) remain viable in the environment long after a host organism has died, which potentially exposes new animals to the infectious agent even after the infected animal has expired. In addition, human dimensions research indicating that hunters will avoid areas of high CWD prevalence is cause for concern as well. Therefore, the department believes it is prudent to treat CWD as a serious threat in order to protect Texas deer populations and the economies dependent upon them. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that CWD has no impacts on human health. The department agrees that there has been no scientific evidence of transmission of CWD to humans; however, the department notes that although at the current time there is no evidence that CWD is transmissible to humans, the World Health Organization advises that no part or product of an animal which has shown signs of a TSE (i.e., the family of diseases that includes CWD) should enter the food chain. No changes were made as a result of the comments.

One commenter opposed adoption and stated that CWD has been around for centuries. The department disagrees with the comment and responds that although TSEs have been known since the 18th century, CWD was first recognized in 1967 but was not identified as a TSE until 1978. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer will die of something anyway. The department agrees that deer have a finite lifespan, but disagrees that this fact reduces or eliminates the need to implement regulatory provisions to address disease detection and response measures. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD is not contagious. The department disagrees with the comment and responds that scientific evidence has established that CWD is a transmissible infectious disease. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nothing should be done about CWD because it will run its course and the deer that survive will be resistant. The department disagrees that doing nothing is an option. The department is unaware of any strain of white-tailed deer or mule deer that can survive CWD if contracted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no animals have died from CWD so the increased prevalence is due to increased testing. The department disagrees with the assertion that there is a causal relationship between the magnitude of testing and the prevalence of CWD and responds that those two values are independent of one another. The department does acknowledge that increased testing, particularly in herds that have not been testing adequately, has resulted in more CWD discoveries, but such testing does not increase the prevalence rate of the disease. With regard to CWD causing the death of deer, although the deer in Texas that tested positive for CWD died from a cause other than CWD, the science evidence clearly establishes that CWD is a fatal disease and does result in mortalities. In addition, it should also be noted that CWD is an additional mortality factor in deer populations; data indicate that mortality rates can surpass fawn recruitment in local populations with high CWD prevalence. Studies have found that CWD-positive deer were much more likely to die as compared to their uninfected counterparts. (See, e.g., Edmunds 2013, DeVivo 2015). While CWD-positive deer in the studies that did survive to the clinical stages of the disease did eventually succumb to CWD, preclinical CWD-positive animals were also shown to be more vulnerable to other mortality factors such as predation, hunter harvest, and vehicle collisions. This additive mortality can result in declining population trends. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that CWD is political disease. The department disagrees with the comments and responds that, as noted elsewhere in this preamble (and in response to the previous comment), CWD is an insidious, persistent disease that, if not controlled, increases in prevalence in early years with no noticeable impacts, but can have long-term negative impacts on population dynamics. No changes were made as a result of the comments.

Impact on Deer Breeders

One commenter opposed adoption and stated that breeder deer are the most tested and protected deer in the state. The department disagrees with the comment and responds that while there are many deer breeders who have taken appropriate, necessary, and effective steps to ensure that CWD is not present in their inventories, that fact alone cannot be extrapolated to provide epidemiological confidence for the entirety of the regulated community. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeder deer are tested and regulated 1,000 times more than wild deer. The department disagrees with the comment and responds that white-tailed deer and mule deer are public resources and cannot be lawfully possessed alive except as provided by law. In addition, the assertion that breeder deer are tested 1,000 times

more than free-ranging deer is not correct; in fact, free-ranging deer populations in most areas of the state have been sampled at statistical confidence levels higher than most deer breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the first case of CWD in the wild was found with .1% testing, but many deer breeders test at 100%; deer breeders test at 20-100% to find it, but it was found in the wild with little testing. The department infers that the commenter believes that the rules impose testing requirements on deer breeders are more intensive than those used to detect CWD in free-ranging deer. If that is the case, the department disagrees with the comment and responds that the sampling of free-ranging deer in most parts of the state has been sufficient to detect CWD if it exists at very low prevalence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeders shouldn't have to analyze failures in other states because that is the department's job. The department disagrees with the comment and responds that the rules as adopted do not require deer breeders to analyze events occurring in another state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will not work because CWD has nothing to do with breeder deer. The department disagrees with the comment and responds that CWD has, in fact, been discovered within deer breeding facilities and the rules as adopted have been in part developed according to accepted principles of epidemiological response for the purpose of detecting it if it exists in any given deer breeding facility. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that CWD is not a deer breeder disease. The department agrees that breeder deer are not the only deer susceptible to CWD, but responds that CWD has been discovered in deer breeding facilities, which by necessity means that deer breeding facilities must be addressed by any rules intended to detect and control CWD. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "it is absolutely imperative that deer breeders and release sites must have the ability to live test out of loss of status" and suggested that the rules be changed to allow "for the facility that received the originating deer secures a "non detected" test result through post-mortem or live tonsil test from the specific deer transferred to the facility." The department interprets this comment to suggest that a facility or release site should be able to regain TC 1 or Class I status by conducting ante-mortem tests on TC 2 deer received at breeding facilities or by performing post-mortem testing of all TC 2 deer received at a release site. The department disagrees with the comment and responds that the statistical confidence used to establish minimum testing standards is based on herd-level sampling, and cannot be used to determine the probability of detection for individual animals. It should be noted that the rules as adopted provide a means for breeding facilities to "test up" to TC 1 status. It should also be noted that rules allow release sites an opportunity to "test-up" during the 2016-2017 season in order to regain Class I status. No changes were made as a result of the comments.

One commenter opposed adoption and stated that rules shouldn't punish facilities unconnected to the index herd. The department disagrees that the rules are intended to be punitive. With regard to facilities believed to be unconnected to the index herd, the department responds that during the epidemiological

investigation of the first CWD-positive in a breeding facility, the department determined that over 75 percent of the deer breeders in Texas were linked to the CWD-positive facility by no more than three degrees of separation. Although many deer breeders may believe they are "unconnected" to a CWD-positive facility, the investigation alluded to demonstrates that most facilities were epidemiologically connected to the CWD-positive facility to some degree. As a result, it is necessary to obtain sufficient epidemiological evidence through testing to establish a level of confidence that CWD is not present in a facility prior to deer being transferred from the facility. No changes were made as a result of the comment.

Ninety-one commenters opposed adoption and stated that deer breeders are being singled out, targeted, punished, discriminated against, destroyed, and/or decimated by the department. The department disagrees that the rules are intended to be punitive or otherwise harm deer breeders. The risk of inadvertently moving CWD to new areas of the state is highest with the artificial movement of deer (i.e., in trailers). The only lawful methods for moving deer via human agency are permits for that purpose issued by the department (Triple T, DMP, deer breeder); therefore, rules designed to address the epidemiological risk associated with such confinement and movement in order to protect a public resource must necessarily regulate the persons authorized by permit to engage in those activities. For approximately a decade the department has required CWD testing at all sites of origin, whether these sites were deer breeding facilities or Triple T trap sites. Under the proposed and adopted rules (as well as previous rules), those who do not wish to move deer by Triple T permit are not required to CWD test, and deer breeders who do not wish to move deer are not required to CWD test. In comparing the level of CWD testing conducted in the last five years, deer breeders tested liberated deer for CWD at much lower percentage compared to CWD testing of deer moved via TTT permits. It should also be noted that when CWD was discovered in free-ranging mule deer in the Hueco Mountains of West Texas in 2012, the department established a 3.1 million acre Containment Zone (CZ). Within this zone no artificial movement of deer has been allowed. Additionally, every white-tailed deer and mule deer harvested by hunters in the CZ has been required to be presented at a check station for CWD testing. The CWD regulations in the CZ apply not only to the CWD-positive population, but to adjoining and surrounding populations as well. Given the high degree of interconnectivity of the deer breeding network in Texas (deer moving back and forth between and among deer breeders), if the regulations for deer breeders were consistent with the regulations in West Texas, all deer breeders would be required to test 100% of all mortalities, which would include hunter-harvested deer. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the state is imposing rules, but only deer breeders are paying. The department disagrees with the comment and responds that the rules as adopted are intended to prevent the spread of CWD as a result of human agency. Because deer breeders, Triple T permit holders, and DMP holders (under some circumstances) are agents of unnatural deer movement, they are directly affected by the rules while other parties (those who don't possess or move deer) are not. No changes were made as a result of the comment.

Fifteen commenters opposed adoption and stated that the intent of the department is to put deer breeders out of business or trample an industry. The department disagrees with the comment and responds that sole intent of the rules as adopted is to

protect a public resource. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that third-party associations and "anti-breeders" are trying to put deer breeders out of business. The department disagrees with the comment and responds that the rules as adopted were created with the invited input of a number of stakeholder groups, including deer breeders. The department is not aware of any groups or associations trying to put deer breeders out of business. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is trying to control deer breeders. The department disagrees with the comment and responds that the department has a statutory duty to protect and conserve the wildlife resources of the state; therefore, rules designed to address the epidemiological risks associated with the confinement and artificial movement of wildlife resources, such as those associated with deer breeding, are necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increase in CWD proves there is no connection to captive deer. The department disagrees with the comment and responds that CWD has been found in multiple deer breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all testing is aimed at deer breeders. The department disagrees with the comment and responds that in some cases there are CWD testing requirements for certain release sites that receive breeder deer or deer from certain DMP facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD isn't being handled properly because the rules are being forced on deer breeders, forcing people out of business and severely hurting the deer breeding industry. The department disagrees with the comment and responds that the rules are the minimum necessary to allow the department to determine the extent and combat the spread of CWD. As mentioned elsewhere in this preamble, because deer breeders physically move deer in ways that nature does not, and in the process magnify the possibility of spreading disease, the rules as adopted must necessarily affect deer breeders. The department also disagrees that the rules force anyone out of business. A relatively small number of breeding facilities are prohibited from transferring deer (i.e., buying and selling deer) because they either received deer from an infected herd or cannot provide epidemiological evidence that CWD is not present. Even if the rules of the department and TAHC allowed such facilities to move deer, it is unlikely that possible customers (other deer breeders and persons who wish to have breeder deer released on their property) would consider obtaining deer from such sources because of the possibility of exposure to CWD. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the rules are unfair to deer breeders and that breeders should be treated the same as any other landowner. The department disagrees with the comments and responds that deer breeders are afforded the privilege of possessing live deer (a public resource) under rules promulgated by the department. The department also has a statutory duty to protect and conserve the wildlife resources of the state. The rules as adopted represent the minimum measures necessary to discharge the department's statutory duty to protect the state's wildlife resources and were promulgated

with the intent to minimize intrusiveness and regulatory burden as much as possible while achieving the goals of the department to determine the extent and prevent the spread of CWD. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the status of a deer breeding facility should not be determined by a five-year testing history. The department disagrees with the comment and responds that if the commenter is referring to one of the options for obtaining TC 1 status under the rules, the scientifically accepted incubation period for CWD is up to five years, therefore it is important to calculate risk based on a five-year testing history. However, the department also notes that the rules as adopted provide another method of obtaining TC 1 status for the 2016-2017 hunting year that does not include a five-year testing history. In addition, as explained elsewhere in this preamble, beginning in 2019 the distinctions between TC 1 and TC 2 will be of no consequence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department focuses on deer breeders, high-fences, and white-tailed deer when 50 percent of CWD is found in mule deer. The department disagrees with the comment and responds that even if half the CWD cases in Texas were found in mule deer (which is not the case), the fact remains that CWD has been discovered in captive white-tailed deer populations and must be addressed in order to protect all deer populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD did not originate in Texas white-tails or breeder deer. The department agrees that while an exact understanding of the source or origin of CWD is unknown, what is known is that it has been detected in captive white-tailed in deer breeding facilities and must be addressed in order to protect all deer populations. No changes were made as a result of the comment.

Breeding Facility Testing

Seventy-four commenters opposed adoption and stated that rules should not include a testing "window" for ante-mortem testing. The department agrees with the comments and the rules have been changed accordingly.

Seventy-two commenters opposed adoption and stated that the rules should be altered to change "the definitions for "Failure to Comply" for TC 1 facilities, including clarification of testing language to reflect both ante- and post-mortem testing, as well as setting a 90-day window for the TC 1 breeder to furnish necessary test results to return to his TC 1 status and setting a one-year moratorium on reapplication to TC 1 status if the breeder does not meet this 90-day requirement." The department agrees that the "testing window" for regaining TC 1 status should be eliminated and the rule as adopted does not contain a "testing window". The department infers that the comment relates to the provisions of proposed §65.95(b)(1)(B) which would have imposed a 60-day window for a TC 1 facility that had failed to submit sufficient test results to retain TC 1 status to submit substitution test results or be classified as a TC 2 facility for a two-year period. Because the adopted rule applies a standard MQ testing requirement to both TC 1 and TC 2 facilities, it is unnecessary to retain the requirement for regaining TC 1 status within 60-days, as the provisions for regaining MQ status will suffice, so long as lower status breeder deer are not introduced into the TC 1 facility.

Seventy-two commenters opposed adoption and stated that "timeframes need to maximize the breeder's ability to achieve a higher status - not set them up for certain failure." The department agrees that the rules as adopted impose standards that prevent the movement of breeder deer under circumstances in which the epidemiological risk is significant, but disagrees that any aspect of the rules as adopted are designed or intended to prevent breeding facilities from increasing in status, or to coerce any person into imprudent or unwise decisions. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that the rules' testing requirements should be "realistic and reliable" instead of punishing "those facilities with the best stewardship of their animals by being below an arbitrary standard of "average mortality." The department disagrees with the comment and responds that the rules as adopted are not intended to be punitive. In addition, the testing requirements within the rules as adopted were developed based on principles of science and epidemiology, including the use of an average mortality rate as a reasonable baseline to determine the level of testing within any given facility, which is necessary to generate statistical confidence through time that CWD is not present. If anything, the rules provide the greatest degree of flexibility to those with the highest testing performance. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules shouldn't apply to deer breeders who haven't received deer in "awhile." The department disagrees with the comment and responds that the rules are designed to achieve a level of confidence that CWD is not present in any given breeding facility, irrespective of the length of time since breeder deer were acquired. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that proposed §65.95 should be altered to allow "the at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility of the immediately preceding five-year period and each year thereafter, rather than making this requirement applicable annually." The department interprets this comment to mean that the commenters opposed the portion of the proposed rule that provided an option to achieve TC 1 status by providing "not detected" results for 80% of the mortalities that occurred in each of the preceding five report years, and that instead a facility should be allowed to provide "not detected" results for 80% of the cumulative mortalities that occurred in the previous five report years. If this interpretation is correct, the department agrees with the comment and the rules have been changed accordingly.

Seventy-two commenters opposed adoption and stated that there must be "an additional option added to ensure deer tested prior to trade or release are allowed to move freely with a TC 1 classification. The new option requested would include (I) ante-mortem tests of any deer transferred from the facility; and (II) post-mortem tests of at least 50 percent of eligible mortalities. This would ensure that any deer that moves from a facility which had received a "not-detected" live test result carries no movement restrictions or further testing with it." The department interprets part (I) of this comment to suggest that even if a deer comes from a TC 2 facility, if it has been live-tested it should be treated as coming from a TC 1 facility. The department disagrees and responds that the statistical confidence used to establish minimum testing standards is based on herd-level sampling, and cannot be used to determine the probability of detection for individual animals. The department interprets part (II)

of this comment to recommend that a 50 percent post-mortem testing standard be the new standard for obtaining TC 1 status. The department disagrees with the comment and responds that given the strong desire on the part of the regulated community to eliminate release-site requirements, a higher post-mortem testing standard is necessary. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that the rules should be adopted with the following provisions to "allow breeders the ability to test cumulatively over the course of one reporting year" as follows: (i) Upon the processing of the annual report, if a facility has met any of the requirements of this section, the facility shall be designated a TC 1 facility for the next reporting year, so long as the facility does not accept a breeder deer from a lower status breeding facility; and (ii) Upon the processing of the annual report, if a facility has cumulatively tested equal to or greater than any of the ante-mortem testing requirements of this section during the entire reporting year, the facility shall be designated a TC 1 facility based upon their cumulative testing percentages." The department disagrees with the comments and responds that risk mitigation is not achieved by conferring TC 1 status on the random satisfaction of testing requirements. Allowing breeding facilities to achieve TC 1 status when the facility is not compliant with TC 1 testing requirements defeats the purpose of the rules. No changes were made as a result of the comments.

One commenter stated that he had recommended a testing regime which provided for 100% post-mortem testing, but that the recommendation had been rejected by staff. The department understands that this recommendation was combined with a more immediate elimination of release site testing. While the department acknowledges the value of a testing regime that tests 100% of mortalities in a breeding facility, the evaluation of the adequacy of such a regime must take into consideration the breeding facility's previous testing history. As noted elsewhere in this preamble, even with a higher level of mortality testing it would take several years to achieve a sufficient level of confidence that CWD would be detected in a facility if it existed at a low prevalence. No changes were made as a result of this comment.

May 6 Recommendation

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt what was referred to as the "May 6 proposal," the "Texas Deer Association proposal" or the "unified industry proposal." The department interprets these comments to refer to a proposal put forth in a stakeholder meeting held on May 6, 2016, during the public comment period. This meeting, among other things, sought comments on the proposed rules. At the meeting, certain representatives of the deer breeding community put forth recommendations for revisions to the rules as proposed. The elements of this recommendation (referred to herein as the "May 6 recommendation") were documented in a letter dated May 7, 2016, signed by representatives of the Texas Deer Association, the Deer Breeders Corporation, the Exotic Wildlife Association and the North American Deer Farmers Association. The department disagrees with the comment and responds generally that although certain elements of the recommendation were determined to be effective in enhancing efforts for the surveillance and detection of CWD and have been incorporated into the rule as adopted, when considered as a whole the recommendation would not provide an adequate level of confidence that CWD would be detected if it existed at a low prevalence.

As a result, when the May 6 recommendation taken a whole is considered, it was determined to be inadequate. The various elements of the recommendation are set forth separately as follows.

Twenty-six commenters opposed adoption of the proposed rules and urged the Commission to adopt the portion of the May 6 recommendation that would have made a deer breeder that meets the following criteria movement qualified (MQ): has "fifth year" or "certified" status in the TAHC CWD Herd Certification Program; has tested 80% of its eligible mortalities; and, has a minimum number of tests equal to or greater than 3.6% of the herd inventory at the end of the reporting year, with at least half of the required test conducted post-mortem. The department agrees that each of these elements has value and has incorporated some of these into the rules as adopted. Specifically, the department agrees that "fifth-year" or "certified status" breeding facilities should be MQ and the rules as proposed and adopted provide for that. The department also agrees that a breeding facility that tests 80% of its eligible mortalities each year with a minimum number of post-mortem tests equal to or greater than 3.6% of the herd inventory at the end of each reporting year provides sufficient confidence to be designated as MQ. Therefore, the rules as adopted include a provision that beginning with the report year that starts April 1, 2017, and for each report year thereafter, a deer breeder that has "fifth year" or "certified status" in the TAHC CWD Herd Certification Program is considered MQ, as is a deer breeder that has submitted CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year, so long as the number of "not detected" test results submitted during the previous reporting year are equal to or greater than 3.6% of the eligible-aged deer reported in the breeding facility inventory at the end of the previous reporting year. However, a release site that receives deer from a breeding facility that only meets the minimum MQ requirements in the 2016-2017 permit year (and is not a "fifth year" or "certified" facility), would be subject to release-site testing as provided in the rules as adopted. Changes were made to the rules as adopted to incorporate an annual testing level of 80% of eligible mortalities with a minimum number of post-mortem tests required, in part in response to these comments. However, although changes were made to the rules as adopted to eventually eliminate release site testing, such changes are not a result of the May 6 recommendation.

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt the portion of the May 6 recommendation that would have required a deer breeder to test half of the 80% of eligible mortalities through post-mortem testing (i.e., ante-mortem substitution would not be authorized for more than 50% of the tests required to achieve 80% testing of mortalities). In addition, the commenters requested that substitution of ante-mortem tests be allowed at a ratio of two ante-mortem mortem tests for one post-mortem test. The ante-mortem substitution ratio included in the May 6 recommendation is consistent with provisions of the proposed rules; however, the department disagrees with the comments and responds that, as noted elsewhere in this preamble and in response to comments about maximizing ante-mortem testing, the department considered several options that would allow ante-mortem substitution for all required post-mortem tests. If no mortalities are tested, a higher number of ante-mortem tests would be required to achieve the same epidemiological confidence as post-mortem tests, perhaps as much as a 6:1 substitution ratio. Stakeholders suggested a 4:1 substitution if less than 50 percent of mortalities were tested but

retaining the 2:1 ratio if the number of post-mortem tests submitted was equal to at least 50 percent of eligible mortalities. The department also received public comment and engaged in discussions concerning the simplification of the regulations. Therefore, in an effort to simplify this requirement, an ante-mortem substitution ratio of 3:1 was selected. From an epidemiological perspective, while more testing is preferred, a substitution ratio of 3:1 was determined to be adequate. Although changes in the use of ante-mortem substitution were made in the adopted rules, no changes were made as a result of these comments.

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt the portion of the May 6 recommendation that recommended elimination of all release site testing after the 2016-2017 hunting year. The department disagrees with this comment and responds that, as noted elsewhere in this preamble, while breeding facility testing of 80% of eligible mortalities with a minimum number of post-mortem tests equal to or greater than 3.6% of the herd inventory at the end of each reporting year, will, over time, provide sufficient confidence that CWD would be detected if it existed in a breeding facility at a low prevalence, given the historic variability among deer breeders' testing history, not until March 1, 2019 will there be sufficient testing history at this level to dispense with release-site testing for deer released from facilities that meet only the MQ requirement. No changes were made in response to the comments.

Twenty-six commenters opposed adoption of the rules and urged the Commission to adopt the portion of the May 6 recommendation that urged elimination of release-site testing for the first year of the rule's effectiveness for release sites that met the following: received deer only from breeding facilities with "fifth year" or "certified" status in the TAHC Herd Certification program; was classified as a Class I release site and was in full compliance with the Interim Breeder Rules; only received deer from a breeding facility that had tested 80% of its eligible mortalities in the preceding reporting year; or received deer only from a breeding facility that had obtained ante-mortem test results for more than 25% of eligible-aged deer. The commenters also recommended that any release site in compliance with the requirements of the Interim Breeder Rules be "reset" to Class I for the 2016-2017 hunting season. The department agrees that a release site in compliance with the requirements of the Interim Breeder Rules should be "reset" to Class I for the 2016-2017 hunting season (so long as the release site does not receive deer of a lower status after the effective date of the rules). The department also agrees with the portion of the recommendation seeking the elimination of release-site testing in the 2016-2017 hunting year for release sites that received deer only from herds with "fifth year" or "certified" status in the TAHC Herd Certification program (Class I release sites) and notes that this part of the May 6 recommendation is consistent with the rules as proposed. However, the department disagrees with the remainder of this portion of the May 6 recommendation. As explained elsewhere in this preamble, given the historic variability among deer breeders' testing history, not until March 1, 2019, will there be sufficient testing history at the 80% level to dispense with release-site testing for deer released from such breeding facilities. Further, statistical analyses conducted by the department found that a breeding facility that has submitted "not detected" ante-mortem test results for at least 50 percent of the eligible-aged deer in the facility as of the date on which ante-mortem testing begins has a sufficiently low level of risk to be classified as TC 1, meaning deer released from that facility would not trigger release-site testing requirements. However, to facilitate the transition to the new rules and recognizing that in

anticipation of the adoption of these rules some deer breeders may have already begun conducting ante-mortem testing but not yet tested 50 percent of eligible-aged deer, a temporary provision is included in the rules as adopted to allow a breeding facility that submits "not detected" ante-mortem test results for at least 25 percent of the eligible aged deer in the facility to be temporarily classified as TC 1; however, the facility must provide the balance of the required testing by May 15, 2017 to maintain TC 1 status. No changes were made as a result of these comments.

Twenty-six commenters opposed adoption of the rules and urged the Commission to adopt the portion of the May 6 recommendation that recommended that there be only one year of release site testing following the adoption of the rules (i.e., the 2016-2017 hunting year) and that those release sites be required to test the first 15 hunter-harvested deer (but not to exceed 15). As explained elsewhere in this preamble, the department agrees that the number of tests required to be submitted from release sites where hunter-harvested deer are required to be tested should be modified to require such tests from the first 15 hunter-harvested deer at the site and the rules as adopted, contain such a modification. However, for reasons explained in response to the previous comments, the department disagrees that release site testing should cease after the 2016-2017 hunting year. No changes were made in response that portion of the comments.

Ante-Mortem Testing

Seventy-two commenters opposed adoption and stated that proposed §65.92(f) "undermines the value of a non-detected live test. A result of non-detected should have the same weight and value in all applicable sections of this division. To suggest that a non-detected result should not count towards other sections or portions of this rules, directly devalues the finding of a non-detected result." The provision in question prohibits the use of an ante-mortem test result more than once to satisfy any testing requirement of the division. The department understands the comment to mean that a permittee should be able to use the same "not detected" test result multiple times to satisfy any testing requirement of the proposed rules. The department disagrees with the comment and responds that the epidemiological value of a "not detected" ante-mortem test result is unique in time and application and cannot be used to satisfy multiple requirements. For example, the epidemiological importance of the 3.6% requirement is independent of the 50% ante-mortem testing, and thus independent samples must be used to achieve the level of confidence intended. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "live animal testing protocols must maximize and value "not detected" results. Restricting animals that can be tested and limiting the number of times an animal can be tested undermines the true value of "not detected" results as well as the producer's willingness to comply." The department disagrees that the rules as adopted do not "maximize and value" test results of "not detected." While the department agrees that ante-mortem testing can be an effective component of an overall testing regime, as explained previously in this preamble in connection with the substitution of ante-mortem for post-mortem tests provided in §65.92(b), testing animals that have died provides a much higher likelihood of detecting the disease, since diseased animals are more likely to die than healthy animals. The rules as adopted contain changes to allow for the more frequent ante-mortem testing of a single animal (from no more than once every 36 months to once every 24 months). In addition, the rules

as adopted were changed to eliminate the minimum number of test results that must be post-mortem (i.e., to allow ante-mortem substitution for all required post-mortem test results). To compensate for the enhanced use of ante-mortem testing, the ratio at which ante-mortem tests may be substituted was adjusted from two ante-mortem test results for each required post-mortem test results to three ante-mortem test results for each required post-mortem test result. In addition, the rules as adopted were modified to eliminate the residency prerequisite (i.e. the time in which a breeder deer must have been in the breeding facility) for testing validity. The rules as adopted retain a minimum age requirement and testing frequency limitation for ante-mortem test validity. The literature indicates that animals younger than 16 months of age are problematic because if they are infected, the disease may not have had enough time to manifest itself in lymphatic or brain tissue. The testing frequency limitation is necessary because the affected tissues must be given sufficient time to regenerate before they can be tested again with efficacy. The department also disagrees that the standards contained in the rules as adopted function to discourage compliance. No additional changes were made as a result of the comments.

One commenter opposed adoption and stated that live testing should be allowed. The department agrees with the comment and responds that, as noted above, both the rules as proposed and the rules as adopted allow for ante-mortem (live) testing of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be residency requirements for ante-mortem testing. The department agrees with the comment and responds that, as previously noted, changes have been made accordingly.

One commenter opposed adoption and stated that the rules do not specifically provide for live testing. The department disagrees with the comment and responds that the rules as proposed and as adopted contain provisions that specifically provide for and allow ante-mortem testing of breeder deer. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that the provisions of proposed §65.92(e)(1) should be eliminated because there are small facilities that may not experience two natural mortalities in one year. As proposed, §65.92 would have limited the number of post-mortem tests for which ante-mortem substitution was allowed. As noted elsewhere in this preamble, the department agrees with the comment and has made changes accordingly.

Release Site Requirements

Seventy-two commenters opposed adoption and stated that release-site testing should be required for three years following release, rather than five. The department agrees and responds that as explained in the discussion of §65.95(c)(1), the rules as adopted eliminate release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test results).

Seventy-two commenters opposed adoption and stated that release-site testing should be a "three consecutive hunting year period for the submission of "non-detected" post-mortem results, specifying a threshold of 50% of either liberated or hunter-harvested deer, whichever is less." With regard to the time period for release site testing and as explained in response to the previous comment, the department agrees and responds that as explained in the discussion of §65.95(c)(1), the rules as adopted eliminate release-site testing requirements for Class II release

sites after March 1, 2019 (except for sites that have not submitted the required test results). However, the department disagrees that Class II release-site testing requirements should be the lesser of 50 percent of either liberated or hunter-harvested deer as provided in the proposed rules. Instead, the department responds that after analyzing 2015-2016 harvest data at Class II release sites, the department concluded that requiring every deer harvested at a site (but not more than 15) to be tested would enhance the level of release site testing at most sites. Thus, the change results in a simpler standard that is easier to comply with and enforce while remaining epidemiologically efficacious.

Seventy-two commenters opposed adoption and stated that the testing requirements for DMP facilities affected by the proposed rules should apply for three years. The department agrees and responds that as explained in connection with the discussion of §65.96, the rules as adopted eliminate the proposed release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test). It should also be noted that §65.98 as adopted reduces the time period for which release sites not in compliance with the Interim Breeder Rules must submit tests (from five years to three years).

Seventy-two commenters opposed adoption and stated that proposed §65.98 should be changed "to only require testing for one year." The department disagrees with the comment and responds that although §65.98 is adopted with changes to reduce the number of years that testing is required by release sites not in compliance with Interim Breeder Rules (from five years to three years), further reduction of such release site testing is insufficient to establish epidemiological confidence that CWD is not likely present. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "the five year testing protocols for unconnected, currently tested Class II release sites is excessive and unwarranted. Deer that are released on Class II release sites come from tested, unconnected breeding facilities. They should not be treated similarly to exposed release sites." The department disagrees with the comment and responds that the proposed five-year testing history under the rules as proposed was not excessive or unwarranted; however, in light of changes made to the testing requirements as adopted, and as explained in the discussion of §65.95, modification of release-site testing requirements is appropriate. Therefore, the rules as adopted eliminate the proposed release-site testing requirements for Class II release sites after March 1, 2019, thus reducing the five-year time period to three years or less. It should also be noted that §65.98 as adopted reduces the time period for which release sites not in compliance with the Interim Breeder Rules must submit tests (from five years to three years). With regard to the portion of this comment regarding "unconnected" breeding facilities, the department disagrees and responds that during the epidemiological investigation of the first CWD-positive in a breeding facility, it was determined that over 75% of deer breeders in Texas were linked to the CWD-positive facility by no more than three degrees of separation. As a result, although many deer breeders may believe they are "unconnected" to a CWD-positive facility, the investigation demonstrated that most facilities were epidemiologically connected to a CWD-positive facility to some degree. However, the rules as proposed and as adopted do make a distinction between breeding facilities that are more directly exposed to CWD (TC 3 facilities) and other breeding facilities. Except with regard to the change to the time period for which release-site testing is required, no changes were made as a result of this comment.

Seven commenters opposed adoption and stated that there should be no release-site testing. The department agrees that except for Class III release sites (which have been more directly exposed to CWD), when deer breeders seeking to move deer have uniformly achieved a higher level of testing (80% of mortalities each year, with a minimum expected annual post-mortem test equal to at least 3.6% of the eligible aged population), the confidence level of detecting CWD if it exists in a breeding facility will be at a level sufficient to dispense with release-site testing for most release sites beginning in 2019. However, the department disagrees that release-site testing can be eliminated immediately and responds that epidemiological science dictates that it is prudent to require release-site testing in conjunction with testing at deer breeding facilities until the statistical probability of detecting CWD has reached an acceptable level. With regard to testing at Class III release sites, the department disagrees with the comment and responds that if deer are released from a facility that is either connected to another facility where CWD has been confirmed or cannot provide adequate testing history to conclude that CWD is not present in facility, the release site poses a much higher epidemiological risk; therefore, continued Class III release site testing is appropriate. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no testing required of any deer breeding facility or release site. The department disagrees with the comment and responds that the only way to prevent CWD from threatening all deer in the state is to determine its prevalence and spread by sampling free-ranging and captive populations of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that release site owners shouldn't have to test 50 percent of harvested deer for five years. The department agrees with the comment and responds that the release-site testing requirements of the rules as adopted have been changed to require the first harvested deer and every deer subsequently harvested to be tested, but require no release site owner to test more than 15 deer in any year. In addition, as explained in connection with the discussion of §65.96, the rules as adopted eliminate release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test).

Seventy-two commenters opposed adoption and stated that "release site requirements must maintain a commitment to the best practices for deer management, promoting the health and vitality of the deer herd by allowing soft release and transition sites as options." The department disagrees that "soft release" is not allowed by the rules as adopted and notes that current regulations in 31 TAC §65.610 provide for "soft release" of breeder deer to allow acclimation, so long as such "soft release" complies with the requirements of that section. The department is uncertain what the commenters mean by "transition sites" or the intended purpose of such sites. To the extent that the commenter is referring to alterations in fencing, the department notes that the rules as adopted allow for release sites to be modified, but continue to require that deer have access to the entirety of the release site (with certain exceptions for safety and protection of agriculture), which is necessary to establish epidemiological certainty regarding the exact locations where liberated deer are confined. Except for the changes to clearly allow modification of a release site and the fencing of areas for safety and to prevent depredation, no changes were made as a result of these comments.

Seventy-two commenters opposed adoption and stated that a release site should consist of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS or any contiguous tract of land owned by the landowner designated as a release site in TWIMS. The department disagrees with the comments and responds that for purposes of disease management, if the department is to allow the release of breeder deer, it must be able to know the exact geographical parameters of the release site. The rules as adopted have been changed to allow for release sites to be modified with the prior notification of the department and to allow for enclosures for the purpose of safety or the protection of crops. No changes otherwise were made as a result of the comments.

Seventy-four commenters opposed adoption and stated that the department does not have the authority to stipulate fence height requirements for release sites, especially when a breeding facility is releasing deer directly from the facility to adjoining low-fenced property owned by the same person. The department disagrees with the comments and responds that under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, the Commission is authorized to regulate the possession of deer held under a deer breeder permit, which includes establishing the circumstances under which the possession of breeder deer may legally cease. No changes were made as a result of the comments.

Testing of Free-Ranging Deer

Three commenters opposed adoption and stated that testing requirements should apply to all wild deer and all landowners. Four commenters opposed adoption and stated that all deer should be tested. The department assumes that these commenters are all referring to testing of free-ranging deer. The department disagrees with the comment and responds that there is a common misperception that free-ranging deer populations and captive deer populations present identical epidemiological contexts for disease sampling. Free-ranging deer populations are resident for the entirety of their lifespans within an extremely narrow geospatial extent (compared to the range of the species), whereas captive deer are commingled within facilities with deer from various other populations and are quite often relocated to destinations far beyond what would occur with normal natural movement. The sizes of the populations of inference are also disparate. Therefore, the two types of populations present two entirely different epidemiological situations that require different responses. The department's long-term CWD sampling efforts in free-ranging deer in almost every region of the state have produced epidemiological results that allow the department to conclude with 99 percent confidence that if CWD exists, it is at a prevalence of less than 1 percent. This statistical confidence cannot be achieved in captive populations (because even large breeding facilities contain an infinitesimally small statistical sample size) except over long periods of time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that hunter-killed deer should be tested at the same rate as breeder deer. While the department agrees that the testing of hunter-harvested deer is an important component of disease management, and notes that the rules as adopted require the testing of hunter-harvested deer at some release sites, the department disagrees that all hunter-harvested deer should be required to be tested for CWD. As explained in more detail in the response to other comments, through voluntary cooperation by hunters and sampling of road-kills, the department has obtained sufficient samples from free-

ranging deer to provide an enhanced level of assurance of detection of CWD in the free-ranging population. The department also notes that the rate of testing is immaterial; the sheer number of hunter-harvested deer tested (over time) is more significant, from a statistical point of view, than the rate of testing. As noted elsewhere in this preamble, at the current time the department is confident that surveillance of free-ranging populations is adequate in almost every region of the state to detect CWD in free-ranging populations at a very low prevalence. No changes were made as a result of the comments.

One commenter opposed adoption and stated that TPWD should test wild deer. The department assumes the commenter is referring to free-ranging deer. The department agrees with the comment and responds the department conducts a robust sampling effort on a continual basis. No changes were made as a result of the comment.

One commenter opposed adoption and stated that 50 percent of hunter killed deer should be tested. The department disagrees with the comment and responds that it is not necessary to sample 50 percent of hunter-harvested to achieve confidence that CWD can be detected at extremely low prevalence, which is explained in detail elsewhere in this preamble. As general background regarding the level of surveillance of free ranging deer, the department notes that testing a higher proportion of mortalities within a herd/population does not necessarily equate to more intensive sampling and/or a higher probability of detecting the disease. In calculating appropriate sample sizes, the department relies on probability detection tables constructed from a computation put forward by researchers Cannon and Roe that has been used extensively over many years for sample-size detection determinations. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that low-fenced deer aren't being tested or aren't being tested at the same intensity as breeder deer. The department disagrees with the comments and responds that if by "low-fenced deer" the commenter means free-ranging deer (which, it should be noted, includes deer on high-fenced properties), sufficient numbers of deer have been tested to yield high confidence that if CWD exists on the landscape, even at extremely low prevalence, it would have been detected in most regions of Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that only a small percentage of native deer are tested. The department assumes the commenters are referring the testing of free-ranging deer. The department agrees with the comment and responds that with regard to the level of surveillance of free ranging deer, testing a higher proportion of mortalities within a herd/population does not necessarily equate to more intensive sampling and/or a higher probability of detecting the disease. In calculating appropriate sample sizes, the department relies on probability detection tables constructed from a computation put forward by researchers Cannon and Roe that have been used extensively over many years for sample-size detection determinations. Simply put, as the population size increases, the proportion of the population that must be sampled to yield an equivalent confidence level decreases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more wild deer have tested positive for CWD than captive deer. The department disagrees with the comment and responds that although it is a fact that more breeder deer than free-ranging deer have been confirmed with CWD, it is irrelevant because the presence of the disease in even a single deer in either captive

or free-ranging populations is cause for concern and action. No changes were made as a result of the comment.

Triple T

Seventy-two commenters opposed adoption and stated that the rules should not include the provision prohibiting the issuance of a Triple T permit to trap deer at a site that has been a release site for breeder deer within the previous five years and should be changed to allow for deer to be trapped at Class I release site for Triple T purposes. The department disagrees with the comments and responds that any release site that received breeder deer within the last five years cannot be definitively excluded as a possible place where CWD has been introduced; similarly, a Class I status for a release site reflects only the source of breeder deer that have been released at that site since August of 2015 and does not account for the epidemiological status of deer that were previously released or resident on the site prior to the liberation of breeder deer. Therefore, the rules prohibit the trapping of deer for Triple T purposes at any location where breeder deer have been liberated within the previous five years (the accepted incubation period for CWD).

Seventy-two commenters opposed adoption and stated that the identification requirements for released Triple T deer should be eliminated. The department disagrees with the comment and responds that it is imperative that translocated deer be identifiable in order to facilitate epidemiological investigations in the event that CWD is discovered in a free-ranging deer population that has received Triple T deer. No changes were made as a result of the comments.

Twelve commenters opposed adoption by stating in identical or nearly identical fashion that the rules would severely limit Triple T activities. The commenters stated that instead of release site testing, the requirement should be for 10% testing at the trap site (no more than 10 deer per year per trap site) and that there should be uniformity of test requirements between all classes and levels. The department disagrees with the comments and responds that both trap site testing and release testing are imperative under certain circumstances. As proposed, the rules would have required 15 "not detected" post-mortem test results from the trap site to be submitted prior to permit issuance. For release sites, the proposed rules would have required 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 were harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer. However, the rules as adopted retain the requirement for 15 deer from the trap site to be tested with "not detected" results, but release-site testing has been eliminated.

Four commenters opposed adoption and stated that there should be no Triple T release-site testing. The department agrees with the comments and has made changes accordingly.

One commenter opposed adoption and stated that the proposed Triple T provisions are burdensome, excessive, and unnecessary. The department disagrees that the rules as proposed were onerous, but responds that the rules have been adopted with changes to facilitate compliance while still achieving a scientifically acceptable level of surveillance.

Administrative Procedure, Governmental Efficiency, and Public Policy

Ninety-four commenters opposed adoption and stated that the rules are overregulation, overreach, overkill, overreaction, overbearing, unwarranted, unjustified, or unnecessary. The department disagrees with the comments and responds that the rules as adopted are intended to represent a narrowly drawn, scientifically efficacious mechanism for increasing disease surveillance in captive populations and populations that receive deer from captive populations. In addition, the rules' requirements are based on the risk of exposure to and spread of CWD and the need for surveillance as part of the department's effort to ensure that the rules were not, in fact, broader than necessary. In addition, the department is undertaking efforts to educate those required to comply about the rules' requirements and modifying TWIMS (the department's online reporting system) to facilitate compliance. No changes were made as a result of the comments.

Eighty commenters opposed adoption and stated that the rules are an excessive expenditure of or waste of tax money. The department disagrees with the comments and responds that the administration and enforcement of fish and game laws in Texas is funded primarily by revenues from the sale of hunting and fishing licenses and permits; therefore, the cost of administering and enforcing the rules as adopted is already part of the department's existing duties. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the rules are shady, the result of political influence and backroom dealing, promulgated according to a hidden agenda, or written by unknown "stakeholders" in closed-door meetings with no notice. The department disagrees with the comments and responds that the rules were developed in an open, inclusive, and transparent process that involved the invited participation of the regulated community and stakeholders (including trade associations representing deer breeders) with facilitation provided by of the Center for Public Policy Dispute Resolution of the University of Texas School of Law and regular contact with interested legislators. No changes were made as a result of the comments.

Seventy-four commenters stated that the rules are burdensome. One commenter opposed adoption and stated that the rules are too stringent. The department disagrees with the comments and responds that as noted in the proposal preamble, the department recognizes that the rules will have an impact on those required to comply. However, the rules' classification of breeding facilities and release sites based on risk of exposure to CWD, with requirements based on a breeding facility's and release site's risk of exposure to CWD, was part of the department's effort to ensure that the rules were not, in fact, broader than necessary. In addition, the department is undertaking efforts to educate those required to comply about the rules' requirements and modifying TWIMS (the department's online reporting system) to facilitate compliance. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that rules are excessively complicated. The department disagrees with the comment and responds that the rules as adopted to the greatest extent possible avoid complexity, but that by the very nature of the regulatory terrain (disease management in a large state with large populations of landowners and deer, and more than 1,000 deer breeders, Triple T, and DMP cooperators), some regulatory complexity is unavoidable. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the costs of the rules outweigh the benefits and the risk of CWD is less than the value of the rules. The department disagrees with the comments and responds that the cost of not having the rules could be severe if CWD becomes established at landscape scale, affecting the state's deer populations and the multi-billion dollar economies surrounding hunting, ranching, real estate, and conservation. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules were arbitrary and inefficient. The department disagrees with the comment and responds that, as explained elsewhere in this preamble, the rules were developed based on scientific principles of epidemiology and disease management, and are intended to be as efficient as possible under the circumstances. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there were now over 500 pages of regulations governing deer breeders. The department disagrees with the comment and responds that depending on how the rules and statutes are quantified, there appears to be fewer than 20 pages of regulatory material that applies to deer breeders. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the Commission should adopt the recommendation of the Texas Deer Association. The department disagrees with the comment and responds that persons associated with the Texas Deer Association made a number of recommendations, some of which have been incorporated into the rules adopted, although other recommendations from the Texas Deer Association were insufficient to meet responsible disease-management goals. With regard to the recommendations made by the Texas Deer Association and others on May 6, 2016, the department's response to the comments regarding those recommendations are provided elsewhere in this preamble. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules cause landowners to buy deer only from TC 1 breeding facilities. The department disagrees with the comment and responds that the rules do not determine who buys or sells deer for whatever reason, rather, it is the emergence of CWD acting to make potential customers anxious about the health of breeder deer being purchased. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal government was regulating where they have no business at taxpayer expense. The department disagrees with the comment and responds that the rules are not the result of a requirement of the federal government. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the government tells people how to raise deer but not cattle. The department disagrees with the comment and responds that unlike cattle, which are considered livestock, mule deer and white-tailed deer are public resources. In addition, it should be noted that state and federal agencies have enacted regulations regarding cattle production. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that government shouldn't be involved in deer breeding and that deer breeding is a private enterprise that government should stay out of. The department disagrees with the comment and responds that under

Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to regulate the possession of live deer under a deer breeder's permit. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that TPWD violated the Open Meeting Act. The department disagrees with the comment and responds that although the commenter did not specify the actions that the commenter believes violated the Open Meetings Act or when they occurred, the rules were adopted by the Parks and Wildlife Commission in a lawfully noticed meeting in compliance with applicable provisions of the Texas Open Meetings Act, following publication of a Notice of Proposed Rulemaking in the *Texas Register* and solicitation of public comment as required under the Texas Administrative Procedure Act. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules constituted a destruction of freedom of commerce. The department disagrees with the comment and responds that the rules as adopted are not for the purpose of regulating commercial activity. As noted in the proposal preamble, the department acknowledges that the rules may have an economic impact on persons required to comply. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the stakeholder groups that provided input to the department were not representative of the public. The department agrees that the various stakeholder groups are not demographically reflective of the state's population as a whole; however, the stakeholder groups were representative of the persons impacted by the rules. The department considers that a stakeholder is a person or organization that has a direct interest in the department's actions, objectives, and policies. On that basis, the composition of the stakeholder groups was focused on the parties directly affected by potential rules addressing the nexus of disease management and the unnatural movement of a popular game species. The stakeholder groups therefore included individuals and associations that could knowledgeably inform the department about the perspectives of affected regulatory agencies, landowners, wildlife managers, hunters, and deer breeders. In addition, through the notice and comment process required for the adoption of the rules, any person with an interest in the rules was given an opportunity to participate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is too political, and one commenter opposed adoption and stated that the rules are part of TPWD's political agenda. The department disagrees with the comments and responds that, as explained in more detail elsewhere in this preamble, the basis for the rules was the protection of a public resource using biologically defensible measures intended to minimize CWD risks to free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas while minimizing direct and indirect impacts of CWD to hunting, hunting-related economies, and conservation in Texas. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules are just a way for the department to create more government jobs. The department disagrees with the comment and responds that, as mentioned elsewhere in this preamble, the rules are for the purpose of protecting a public resource. Although the department has engaged additional manpower on a temporary basis

to enhance customer service to the regulated community, the administration and enforcement of the rules as adopted will be effected by existing personnel. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a "cash cow" for the department and one commenter opposed adoption and stated that the department was trying to add more government jobs and increase budget. The department disagrees with the comment and responds that the rules are not motivated by and do not affect the department's revenue stream. No changes were made as a result of the comment.

One commenter opposed adoption and stated that politics should be kept out of rulemaking. The department agrees with the comment and responds that the rules as adopted are for the purpose of protecting a public resource based on the best epidemiological science available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that TPWD is corrupt because testing goals in the two counties where CWD was discovered were not attained. The department assumes that the commenter is referring to the fact that although the department exceeded its goal for collection of CWD samples from hunter-harvested deer on a statewide basis, the department did not achieve its goal for hunter-harvest sample collection in the Central Texas areas surrounding the sites on which CWD was detected. The department disagrees with the comment and responds that every effort was and is being made to accumulate an epidemiologically complete picture of the prevalence of CWD in every part of the state. The department also responds that suboptimal sampling in any given location does not make the department "corrupt" or the rules as adopted unnecessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules change constantly, which is illegal. The department disagrees with the comment and responds that as explained elsewhere in this preamble, while the department acknowledges that there have been several iterations of regulations regarding CWD, the emergency rules and the Interim Breeder Rules were developed for the stated purpose of providing an immediate response in the wake of the June 2015 discovery of CWD in a breeding facility, to enable breeders, release sites, land managers, hunters, and wildlife enthusiasts some degree of certainty through the 2015-2016 hunting season, and to afford the department an opportunity, through a process that included extensive stakeholder input, to develop regulations that would provide a mechanism for responding to CWD for the long term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the per-animal testing costs in the preamble are too high. The department disagrees with the comment and responds that because the procedures for CWD sample collection were relatively new and only a small number of persons at the time the proposed rules were published had been trained or certified to perform those procedures, the department based the estimates of the cost of compliance on information solicited from a number of private veterinarians. As more people become trained and certified to become sample collectors, the cost of compliance will be reduced, which has proven to be the case. No changes were made as a result of the comment.

One commenter opposed adoption and stated that TPWD admitted there were no goals. The department disagrees with the

comment and responds that it is unaware of any statement to the effect that there is no goal for this rulemaking. The department stated numerous times in numerous rulemakings, as well as continuously to the public via the department's communications efforts since the discovery of CWD in a deer breeding facility in June 2015, that the department is guided by the three major goals set forth in the CWD Management Plan: (1) Minimize CWD risks to the free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas; (2) Establish and maintain support for prudent CWD management with hunters, landowners, and other stakeholders; and (3) Minimize direct and indirect impacts of CWD to hunting, hunting related economies, and conservation in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is unethical to have unreasonable rules. The department disagrees that the rules are unethical or unreasonable and responds that as explained elsewhere in this preamble, the department has undertaken considerable efforts to involve affected parties in the process of developing these rules to ensure that the rules as adopted provide a reasonable mechanism for the surveillance and containment of CWD based on scientific principles of disease management while still allowing regulated activities to occur. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the original rules worked just fine. The department disagrees with the comment and responds that while the original rules (i.e., the rules that existed at the time CWD was discovered in a Medina County breeding facility in June 2015) provided an adequate initial baseline for testing, the rules were inadequate to provide a level of assurance that CWD would be detected if it existed in a breeding facility. It should be noted that although the minimum testing requirement under the original rule was 20%, the average testing rate for breeding facilities was previously 40%. Also, every Texas deer breeding facility where CWD has been discovered had tested more than 90% of eligible mortalities. In the first deer breeding facility where CWD was discovered (Medina County), 95% of the eligible mortalities were tested. In the second facility (Lavaca County), the facility owner was required as prescribed in a TAHC herd plan to test 100% of eligible mortalities, and it was under this testing rate that CWD was discovered. The third and fourth discoveries of CWD in white-tailed deer occurred at facilities under a TAHC herd plan or subject to enhanced testing under the Interim Breeder Rules. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules have too many traps and holes. The department disagrees with the commenter, especially in the absence of the identification of specific problematic provisions, and responds that the rules were not intended to include traps and holes. In addition, as noted in response to other comments, through outreach and modifications to TWIMS, the department is seeking to address concerns about compliance with the rules.

One commenter opposed adoption and stated that the rules are "not right." The department understands this comment to be stating a general objection to the rules. The department disagrees with the comment and responds that it is discharging a statutory duty to protect the wildlife resources of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD cannot be regulated away. The department agrees with the comment and responds that the rules as adopted are not intended to elim-

inate CWD, but to detect it where it exists so that it can be contained. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules do not account for long-term impacts. The department disagrees with the comment and responds that the rules actually are intended to avoid long-term impacts. By providing a pathway for most, if not all, breeding facilities to achieve movement status without release-site testing requirements, the rules intentionally seek to minimize long-term impacts for those deer breeders who are willing to conduct adequate testing. No changes were made as a result of the comment.

Nature of Breeder Deer

Seventy-two commenters opposed adoption and stated that the rules shouldn't "interfere with the private property rights of the individual landowner." The department agrees with the comments and responds that the rules as adopted do not affect the private property rights of any individual landowner. No changes were made as a result of the comments.

Seventy-five commenters opposed adoption and stated that the rules should not require breeder deer to be killed. The department disagrees that the rules require breeder deer to be killed. The rules provide for testing requirements that must be met in order to be able to move deer and provide the option of sacrificing deer in order to meet those requirements, but do not require any deer breeder to kill any deer. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that breeder deer are private property and should be treated like cattle. The department disagrees with the comments and responds that breeder deer are the property of the people of the state under the provisions of the Parks and Wildlife Code, while cattle are considered livestock. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules violate property rights. The department disagrees with the comment and responds that the rules as adopted do not regulate the acquisition, use, or transfer of private property, real or personal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeder deer are livestock and shouldn't be regulated by the state. The department disagrees with the comment and responds that deer are not livestock under the laws of this state, and that under the Parks and Wildlife Code, white-tailed deer and mule deer are the property of the people of the state. No changes were made as a result of the comment.

Economic Impacts

Two commenters opposed adoption and stated that the rules will destroy property values. The department disagrees with the comments and responds that the presence of CWD in an area, rather than the presence of rules designed to detect and contain CWD, would seem to be the major determinant of the effect of CWD on property values. In addition, while the department recognizes that there could be costs associated with additional testing under the rules, the detection and containment of CWD is necessary to protect the state from the threat of CWD to the state's multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies, which should positively impact property values. No changes were made as a result of the comments.

Eighty-one commenters opposed adoption and stated that the rules will hurt state and local economies and cost jobs. Six commenters opposed adoption and stated that the rules will kill the deer breeding industry and put people out of business. Two commenters opposed adoption and stated that the rules will create financial burdens, economic hardship, and hurt families. Similarly, one commenter opposed adoption and stated that the rules will hurt thousands of businesses and people. One commenter opposed adoption and stated that the rules will jeopardize 800,000 jobs. The department disagrees with the comments and responds that depending on a breeding facility's classification under the rules and the types of activities that the breeding facility seeks to undertake, there may be costs associated with additional testing. If the comment is referring to marketplace behavior, the proposal preamble also noted that 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 rules from marketplace behavior that is the result of the discovery of CWD. With regard to the comment about jeopardizing jobs, an unpublished study conducted by the Agricultural and Food Policy Center at Texas A&M University in 2007 estimated the number of jobs created by the deer breeding industry at that time to be 7,335 jobs with the "multiplier effect." The department further responds that detection and containment of CWD is necessary to protect the state's multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules will result in a loss of at least \$1.2 million in revenue to the department in the form of deer breeders going out of business and lost license revenue from non-resident hunters. The department disagrees with the comment and responds that department data indicate a steady trend line for the number of permitted deer breeders, that there is no data to estimate what percentage of non-resident hunters hunt released breeder deer, and that significant revenue loss and economic harm could result if CWD is not contained and managed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules constituted an unfunded mandate, because deer breeders must bear the cost of CWD testing while free-ranging deer are tested by the state at no cost to hunters and landowners. The department disagrees with the comment and responds that deer breeding is a commercial enterprise that is voluntarily engaged in by deer breeders and much the same as the cost of fencing, feed, and medical care, the testing requirements imposed by the rules are a cost of doing business that can be passed to the consumer if the business operator so chooses. It should also be noted that persons transporting deer pursuant to Triple T or TTP permit must pay costs associated with the movement of deer, including the cost of CWD testing. Hunter-harvested deer are tested at no cost because the department finds an imperative need to develop an epidemiological characterization of CWD in free-ranging populations everywhere in the state. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules will hurt or kill hunting. The department disagrees with the comments and responds that the rules adopted will protect hunting by protecting the resources that are hunted. No changes were made as a result of the comments.

One commenter opposed adoption and stated that because deer breeders provide the lion's share of hunting opportunity, and the rules will hurt department revenue and the economy. The department disagrees with the comment and responds that although breeder deer compose a very small percentage of the deer harvest, the threat to the economy arises from failing to respond responsibly to CWD, which, if not managed, has the potential to negatively impact the state's hunting economy. No changes were made as a result of the comment.

Compliance and Enforcement

Seventy-two commenters opposed adoption and stated that "Any penalties for non-compliance must accurately reflect the actions and requirements of the current rules, not extending penalties beyond what is reasonable or just." The department is uncertain exactly what is meant by the comment, but responds that the penalties for violations of the rules as adopted are stipulated by statute and do not differ from the penalties currently in effect. No changes were made as a result of the comments.

Miscellaneous

One commenter opposed adoption and stated that there should be no rules whatsoever. The department disagrees with the comment and responds that the department has a statutory duty to protect public wildlife resources and it is imperative to do so because CWD poses a threat to those resources. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that "It is imperative that any rules regarding standards for testing and release be based on the overall stewardship and health of the deer herd, the true impacts of this disease on the population in Texas, the continuity, applicability, and practicality within a once-prosperous business environment, and should account for the economic burden they place on the producer, permit holder, or release site registrant." The department agrees with the comment, with the caveat that the assertion of a "once-prosperous business environment" is an unsubstantiated comparative. No changes were made as a result of the comments.

Rules Not Stringent Enough

Twelve commenters opposed adoption and stated that deer breeding should not be legal. The department disagrees with the comment and responds that pursuant to Parks and Wildlife Code, §43.352(a), the department is required to issue a permit to a qualified person to possess live breeder deer in captivity. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that all released breeder deer should bear visible tags or other means of ready identification and released only to double-fenced release sites. The department disagrees with the comments and responds that the rules as adopted require only Triple T deer and breeder deer being released from a TC 3 breeding facility to be eartagged. The department also believes that the current standard for release-site fencing, which requires a fence to be at least seven feet in height, and more importantly, capable of retaining deer at all times, to be sufficient for keeping liberated deer from commingling with free-ranging deer. The department notes that Parks and Wildlife Code, §43.3561, does include identification requirements associated with breeder deer. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the fence requirement should be eight feet, not seven feet. The department

disagrees with the comments and responds that the rules as adopted require release-site fencing to be at least seven feet in height, which the department believes is sufficient to reasonably retain breeder deer on the release site under ordinary circumstances. The department also notes that the rules as adopted do not prevent a landowner from erecting a fence of greater than seven feet in height. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules do not require notification of neighboring landowners when a CWD-positive deer is found. The department acknowledges that the rules do not require adjoining landowners to be notified if CWD is discovered on a property, but disagrees that such a requirement would increase the department's ability to detect and contain CWD. The department reasons that because it notifies the public when CWD is discovered and under other rules may designate any area of the state as a Containment Zone or Surveillance Zone for purposes of CWD management, landowners of property surrounding a site where CWD is discovered will quickly learn of the disease's emergence, if it occurs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should not allow release to low-fenced property. The department agrees with the comment and responds that the rules prohibit the release of deer to low-fenced acreage. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ante-mortem testing at 25 percent will allow young animals that have CWD that is not yet detectable to be moved, thus spreading the disease. The department disagrees with the comment and responds that the 25 percent ante-mortem test value is a preliminary testing requirement to temporarily achieve TC 1 status during the initial year of the new rules effectiveness; to maintain TC 1 status, another 25 percent of the source facility's inventory would have to be ante-mortem tested by May 1. The department is attempting to allow as many TC 2 facilities as possible to "test up" to TC 1 status and reasons that some facilities might not be able to ante-mortem test 50 percent of their inventory immediately; therefore, the 25 percent value was selected. It should also be noted that irrespective of the testing level, young animals could be moved with CWD because it is not normally yet detectable, even with 100% ante-mortem testing. The department also notes that if CWD is present in a breeding facility it will be discovered through time, and because breeder deer can be liberated only to high-fenced release sites, if CWD is discovered in a breeding facility after it has met an initial 25 percent "not detected" ante-mortem standard, the department will know the exact location where deer from the facility have been transferred or liberated and will be able to take immediate steps to address the situation. No changes were made as a result of the comment.

The department received a total of 422 comments supporting adoption of the proposed rules. Between April 22, 2016 and May 26, 2016 the department received 178 comments supporting adoption: 111 comments via the department's website and 67 written comments. At the June 20, 2016, special Commission meeting, the department received 244 comments supporting adoption of the rules.

The Texas Deer Association, Exotic Wildlife Association, AgriSense Texas, and the Deer Breeder Corporation commented against adoption of the rules as proposed.

The following groups and associations commented in support of adoption of the rules: Texas Farm Bureau, King Ranch, Texas and Southwestern Cattle Raisers Association, Ducks Unlimited, Archery Trade Association, Caesar Kleberg Wildlife Management Institute, Plateau Land and Wildlife Management, Audubon Texas, Pope and Young Club, Austin Woods and Waters Club, Quality Deer Management Association, Bexar Audubon Society, Rocky Mountain Elk Foundation, Boone and Crockett Club, Safari Club International - Houston Chapter, Coastal Bend Bays and Estuaries Program, Sierra Club - Lone Star Chapter, Hill Country Alliance, Mule Deer Foundation, Shikar Safari Club International, Texans For Saving Our Hunting Heritage, Hill Country Conservancy, Texas Bighorn Society, Texas Agricultural Land Trust, Texas Cattle Feeders Association, Lone Star Bow Hunters Association, Texas Chapter of The Wildlife Society, National Wild Turkey Federation, Texas Sportsman's Association, National Wildlife Federation, Texas Wildlife Association, Orion - The Hunters Institute, Native American Seed, Association of Fish and Wildlife Agencies, Bear Trust, Catch a Dream Foundation, Council to Advance Hunting and the Shooting Sports, National Shooting Sports Foundation, National Trappers Association, North American Grouse Partnership, Pheasants Forever - Quail Forever, Tennessee Wildlife Foundation, Theodore Roosevelt Conservation Partnership, Tread Lightly!, Wildlife Management Institute, Wildlife Mississippi, Wildlife Forever, Texas Conservation Alliance, Nina Sinclair Trust, Whitetails Unlimited, Wild Sheep Foundation, and the East Texas Woods and Waters Club.

31 TAC §§65.90 - 65.94

The repeals are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and 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 agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 25, 2016.

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General Counsel

Texas Parks and Wildlife Department

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Proposal publication date: April 22, 2016

For further information, please call: (512) 389-4775



31 TAC §§65.90 - 65.99

The new rules are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and 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.

§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) Interim Breeder Rules--31 TAC §§65.90 - 65.93, concerning Chronic Wasting Disease - Movement of Deer, adopted by the Texas Parks and Wildlife Commission on November 5, 2015, and published in the January 29, 2016 issue of the *Texas Register* (41 TexReg 815).

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

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

(20) 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).

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

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

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

(24) 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.

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

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

(27) 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.

(28) 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.

(29) 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.

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

(31) 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 (TC 3). 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.

(32) 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.

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

(34) TAHC--Texas Animal Health Commission.

(35) 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).

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

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

(38) 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.

(39) 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),

(40) 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).

(41) 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 subchapter conflicts with any provision of this chapter other than Division 1 of this subchapter, this subchapter 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) Notwithstanding any provision of this division, no person may cause or allow breeder deer to be moved from a facility for any purpose if such movement is prohibited by a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine.

(e) 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) of this title (relating to Movement of Breeder Deer), if the facility is a release site.

(f) 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.

(g) 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.

(h) 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.

(i) 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 division, 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 with at least 6 lymphoid follicles collected within six months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

(1) is at least 16 months of age; and

(2) has not been the source of a "not detected" ante-mortem test result submitted within the previous 24 months.

(c) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex or medial retropharyngeal lymph node of an eligible mortality, and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

(d) To meet the requirements of §65.94(a)(1)(A) and (B) of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title (relating to Movement of Breeder Deer),

ante-mortem test results may be substituted for post-mortem test results at a ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

(e) 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.

(f) 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.

(g) 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.

§65.94. 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:

(A) met the provisions of this subparagraph:

(i) had less than five eligible mortalities from May 23, 2006 through March 31, 2016; or

(ii) 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; and

(B) beginning with the report year that starts April 1, 2017, and each April 1 thereafter

(i) achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or

(ii) submitted CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the eligible-aged deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by 3.6 percent;

(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; or

(4) is not in compliance with the reporting and recordkeeping provisions of this division and §65.608 of this title (relating to Annual Reports and Records).

(b) A breeding 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 the required "not detected" test results prescribed by subsection (a) of this section are submitted.

(c) A breeding 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 have been in possession of a deer that was held in 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. Except as may be otherwise provided in this division, a breeding facility that is in compliance with the requirements in 65.94(a) of this title (relating to Breeding Facility Minimum Movement Qualification) is a TC 1 facility if:

(A) the breeding facility has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or

(B) the breeding facility has submitted one of the following:

(i) "not detected" post-mortem test results for at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility over the previous five consecutive reporting years, so long as the total number of "not detected" post-mortem test results submitted during the previous five consecutive reporting years is 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; or

(ii) "not detected" ante-mortem test results for at least 50 percent of eligible-aged deer in the facility's inventory as of the date the facility initiates the ante-mortem testing process. For the report year beginning April 1, 2016, a breeding facility will be construed to have temporarily complied with this item upon submission of "not detected" ante-mortem test results for at least 25 percent of eligible-aged deer in the facility as of the date the facility initiates the ante-mortem testing process; however, the breeding facility must submit the remaining ante-mortem tests results to achieve 50% testing by May 15, 2017.

(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, quarantine, 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 or quarantine in effect at the breeding facility has been lifted.

(D) A TC 3 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. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this subparagraph.

(B) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(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 under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(D) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted as required by this subsection. A release site that is not in compliance with the requirements of this subsection is ineligible to receive deer and must continue to submit test results until the testing requirements of this subsection are satisfied.

(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. Except as provided in §65.98, a release site is a Class I release site and is not required to perform CWD testing if the release site

(A) is not a Class II or Class III release site; and

(B) after August 15, 2016, the release site has received deer only from TC 1 facilities

(3) Class II Release Site.

(A) A release site that is not a Class III release site and receives deer from a TC 2 breeding facility is a Class II release site.

(B) Beginning the first hunting year following the release of deer from any TC 2 breeding facility and continuing for each hunting year thereafter, the owner of a Class II release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year.

(C) The requirements of subparagraph (B) cease as follows:

(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;

(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.

(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) it has not been released from a TAHC hold order or quarantine 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 site 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) Beginning the first hunting year after the release of deer from the following facilities, and continuing for each hunting year thereafter, the owner of the release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year:

(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.

(C) The requirements of subparagraph (B) cease as follows:

(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;

(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.

(2) The department will not authorize the transfer of deer to a DMP facility from a TC 3 breeding facility, a Class III release site, or from a release site or deer breeding facility that is not in compliance with the requirements of this division.

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

(a) General.

(1) Unless expressly provided otherwise in this section, 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 or quarantine.

(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 a 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, in addition to the marking required by §65.102 of this title (relating to Disease Detection Requirements). 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 unless the sample was collected and 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.

(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) 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 as of August 15, 2016, is in compliance with the Interim Deer Breeder Rules shall be not subject to testing requirements of this division until deer are liberated or released onto the release site under the provisions of this division.

(c) A release site that becomes a Class II release site as a result of the receipt of deer on or after August 15, 2016 from a TC 2 breeding facility will be designated as a Class I release site if the release site is in compliance with all Class II requirements as provided in §65.95(c) of this title (relating to Movement of Breeder Deer) in that season; and

(1) all TC 2 breeding facilities that provided deer to the release site achieve TC 1 status by May 15, 2017, as provided in 65.95(b)(1) of this title (relating to Movement of Breeder Deer); or

(2) all breeder deer liberated to the release site after August 15, 2016 and prior to October 1, 2016:

(A) are harvested and CWD-tested during the 2016-2017 hunting year; and

(B) no additional deer are received from a TC 2 or TC 3 facility during the 2016-2017 hunting year.

(d) A release site that was not in compliance with the Interim Deer Breeder Rules shall be:

(1) required to comply with the applicable provisions of this division regarding Class II or Class III sites for a period of three consecutive years beginning on the first day of lawful hunting for the 2016-2017 hunting year; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this subsection.

(e) 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.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.286

The Comptroller of Public Accounts adopts amendments to §3.286, concerning seller's and purchaser's responsibilities, including nexus, permits, returns and reporting periods, and collection and exemption rules, without changes to the proposed text as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4383). The amendments implement statutory changes enacted in 2015 by the 84th Legislature and clarify agency policy regarding direct payment permit holders and prepayment discounts. House Bill 2358, 84th Legislature, 2015, added Tax Code, §151.0241 (Persons Performing Disaster- or Emergency-Related Work).

A new defined term is added to subsection (a) to implement House Bill 2358, 84th Legislature, 2015. New subsection (a)(3) is added to define the term "disaster- or emergency-related

work." This definition is taken from Business & Commerce Code, §112.003, and incorporates the definitions of the terms "critical infrastructure" and "disaster- or emergency-related work." Subsequent paragraphs are renumbered accordingly. In addition, renumbered subsection (a)(4), defining the term "engaged in business," is amended to add new subparagraph (J) to implement House Bill 2358. New subparagraph (J) provides that certain out-of-state business entities who come to Texas for the sole purpose of repairing or replacing critical infrastructure damaged in a disaster or emergency are not engaged in business in this state. This provision is effective June 16, 2015.

Subsection (c)(1), relating to obtaining a sales and use tax permit, is amended to implement Senate Bill 853, 84th Legislature, 2015, which provides that a sales tax permit application filed electronically on a form prescribed by the comptroller is deemed to be signed by the applicant for purposes of Tax Code, §151.202(b)(5).

Subsection (d)(2)(B) is amended to reinstate the requirement that out-of-state sellers identify the tax on their bills or invoices as Texas tax. The following sentence was first added to the section in 1988: "Out-of-state sellers must identify the tax as Texas sales or use tax." See 13 TexReg 3988 (1988). During the drafting of the amendments to the section that were adopted effective June 3, 2015, the sentence was inadvertently deleted. Because the deletion was inadvertent, it was not explained or addressed in the preamble to the 2015 amendment. See 40 TexReg 3183 (2015) (addressing revisions to subsection (d)(2)(A) but not subsection (d)(2)(B)). The language is revised to describe out-of-state sellers as sellers who do not maintain a physical location in Texas.

Subsection (d)(2)(B) is further amended to memorialize current comptroller procedure that when an invoice or bill does not identify tax as Texas tax, it is presumed that the seller did not collect Texas tax. The subsection further explains that the presumption is rebuttable.

Subsection (f)(3), relating to extensions for persons located in a disaster area, is amended to use terminology consistent with House Bill 2358 and amended subsection (a). For example, the term "natural disaster area" is replaced with the phrase "an area designated in a state of disaster or emergency declaration."

Subsection (g)(8), relating to direct payment permit holders, is also revised. This subsection states that "prepayment procedures and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits." Because subsection (h) addresses discounts for timely filing and for prepayment, subsection (g)(8) is amended to replace the phrase "prepayment procedures" with the more accurate phrase "prepayment discounts."

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.0241 ("Persons Performing Disaster Or Emergency-Related Work") and Business & Commerce Code, Chapter 112 et seq.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1 - 147.6

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 147, Subchapter A, §§147.1 - 147.6, concerning general rules for hearings. The rules are adopted without change to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3266). The text of the rules will not be republished.

The amended rules are adopted to capitalize titles throughout the rules, change the section symbol to the word "Section" in 147.5 and update the language in 147.6 to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.036 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 relates to the board members' and parole commissioners' release and revocation duties. Sections 508.281 and 508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



SUBCHAPTER B. EVIDENCE

37 TAC §§147.21 - 147.24, 147.27

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 147, Subchapter B, §§147.21 - 147.24 and 147.27, concerning evidence. The amendments are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3267). The text of the rules will not be republished.

The amended rules are adopted to capitalize hearing officer throughout the rules.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board members' and parole commissioners' release and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

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CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §148.48

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 148, §148.48, concerning record. The rule is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3268). The text of the rule will not be republished.

The amended rule is adopted to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section

508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

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

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CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER B. SELECTION FOR MANDATORY SUPERVISION

37 TAC §149.16

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 149, Subchapter B, §149.16, concerning selection for mandatory supervision. The rule is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3269). The text of the rule will not be republished.

The amended rule is adopted to capitalize chair within §149.16.

No public comments were received regarding adoption of this amendment.

The amended rule is adopted under §508.0441 and §508.045, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision.

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

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Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55, §150.56

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 150, Subchapter A, §150.55 and §150.56, concerning published policies of the board. The rules are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3269). The text of the rules will not be republished.

The amended rules are adopted to capitalize titles throughout the rules.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

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

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TRD-201603631

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.13, §437.17

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning, §437.13, Processing Fees for Test Application, and §437.17, Records Review Fees.

The amendments are adopted without changes to the proposed text as published in the June 3, 2016, *Texas Register* (41 TexReg 3987) and will not be republished.

The amendments are adopted to adjust the fee charged for sectional exams, which are typically administered as retests following an initial exam failure; and to adjust fees charged for records review.

The adopted amendments will assure that all individuals will have passed each section of a multiple-section exam in order to qualify for certification. The records review fee increase reflects the amount of staff time committed to the review of the records.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the au-

thority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set examination fees for certification of fire protection personnel.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603597

Tim Rutland

Executive Director

Texas Commission on Fire Protection

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Proposal publication date: June 3, 2016

For further information, please call: (512) 936-3812



CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.3, 439.7, 439.9, 439.11, 439.19

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations For Certification, Subchapter A, Examinations For On-Site Delivery Training, concerning, §439.1, Requirements - General; §439.3, Definitions; §439.7, Eligibility; §439.9, Grading; §439.11, Commission-Designated Performance Skill Evaluations; and §439.19, Number of Test Questions. The amendments are adopted without changes to the proposed text as published in the June 3, 2016, *Texas Register* (41 TexReg 3988) and will not be republished.

The amendments are adopted to require an individual to pass all sections of a multiple-section examination, define sectional exam, place an expiration on certificates of completion, place a limit on the amount of time required for a person to complete skills evaluations and adjust the number of questions on certain state examinations.

The adopted amendments will ensure that all individuals tested to become certified fire protection personnel will have passed each section of a multiple examination with at least seventy percent.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set examination fees for certification.

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

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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Proposal publication date: June 3, 2016
For further information, please call: (512) 936-3812



CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) adopts new sections to Chapter 451, Fire Officer, Subchapter C, Minimum Standards For Fire Officer III, §451.307, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter D, Minimum Standards For Fire Officer IV, §451.407, International Fire Service Accreditation Congress (IFSAC) Seal. The new sections are adopted with changes to the text as proposed in the June 3, 2016, *Texas Register* (41 TexReg 3991). The changes from the proposed text consists of added language requiring an individual to have a current examination on file in order to qualify for an IFSAC seal and to submit an application for that seal prior to the expiration of their examination.

The proposal is adopted to add language and new requirements for the issuance of IFSAC seals for Fire Officer III and Fire Officer IV.

The adopted new sections will assure that individuals seeking to acquire IFSAC seals are in compliance with the requirements of the International Fire Service Accreditation Congress.

No comments from the public were received regarding the adoption of the new sections.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.307

The new section is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

§451.307. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals holding a current commission Fire Officer III certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.

(b) Individuals completing a commission approved Fire Officer III program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer II; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3812



SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.407

The new section is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

§451.407. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals holding a current commission Fire Officer IV certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.

(b) Individuals completing a commission approved Fire Officer IV program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer III; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Subchapter A, §217.2, Defini-

tions; §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. The amendments to §§217.3, 217.33, 217.40, 217.43, 217.45, 217.46, and 217.54 are adopted without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2895) and will not be republished. The amendments to §§217.2, 217.4, 217.5, 217.7, 217.26, 217.55, 217.88, and 217.123 are adopted with changes to the proposed text and will be republished. Changes in the adopted amendments respond to public comments or otherwise reflect nonsubstantive variations from the proposed amendments.

Several bills from the 84th Legislature, Regular Session, 2015, amended sections of the Transportation Code. Because of these statutory changes, several rules required amendment to maintain consistency with the amended statutes. Amendments throughout Chapter 217, Subchapters A, B, D, and F reflect the statutory changes and correct statutory citations; delete unnecessary language, including language that repeats statute; and update and clarify various requirements and procedures.

COMMENT

The following individuals or entities furnished written comments opposed to the proposed amendment to §217.4 prescribing requirements applicable to "even trade" title transactions: Linda Bridge, Bee County Tax Assessor-Collector (TAC); Sharon Long, Bell County TAC; Ro'Vin Garrett, Brazoria County TAC; Jackie Moore, Carson County TAC; Becky Watson Fant, Cass County TAC; Cathy C. Talcott, Comal County TAC; Michelle French, Denton County TAC; Gaye Whitehead, Gray County TAC; Bruce Stidham, Grayson County TAC; Linda Cummings, Hansford County TAC; Debra L. Ford, Hemphill County TAC; Mary Ann Lovelady, Jones County TAC; Deborah A. Sevcik, Lavaca County TAC; Ronnie Keister, Lubbock County TAC; Karen M. Lane, Madison County TAC; Randy Riggs, McLennan County TAC; Karen Hood, Midland County TAC; Tammy McRae, Montgomery County TAC; Nikki McDonald, Moore County TAC; Gail Smith, Navarro County TAC; Linda Brown, Oldham County TAC; Sherri Aylor, Potter County TAC; Tonya Martin, Red River County TAC; Ida M. Turner, Refugio County TAC; Dalia Sanchez, San Patricio County TAC; Patrick L. Kubala, Wharton County TAC; Deborah M. Hunt, Williamson County TAC; Monte S. Shaw, Wise County TAC; and Thelma "Midget" Sherman, President, Tax Assessor-Collectors Association of Texas (TACA).

The TACs for Bee, Brazoria, Grayson, Hemphill, Hansford, Madison, Red River, San Patricio, Wharton, and Williamson Counties, and TACA commented that the amendment was too onerous, too burdensome a process for the public, and would create a hardship for individuals wishing to conduct an "even trade."

RESPONSE

While the proposed amendment related to even trade transactions may create a more onerous or burdensome process for the

public, the department does not agree that this is a compelling reason not to adopt the amendment. Even trade transactions are more susceptible to fraud since no sales taxes are paid. The proposed rules had the potential to more effectively deter fraudulent actors from committing a crime.

COMMENT

The TACs for Bee, Bell, Brazoria, Denton, Potter, San Patricio, Wharton, and Wise Counties and TACA commented that the amendment did not provide any guidance for motor vehicle dealers.

RESPONSE

The department disagrees that guidance is necessary for motor vehicle dealers. Dealers are expressly authorized to deduct the trade-in value of a vehicle from the purchase price for the purposes of calculating sales tax owed. If a dealer accepts a vehicle as a trade-in for a new or used motor vehicle, a sale has still occurred, and consideration has passed from the buyer to the dealer for that vehicle. An "even trade," as defined by proposed amended §217.2, is a "transaction involving the even exchange of two automobiles with comparable standard presumptive value."

COMMENT

The TACs for Bee, Bell, Brazoria, Carson, Cass, Gray, Jones, Madison, Moore, Oldham, Potter, Red River, Refugio, San Patricio and Wharton Counties, and TACA commented that the proposed amendment could be a violation of the Health Insurance Portability and Accountability Act (HIPAA).

RESPONSE

HIPAA protects individuals' identifiable health information held by covered entities and their business associates (called "protected health information" or "PHI"). Covered entities under HIPAA are health care clearinghouses, health plans, and most health care providers. Business associates generally are persons or entities that perform functions or activities on behalf of, or provide certain services to, a covered entity that involve access to PHI. See generally <http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>. As such, the department disagrees that a TAC is a covered entity or a business associate under HIPAA and disagrees that a TAC is covered by the HIPAA privacy rule.

COMMENT

The Jones County TAC also commented that the amendment would be a violation of privacy.

RESPONSE

The department would point out that the proposed amendment does not require detailed medical information, but rather documentation from the applicant's physician attesting that the applicant is unable to be physically present.

COMMENT

The TACs from Bee, Bell, Brazoria, Cass, Comal, Denton, Hansford, Lavaca, Madison, Montgomery, Refugio, San Patricio, Wharton and Williamson County suggested that instead of adopting the amendments for an even trade transaction, the process should be similar to the "gift affidavit" process.

RESPONSE

The department notes that the "gift affidavit" statement is specifically authorized by Tax Code, §152.062(b-2) and is applicable only to the transfer of ownership of a motor vehicle as the result of a gift. As such, the "gift affidavit" may not be used for an even trade.

COMMENT

The TACs from Bee, Bell, Brazoria, Carson, Cass, Denton, Gray, Hansford, Hemphill, Lavaca, Lubbock, McLennan, Midland, Montgomery, Moore, Navarro, Potter, Red River, Wharton, Williamson, and Wise Counties and TACA commented that the proposed amendment is a sales tax issue, and that the Comptroller of the State of Texas should be consulted.

RESPONSE

The department responds that while the issue does relate to the proper payment of sales tax, it involves the transfer of ownership of motor vehicles, and, as such, is within the department's statutory authority to "adopt rules to administer the Certificate of Title Act, Chapter 501 of the Texas Transportation Code." See Transportation Code, §501.0041.

Despite the above responses to comments, the department has determined that the proposed definition for "even trade" and the requirements applicable to an even trade transaction will not be added to Chapter 217, Subtitle A, at this time. The department intends to either propose a similar rule in the future, or pursue other avenues for addressing the risks associated with even trade transactions. As such, proposed amendments to §217.2 and §217.4 related to even trade transactions will not be adopted.

COMMENT

Insurance Auto Auctions (IAA) commented on §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle, recommending that the section be further amended to comply with Transportation Code, §501.095 by eliminating the limitations on sales by insurance companies, including a reference to electronic titling, and including out-of-state documents.

RESPONSE

Having reviewed the comment and Transportation Code, §501.095, the department agrees that the rule and statute are not consistent, and amended the rule to align with the language of the Transportation Code.

Lastly, proposed amendments 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, added 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. House Bill 910, 84th Legislature, Regular Session, 2015, amended Government Code, Chapter 411, Subchapter H, to change the term "concealed handgun license" to "license to carry a handgun" in most sections. To maintain consistency with statute, the department is adding "license to carry a handgun" to the proposed rule text, in addition to "concealed handgun license." This change is nonsubstantive and made only to align with the Government Code.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.2 - 217.5, 217.7

STATUTORY AUTHORITY

The amendments are adopted 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 adopted 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. 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.

(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.

§217.4. *Initial Application for Title.*

(a) Time for application. 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;

(2) 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; or

(3) as otherwise provided by Transportation Code, Chapter 501.

(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 Non-repairable 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 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).

§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;

(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 or license to carry a handgun 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;

(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 or license to carry a handgun 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 adoption and found it to be a valid exercise of the agency's legal authority.

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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 adopted 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 adopted 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;
- (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 or license to carry a handgun 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.

§217.55. *Exempt and Alias Vehicle Registration.*

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles 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 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) 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) 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 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:

(i) the vehicle 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 must include a statement signed by a person having the authority to act for a 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 adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.88

STATUTORY AUTHORITY

The amendments are adopted 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 adopted 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 vehicle title, non-repairable record of title, salvage vehicle title, salvage record of title, or a comparable out-of-state ownership document has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone.

(b) Without a non-repairable or salvage motor vehicle title. If a non-repairable vehicle title, non-repairable record of title, salvage

vehicle title, salvage record of title, or a comparable out-of-state ownership document has not been issued for a non-repairable or salvage motor vehicle, only a salvage vehicle dealer, used automotive parts recycler, metal recycler, insurance company, or governmental entity may sell, transfer, or otherwise release ownership of the motor vehicle. Such person may only sell, transfer, or otherwise release ownership of a motor vehicle to which this subsection applies to:

- (1) a salvage vehicle dealer;
- (2) a used automotive parts recycler;
- (3) a metal recycler;
- (4) a governmental entity; or
- (5) an insurance company.

(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, 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 entity'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 adoption and found it to be a valid exercise of the agency's legal authority.

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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



SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §217.123

STATUTORY AUTHORITY

The amendments are adopted 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 adopted 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;
- (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 or license to carry a handgun 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. and Transportation Code, Chapter 730; and
 - (ii) only for the purposes defined in the agreement;
- (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. 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Motor Vehicles

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts 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 adopts 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 adopts the repeal of §217.31, License Plate Reissuance Program. The amendments to §217.29 and §217.52, and new §§217.183 - 217.185 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2920). The amendments

to §§217.23, 217.24, 217.32, 217.53, and 217.72; new §217.181 and §217.182; and the repeal of §217.31 are adopted without changes to the proposed text, and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS, NEW SUB-CHAPTER 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 processing and handling at \$5 and allocated the fee to the department, county tax assessor-collectors, and deputies. The rules also define the scope of a registration transaction and those transactions that are exempt from the processing and handling fee.

The rules also shift responsibilities related to renewal registrations from the county tax assessor-collectors and transfers these obligations to the department. The rules provide for replacement of a license plate if the license plate needs to be replaced for cosmetic or readability reasons, and eliminate no-charge replacement of specialty plates if the plate is at least seven years old. The rules reduce the automated registration and titling system fee required by Transportation Code, §502.356 from \$1 to \$.50.

COMMENTS

The department received comments from Sen. Robert Nichols and Sen. Charles Perry requesting that the department carefully consider the effect of the rules on counties. Sen. Don Huffines commented that the department should reexamine the processing and handling fee. Rep. Joe Pickett asked the department to look carefully at the percentage splits. Rep. Ken King commented that the rules will have adverse consequences for rural counties and expressed concern that the county would face reduced revenues and increased customer volumes. Rep. James White expressed support for the cost-saving efficiencies contained in the proposed rule, and asked the department to consider the impact of the fee changes on working class families. Rep. Dawnna Dukes expressed opposition to the proposed rules and asked the department to withdraw the proposed changes. Rep. Dukes commented that the rules shift duties to the counties without providing resources. The Travis County Legislative delegation commented that the rules as proposed increase costs for vehicle owners while providing less funding to perform titling and registration transactions.

The department received a letter from the Office of the Governor, Greg Abbott, urging the board to reduce the processing handling fee if possible.

The Travis County Commissioners Court opposes rule changes that will add to county administrative duties without providing necessary resources, and asks that the proposal be shelved. The Dallas County Commissioners Court and the Dallas County Tax Assessor-Collector (TAC), and the Ochiltree County Commissioners Court and the Ochiltree County TAC commented that they are opposed to the fee schedule, as it unfairly burdens walk-in customers with an increased fee burden, and reduces revenues to the counties. In addition, they oppose the shift in responsibilities for online registration renewals from the counties to the department, and oppose the removal of the requirement to replace license plates every seven years, raising concerns about

reflectivity and readability. Brazoria County Judge L.M. "Matt" Sebesta, Jr. opposed the rule changes as they would adversely affect the county's revenue stream, increase county costs and reduce local control. Samuel Neal Jr., Nueces County Judge opposed the rule in the current (proposed) form because of reduced revenues to the county. Keith Mitchell, Lamar County Commissioner expressed concern that the rules reduce the amount of local retained revenue.

The Texas Conference of Urban Counties (TCUC) expressed concern that the rules result in decreased county revenues. TCUC also opposed the fee schedule because it deprives counties of revenue from online transactions and requires counties to perform high-cost in person transactions for a fee that is below the actual average cost to counties as determined by the Texas Transportation Institute (TTI) study. TCUC contends that the rules violate Transportation Code, §502.1911(b)(2) because the fee is insufficient to cover the cost of providing vehicle registration services. The Texas Association of Counties (TAC) expressed concerns that the rules, as proposed, will cost counties significant revenue. The Tax Assessor-Collectors Association of Texas (TACA) opposed the proposed changes to §217.29 as lacking statutory authority to remove any part of the online renewal process from the office of the TAC. TACA also commented that there should be no reduction in the current fees received for processing any vehicle registration or renewal. David Brooks, on behalf of TACA, contends that the changes to §217.29 are not authorized by Transportation Code, §520.005(d), which states that "[e]ach county assessor-collector shall process a registration renewal through an online system designated by the department."

The Harris County Toll Authority supported the rule changes that require plate replacement when there is reduced plate readability or reflectivity. The 3M Company (3M) commented on the rules affecting license plate replacement, expressing concerns about declines in license plate reflectivity, readability and toll revenue. 3M also expressed concerns about the effect of the rule changes on red light cameras and registration revenue.

The department also received comments from the following group of full service deputies (the "Deputies") from Bexar and Travis Counties, represented by attorney Bill Aleshire: Auto Title Express; GM&N Auto Title Service; San Antonio Auto Title, Inc.; Tisdale LLC; Texas Auto Title; Texas Tag and Title; River City Auto Title; Auto Title Service; Auto Title Service of Oakhill; Fry Auto Title Service; and Universal Auto Title Service. The comments noted that the proposed fees were not sufficient for the Deputies to cover the expenses associated with titling and registration, and therefore violate Transportation Code, §502.1911(b)(2). The Deputies also oppose the prohibition on charges for certain transactions in proposed §217.184, such as temporary permits, which the FSDs have been charging for years. The Deputies also expressed concern that the TTI study was not independently conducted and contains understated, false and incomplete data regarding deputy costs. The Deputies also contend that §217.29 conflicts with Transportation Code, §520.005.

The department received comments opposed to the proposed rule from the following Tax Assessor-Collectors (TAC): Jeri D. Cox, Aransas County; Gwenda Tschirhart, Bandera County; Linda G. Bridge, Bee County; Sharon Long, Bell County; Albert Uresti, Bexar County; Ro'Vin Garrett, Brazoria County; Kristeen Roe, Brazos County; Christine Pentecost, Brown County; Jackie Moore, Carson County; Becky Watson Fant,

Cass County; Cathy C. Talcott, Comal County; John R. Ames, Dallas County; Michelle French, Denton County; Sandra Cagle, Eastland County; Ruben P. Gonzalez, El Paso County; Jennifer Schlicke-Carey, Erath County; Gail Young, Fannin County; Gaye Whitehead, Gray County; Bruce Stidham, Grayson County; Linda Cummings, Hansford County; Mike Sullivan, Harris County; Debra L. Ford, Hemphill County; Pablo (Paul) Villarreal Jr., Hidalgo County; Scott Porter, Johnson County; Mary Ann Lovelady, Jones County; Tonya Ratcliff, Kaufman County; Deborah A. Sevcik, Lavaca County; Ronnie Keister, Lubbock County; Karen M. Lane, Madison County; Randy H. Riggs, McLennan County; Karen Hood, Midland County; Tammy McRae, Montgomery County; Nikki McDonald, Moore County; Kim Morton, Nacogdoches County; Gail Smith, Navarro County; Kevin Kieschnick, Nueces County; Linda Womble, Ochiltree County; Linda Brown, Oldham County; Sherri Aylor, Potter County; Tonya Martin, Red River County; Ida Turner, Refugio County; Dalia Sanchez, San Patricio County; Gary B. Barber, Smith County; Darlene Chambers, Somervell County; Ron Wright, Tarrant County; Becky Robles, Tom Green County; Bruce Elfant, Travis County; Patrick L. Kubala, Wharton County; Deborah M. Hunt, Williamson County; and Monte S. Shaw, Wise County. The comments from the TACs contend that the proposed changes to §217.29 are not authorized or allowed by Transportation Code, §520.005, and that the rules reduce the amount of revenue counties receive from registration transactions by encouraging online renewals. The comments from the TACs also expressed concern about driver safety as a result of ending mandatory plate replacement at seven years, and that TACs were personally liable for dollars that are required to flow through their offices. Some TACs expressed a concern that walk-in customers are subject to a higher fee for vehicle registration.

The department also received comments from 46 individuals who submitted letters or e-mails. Most, but not all, of the individual commenters were opposed to the rule as proposed.

The department received resolutions in opposition adopted by the Commissioners Courts of Bee, Bexar, Brown, Castro, Collin, Denton, DeWitt, El Paso, Grayson, Jackson, Kaufman, Lamar, Lynn, Lubbock, Midland, Panola, San Patricio, and Sutton Counties. The resolutions opposed the rules because of a revenue loss to the counties, an increase in county costs and a loss of local control.

The department did not receive a request for a public hearing pursuant to Government Code, §2001.029(b).

GENERAL COMMENTS

Several of the individual commenters expressed opposition to the proposed rules in general, with some opposing the plan for its emphasis on increasing online registration renewal. Others opposed the "outsourcing" of vehicle registration with a private vendor, and moving registration processing from local county offices to Austin. Other comments opposed dedicating more funds to roads and bridges.

RESPONSE

The board is statutorily required by the Transportation Code, §502.1911 and §520.004 to adopt a processing and handling fee by rule, and to provide services that are reasonable, adequate and efficient. The department has determined that the process for renewing registrations online can be made more efficient by contracting with a private vendor for the fulfillment part of the

registration renewal process. Only part of the vehicle registration renewal process will be moved to Austin. Texas citizens will continue to visit in person or mail in their registrations to their local TACs, and TACs will retain authority to review and reject online transactions. The decision to dedicate additional funds to roads and bridges is not made by the department or board, but by the Texas Legislature.

COMMENTS TO SPECIFIC RULE SECTIONS

§217.29, Vehicle Registration Renewal via Internet

COMMENT

The Texas Association of Counties comments that the regulation is invalid because it conflicts with the Transportation Code. Many of the comments from individual TACs articulate an argument similar to the TACA comment, and the response covers those comments. More specifically, TACA argues that the changes to §217.29, which eliminate some of the duties of the TAC and transfer those duties to the department, conflict with Transportation Code, §520.005, which states that: "Each county assessor-collector shall process a registration renewal through an on-line system designated by the department." TACA also argues that the proposed rule is in conflict with Transportation Code, §502.040(b)(1), which states that an application for vehicle registration is made "through the county assessor-collector of the county in which the owner resides[.]"

RESPONSE

The department disagrees with the TACA comment. Transportation Code, §520.004 gives the department jurisdiction over vehicle registrations, and requires the department to provide by rule services that are "reasonable, adequate, and efficient." The proposed changes to §217.29 reflect the department's efforts to fulfill its statutory duty to provide reasonable, adequate and efficient registration renewal services. Both §520.005(d) and §502.040 use almost identical language when referring to the county's role in the registration of vehicles: - "process . . . through an on-line system" and "application must be . . . made in a manner prescribed by the department . . . through the county assessor-collector." There is no definition of the term "through" in either statutory section. The department, in light of its role in the efficient and orderly processing of registrations, and consistent with the Legislature's directives in HB 2202 (83rd RS, 2013), is creating a more efficient method of fulfilling the online transactions, which is only one aspect of the process of registration renewal, and includes printing, assembling and mailing renewal stickers. The department's interpretation of §520.005 and §502.040 is entitled to "serious consideration" by the courts of the state. *Railroad Comm'n v. Texas Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 624 (Tex. 2011). If "there is an ambiguity in the governing framework, [a court] will generally uphold an agency's interpretation of an ambiguous statute that it is charged with enforcing provided that the construction is reasonable and 'in accord with the plain language of the statute.'" *Id.* at 625. The department has consistently maintained that the county tax assessor-collectors will have some part in "processing" the on-line transactions, whereas much of the work of fulfillment will be satisfied by the department. This is consistent with current applications for registration in International Registration Plan (IRP) registrations, token trailers, and forestry vehicles where the department has long performed the registration work and routed compensation for the entire registration plus the county portion to the county of registration in spite of the TAC performing no work on these registrations.

TACA also misreads the meaning and effect of Transportation Code, §520.005(d). That section requires a TAC to process a registration renewal through an online system designated by the department. Section 520.005(d) does not say "all registration renewals," but instead speaks of "a registration renewal" meaning a registration renewal received by the TAC. Section 520.005(d) does not require all aspects of registration renewals be processed by a TAC; it merely requires a TAC process those that it receives. Moreover, even if one interprets §520.005(d) as requiring TACs to process all registration renewals, payments for online registration renewals will be processed through each county TAC as they currently are processed. The proposed rule merely takes part of the registration renewal process and moves it from the TAC to the department, meeting the requirement of Transportation Code, §520.004 that the department provide efficient registration services.

The effect of TACA's argument is to interpret §520.005 as prohibiting the department from processing or approving vehicle registration renewals. Such an interpretation conflicts with several Transportation Code sections that clearly establish the department's lead role in processing and approving vehicle registration and registration renewal applications. For example, Transportation Code, §502.042 identifies the department, not a county tax assessor-collector, as the entity that "may not register or renew the registration of a motor vehicle" unless certain requirements are met. In addition, Transportation Code, §502.191 identifies the department and its employees, along with TACs, as being authorized to collect registration fees. TACA's statutory interpretation ignores other Transportation Code sections that give the department primary jurisdiction over vehicle registrations.

TACA also argues that the proposed changes to §217.29 conflict with Transportation Code, §502.040(b), which it argues requires a registration application be made "through" the county tax assessor-collector. This section of the Transportation Code applies to an initial registration application, and not to vehicle registration renewals, and therefore does not conflict with the proposed changes to §217.29, which only applies to vehicle registration renewals.

The department has made changes to the rule as proposed to clarify the timing and applicability of the shift in responsibilities as it relates to vehicle registration renewals.

Additional comments from several of the TACs emphasize that the county TAC is personally liable for every dollar that is required to flow through their office. The Hidalgo County TAC, Pablo (Paul) Villarreal, Jr., commented that county deputies must check an internal scofflaw database of individuals that have citations due to local municipalities, justice of the peace courts, and county and district courts.

In response to the comments relating to personal liability and scofflaw checks, the department has added language back to the county responsibilities section in §217.29 giving the counties the ability to reject applications that do not meet the requirements of Chapter 217 or Transportation Code, Chapter 502. The online registration renewal process will be designed to automatically put a system hold on an application to give TACs the opportunity to decline or reject a registration renewal transaction. Circumstances that may result in a TAC rejecting an application for renewal include the discovery of fees or other amounts owed to the county by the applicant (scofflaw). After the hold is released, the application will be automatically approved, and the remaining work of fulfilling the registration (printing the sticker, stuffing

the envelope and mailing) will be performed by the department at its expense.

§217.31, License Plate Reissuance Program

COMMENT

The 3M Company (3M) commented on the rules affecting license plate replacement, expressing concerns about declines in license plate reflectivity and readability, and the effect on law enforcement. 3M also expressed concerns about the effect of the rule changes on toll revenue, red light camera programs, and registration revenue. A commenter opposed extending license plate renewal beyond seven years. The Harris County Toll Road Authority expresses support for the proposed rules affecting license plate replacement, and asked that improvement be sought in license plate fonts.

RESPONSE

The elimination of mandatory plate replacement at seven years affects only a small percentage of Texas motorists, and the requirement that license plates be legible with proper reflectivity remains in effect. The department received no comments from law enforcement entities expressing concern with the rule as proposed. The changes to the plate replacement do not relieve a motorist of the requirement to comply with Transportation Code, §502.475.

§217.183, Fee Amount

COMMENT

State Sen. Don Huffines commented that the fee structure that encourages online registration was misguided and unwarranted. Sen. Huffines also expressed his concern that the department was burdening Texas drivers with increased fees, and should work within its existing budgeting capabilities.

RESPONSE

The board is required by Transportation Code, §502.1911 to set the processing and handling fee at a level sufficient to cover the costs associated with collecting registration fees. The department interprets the passage of HB 2202 by the 83rd Texas Legislature as a mandate to establish a processing and handling fee. The department will continue to eliminate redundancies, inefficiencies and misallocations consistent with Transportation Code, §520.004, which requires the department to provide efficient registration services.

COMMENT

State Rep. Ken King expressed concern that the additional fee would burden farmers and oil and gas companies.

RESPONSE

While the department acknowledges that the cost to renew registrations by mail and in-person will increase, the overall increase was mandated by HB 2202. The fee structure seeks to encourage all Texans to renew registrations online and pay less than they currently pay.

COMMENT

TCUC and other commenters contend that the proposed rules violate Transportation Code, §502.1911(b)(2), which directs the board to set the processing and handling fee in an amount that is sufficient to cover the expenses associated with collecting registration fees by the department, TACs, and deputies. TCUC argues that the department will be depriving counties of revenue

from online registrations, leaving counties with high-cost in-person transactions without the benefit of revenue from online registrations. TCUC contends that its member counties will all see annual revenue losses, and that the efficiencies the department offsets the revenue losses with are overstated.

RESPONSE

The department disagrees with the TCUC comment. The processing and handling fee, and the allocation to the TACs of a portion of that fee, are set at amounts that compensate the TACs for their expenses in collecting registration fees. Costs for collecting registration fees vary depending on the type of transaction and from county to county. In some cases, the fee allocation to a TAC may not entirely compensate the TAC for a specific transaction. However, when considering the variety of registration transactions covered by this rule, the department contends that the allocations fairly compensate the TACs for their work, comply with the requirement of Transportation Code, §502.1911(b)(2), and encourage the efficient processing of registration transactions at the county level, consistent with the department's statutory duty to provide for reasonable, adequate, and efficient registration and titling services, along with county standards for uniformity and service quality, in compliance with Transportation Code, §520.004(1) and (2). The TACs also receive revenue from transactions where they are not involved in processing an application or collecting a registration fee. Those transactions include International Registration Plan registrations under Transportation Code, §502.091, token trailer registrations under Transportation Code, §502.255, and commercial fleet registrations under Transportation Code, §502.0023. TACs will receive \$2.30 for those transactions even though the transaction is processed by the department. TACs also receive compensation for certain transactions that require a minimal amount of staff time, such as duplicate receipts, inquiry receipts, and replacement registration stickers. The TACs will also benefit from lower costs, including postage, from the elimination of mandatory plate replacement at seven years.

The TAC comments which contained arguments regarding reductions due to the rules did so in light of revenues, not based on the expenses associated with collecting registration fees by the county TACs. The department cannot extrapolate the county cost of performing registration services solely from a comparison of county revenue per transaction before and after the rule change. TACs will see a significant reduction in the amount of work performed for online transactions, and consequently, county costs will decrease. TACs will no longer be printing, assembling and mailing online renewal registrations, as that function will be completed by the department. The department calculated the reduced costs for TACs based on worker time in processing online renewals, combined with postage and envelope costs. The estimates for reduced costs are not understated, and represent real costs that will no longer be incurred by TACs.

COMMENT

The Office of Texas Governor Greg Abbott submitted a comment that urges the department to allocate any additional funding identified since the proposal to reduce the processing and handling fee paid by consumers.

RESPONSE

The department agrees with the comment from the Governor's Office. Setting the processing and handling fee at \$4.75 will minimize the financial impact of the fee on Texas drivers to the greatest extent possible, drive greater efficiency in the state's regis-

tration system, and provide sufficient funding for the department and TACs to cover the expenses associated with collecting the registration fees.

§217.185, Allocation of the Processing and Handling Fee

COMMENT

State Sen. Robert Nichols requested that the board carefully consider the full effect of the proposed rules on all Texas counties. State Sen. Charles Perry expressed concern about the impact of the proposed rule on local tax assessor-collectors and taxpayers. State Rep. Joseph Pickett asked that the board look carefully at the decrease in revenue to the counties and the allocation of the processing and handling fee. State Rep. Ken King expressed concern that the proposed rules will have an adverse effect on rural areas. State Rep. Dawnna Dukes expressed concern that the proposed rules shift administrative duties to the counties without providing necessary resources to fulfill county obligations.

The department received resolutions from several Texas counties, and comments from Texas county judges. The resolutions from the commissioner's courts of Bee, Brown, Castro, DeWitt, Donley, Jackson, Kaufman, Lamar, Lynn, Midland, Panola, San Patricio and Sutton counties state that the rules as proposed will decrease county revenues, increase county costs and reduce local control. Brazoria County Judge L.M. "Matt" Sebesta, Jr. submitted a comment similar to those counties listed above. The resolutions from the commissioner's courts of Collin, Denton, El Paso, Grayson and Lubbock counties state that the proposed rules will result in a revenue loss to counties. Nueces County Judge Samuel L. Neal, Jr. suggested that counties be allowed to voluntarily "opt-out" of turning over online registrations to the state. The Travis County Commissioners Court commented that the proposal will reduce county fee revenue and increase costs to county vehicle owners. The department also received comments from many TACs concerned about the loss of revenue to the counties from registration transactions. The Harris County TAC, Mike Sullivan, commented that the rules as proposed fail to sufficiently cover the expenses associated with collecting registration fees, as required by Transportation Code, §502.1911. The Harris County comments also contend that the amount of "cost savings" in the proposed rule is overestimated and leave the county with a revenue shortfall. The comments also question the results of the TTI study and contend that the study neglected to consider certain cost factors, such as an increase in average transaction time due to the implementation of "single-sticker," increased transaction time due to the October 2015 Registration and Title System (RTS) refactoring, overtime costs, and other factors. In addition, the comments question some of the assumptions that the department used in the fiscal note for the proposed rules, such as the yearly increase in registration transactions and the yearly increase in online registration renewals. The comments also contend that the allocation of \$.25 to the TACs for online registration renewals is not equitable or reflective of actual costs. Travis County TAC Bruce Elfant commented that the TTI study does not take into account the consequences of Two Steps One Sticker and National Motor Vehicle Title Information System (NMVTIS) compliance and that the department is not authorized to shift the responsibility for online registration renewals from the counties.

RESPONSE

The department agrees that the proposed rules will result in a loss of revenue to counties. The department disagrees that the

proposed rules will result in increased county costs. The proposed rules shift the responsibility for fulfilling internet vehicle registration renewals from counties to the department, resulting in decreased expenses for the counties, not increased costs. The department has also made changes to the rule as proposed to clarify the timing and applicability of the changes to fee allocation.

There is a limited effect on local control for internet registration renewals, and that is necessary to achieve efficiency in the processing of vehicle registrations, as required by Transportation Code, §520.004(2), which requires the department to provide reasonable, adequate and efficient registration and titling services. TACs will continue to administer in person and mail-in registration transactions, and will continue to have the authority to reject online registration renewals. In addition, revenue from online registration renewals will continue to flow through local TACs, not a private vendor. In response to Nueces County Judge Neal, the department disagrees with the comment, as allowing counties to "opt-out" of the proposed online renewal registration would reduce the projected efficiencies. In response to the Travis County Commissioners Court, the department notes that Travis County vehicle owners who renew their registrations online will pay less to renew their registrations.

The department disagrees with the comments from the Harris County TAC. The TTI study represents the most comprehensive compilation of costs incurred in processing registration transactions, and is an estimate. The department's assumption relating to yearly registration transaction volume and online transaction increases are based on statewide data, and it is entirely plausible that Harris County data will vary from the department's data. Regarding the allocation of \$.25 for online transactions, the department disagrees with the comment, as most of the TAC's responsibilities for these transactions are shifted to the department.

The department disagrees with the comments from the Travis County TAC. The department contends that TAC assistance with Two Steps One Sticker and NMVTIS compliance provides a great benefit to Texans in safety, efficiency and fraud prevention, and that the impact on TACs is overstated. The Two Steps One Sticker and NMVTIS programs are also mandated by law and cannot be affected by this rulemaking.

COMMENT

One commenter noted that the proposed rules are not clear as to whether they apply to vehicle registrations for commercial vehicles or vehicles registered under the International Registration Plan (IRP).

RESPONSE

The department agrees with the comment, and has made changes to §217.183 and §217.185 to clarify the applicability of the rules to commercial vehicles and those registered under the IRP.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.24, 217.29, 217.32, 217.52, 217.53

STATUTORY AUTHORITY

The amendments are adopted 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, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091 - 502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

§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. This subsection applies to vehicle registrations expiring prior to January 1, 2017 that are submitted for renewal prior to July 1, 2017. 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.

(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.

(f) Duties of the county. For vehicle registrations that expire prior to January 1, 2017 that are submitted for renewal prior to July 1, 2017, 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;

(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

(8) register each vehicle for a 12-month period.

(g) Duties of the county. For vehicle registrations that expire on or after January 1, 2017, and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, 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;

(5) reject applications that do not meet all requirements set forth in this chapter, and in Transportation Code, Chapter 502; and

(6) register each vehicle for a 12-month period.

(h) Duties of the department. For vehicle registrations that expire on or after January 1, 2017, and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, the department shall promptly mail renewal registration validation stickers and license plates to applicants.

§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) li-

cence 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) or (3) 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) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a \$6 fee.

(4) 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) 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.

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

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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



43 TAC §217.31

STATUTORY AUTHORITY

The repeal is adopted 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, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091-502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

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

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David D. Duncan

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §217.72

STATUTORY AUTHORITY

The amendments are adopted 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, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091-502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

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

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SUBCHAPTER I. FEES

43 TAC §§217.181 - 217.185

STATUTORY AUTHORITY

The new subchapter is adopted 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, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091 - 502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

§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 \$4.75 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. For registrations processed through the TxIRP system, the applicant shall pay any applicable service charge. 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), but are subject to any applicable service charge set pursuant to Government Code, §2054.2591, Fees. 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 and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, except as provided in subsection (b) of this section, 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 or the TxIRP system or is a registration processed under Transportation Code, §§502.0023, 502.091, or 502.255; or §217.46(b)(5) or (d)(1)(B)(i) of this title (relating to Commercial Vehicle Registration):

(A) \$2.30 will be remitted to the county tax assessor-collector; and

(B) the remaining amount shall be retained by the department.

(4) If the registration transaction was processed through the department's online registration portal, the fee established in §217.183 is discounted by \$1:

(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.

(5) 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 transactions under Transportation Code, §§502.092-502.095, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Department of Motor Vehicles

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SUBCHAPTER H. DEPUTIES

43 TAC §§217.161 - 217.164, 217.166 - 217.168

The Texas Department of Motor Vehicles (department) adopts amendments to §217.161, Deputies. The department also adopts new sections §217.162, Definitions; §217.163, Full Service Deputies; §217.164, Limited Service Deputies; §217.166, Dealer Deputies; §217.167, Bonding Requirements; and §217.168, Deputy Fee Amounts. The amendments to §217.161 and §217.164 are adopted without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2930) and will not be republished. New §§217.162, 217.163, and 217.166 - 217.168 are adopted with changes to the proposed text and will be republished. The proposal included new §217.165, Inspection Deputies. However, as further detailed below, the department withdraws this section.

Changes in the new sections respond to public comments and/or reflect nonsubstantive variations from the proposed new sections.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

House Bill 2202 and House Bill 2741, 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 amendments and new sections implement the legislative directive of House Bills 2202 and 2741.

As required by Transportation Code, §520.0071, the amendments and new sections 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 rules proposed for adoption follow at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the Texas A&M Transportation Institute (TTI), additional data gathered by department staff, and information from multiple conversations and 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 rules proposed for adoption reflect the department's effort to establish the appropriate classification types of deputies, to prescribe the duties and obligations of deputies in a useful and meaningful way, to set bonds in an amount that adequately protect the level of state property inventory that may be at risk, and to set the fees that may be charged or retained by deputies in amounts that comply with the statute. Full service deputies are unique in that their business model includes the provision of government services under contract, and they are operating in a changing business environment. As such, the adopted rules reflect a balance between what is an appropriate amount for private citizens to pay for government services with what is an appropriate amount for these private businesses to charge for the provision of government services.

COMMENTS

The department received comments from Rep. Joe Pickett; Rep. Dawnna Dukes; the Travis County Legislative delegation (consisting of Sen. Donna Campbell, Sen. Kirk Watson, Sen. Judith Zaffirini, Rep. Donna Howard, Rep. Celia Israel, Rep. Elliott Naishtat, Rep. Eddie Rodriguez, and Rep. Paul Workman); the Travis County Commissioners Court; L.M. "Matt" Sebesta, Jr., Brazoria County Judge; Samuel L. Neal, Jr., Nueces County Judge; the Tax Assessor-Collectors Association of Texas (TACA); the Texas Association of Counties; the Texas Conference of Urban Counties; the North Central Texas Council of Governments (NCTCOG) and the Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth area; EAN Holdings, LLC (dba Enterprise, Alamo, and National rental car brands); Kroger; Food Town; and Clearwater Transportation (dba Dollar, Thrifty, and Hertz Car Rental).

The department also received comments from the following group of full service deputies (the "Deputies") from Bexar and Travis Counties, represented by attorney Bill Aleshire: Auto Title Express; GM&N Auto Title Service; San Antonio Auto Title, Inc.; Tisdale LLC; Texas Auto Title; Texas Tag and Title; River City Auto Title; Auto Title Service; Auto Title Service of Oakhill; Fry Auto Title Service; and Universal Auto Title Service.

The department received comments from the following Tax Assessor Collectors (TAC): Jeri D. Cox, Aransas County; Linda G. Bridge, Bee County; Albert Uresti, Bexar County; Ro'Vin Garrett, Brazoria County; Kristeen Roe, Brazos County; Becky Watson Fant, Cass County; Ruben P. Gonzalez, El Paso County; Jennifer Schlicke-Carey, Erath County; Bruce Stidham, Grayson County; Pablo (Paul) Villarreal Jr., Hidalgo County; Mary Ann Lovelady, Jones County; Tonya Ratcliff, Kaufman County; Deborah A. Sevcik, Lavaca County; Ronnie Keister,

Lubbock County; Randy H. Riggs, McLennan County; Tammy McRae, Montgomery County; Kim Morton, Nacogdoches County; Gail Smith, Navarro County; Kevin Kieschnick, Nueces County; Dalia Sanchez, San Patricio County; Bruce Elfant, Travis County; Patrick L. Kubala, Wharton County; and Deborah M. Hunt, Williamson County.

The department also received comments from 1,184 individuals, as follows: 32 individuals submitted letters or e-mails; 552 individuals signed pre-printed forms, some with additional hand-written notes; 256 individuals submitted pre-printed postcards; and the department received a petition with 341 signatures in response to the proposed rules.

The department received resolutions adopted by the Commissioners Courts of Bee, Bexar, Brown, Castro, Collin, Denton, DeWitt, Donley, El Paso, Grayson, Jackson, Lamar, Lynn, Lubbock, Midland, Moore, Panola, San Patricio, and Sutton Counties opposing the rules to the extent they decrease county revenues, increase county costs, and reduce local control.

The department received four comments from individuals related to annual safety inspections of motor vehicles. One individual expressed support for eliminating mandatory safety inspections; three individuals expressed opposition to eliminating mandatory safety inspections. The adopted rules do not relate to mandatory safety inspections, which are required under Transportation Code, Chapter 548. The Texas Department of Public Safety administers and enforces requirements related to motor vehicle safety inspections. As such, comments for or against mandatory safety inspections do not relate to the proposed rules regarding 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 department also received multiple pages of signatures of individuals acknowledging support for private title service companies. These signature pages were forwarded to the department by Bill Aleshire, who explains they are "from customers of full-service deputies (FSD) in Bexar County and Travis County . . . collected by the FSDs from their customers in response to TxDMV's rule proposal to limit the price FSDs can charge their customers to \$5 per registration and \$15 per title transactions." The department would note, however, that only 341 of these signatures are dated on or after the April 7, 2016 board meeting at which the board voted to publish the proposed rules. In fact, many of the signatures are from August of 2015, and several pages are photo-copied duplicates. Any signature that predates the April 7 board meeting cannot be considered a comment to the proposed amendments and new sections. Even so, the department acknowledges the support private title service companies have from their customer base and does not seek to diminish the value of title service companies to their customers.

The department did not receive a request for a public hearing.

GENERAL POSITION OF COMMENTERS

In general, most of the commenters oppose the proposed new sections. Most of the commenters expressed support for the private title service companies who operate as full service deputies, including the prices they charge. The individuals submitting comments generally expressed their support for private title service companies, many by name; commented that they do not mind the fees they pay to use these companies; and asked the department to not shut these companies down.

RESPONSE

The department in no way seeks to shut down private title service companies, and believes they can provide a valuable service to those counties that choose to use them. However, the department has a legislative mandate to prescribe rules that 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.

COMMENT

The Texas Association of Counties submitted a general comment encouraging the department to consider seriously each comment provided by county officials and other county official associations regarding the impact of the proposed rule changes. The Texas Association of Counties also offered to assist the department with outreach efforts to county officials.

The Travis County Legislative delegation, Aransas and El Paso Counties, and the Brazoria and Nueces County Judges submitted comments opposing rule changes that would cause private title service companies to close, that set limits on what private title services may charge, and that will add to the duties of the counties without providing the necessary resources to accomplish them or otherwise generally increasing the burden on the counties. Representative Dawnna Dukes and the Texas Conference of Urban Counties submitted similar comments, requesting that the department withdraw the proposed rules and develop a new proposal to include fees that are sufficient to cover the costs of providing the services.

The Travis County Commissioners Court similarly commented that it opposes any rule changes that will add to the administrative duties counties perform on behalf of the department without providing the necessary resources to accomplish them, and that the proposed rules should be shelved so that department staff can work with tax offices and other stakeholders to fashion a more reasonable proposal.

RESPONSE

The department disagrees that the proposed rules will add to the duties of the counties. Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

The Transportation Code, Chapters 501, 502, and 520, and current Texas Administrative Code, Title 43, Part 10, Chapter 217, require the department and the county to perform certain title and registration transactions. See, e.g., Transp. Code, §§501.023, Application for Title; 501.145, Filing by Purchaser; Application for Transfer of Title; 502.041, Initial Registration; 502.057, Registration Receipt; 520.005, Duty and Responsibilities of County Assessor-Collector; 43 TAC §217.23, Initial Application for Vehicle Registration, §217.28, Vehicle Registration Renewal.

On the other hand, no statute or rule requires a county to utilize a deputy authorized under Transportation Code, §520.0071. Thus, a county's duties have clearly been provided for by statute and administrative rule; a county's election to deputize private entities to perform services is entirely at a county's discretion.

Furthermore, in developing the proposed fee amounts, the department considered information gathered over the past two

years from multiple conversations and 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, in an effort to propose fee amounts that comply with the statute and legislative intent. With the increased fee amounts in the adopted rule, the department believes that all full service deputies should be able to maintain operations. This is based on a review of the current charges as reported by all of the deputy offices, noting that the adopted fee is at or above what at least half of the deputies currently charge for their services and within \$10 of those that currently charge more, as well as an analysis of impact performed against the confidential financial information submitted by the full service deputies, including those that charge more, represented by Mr. Aleshire.

COMMENTS TO SPECIFIC RULE SECTIONS.

SECTION 217.162 - DEFINITIONS

COMMENT

EAN Holdings provided comment explaining that EAN business units hold General Distinguishing Numbers with the department and are also classified as commercial fleet buyers pursuant to Transportation Code, §501.0234(b)(4). EAN Holdings explains that these relationships are mutually beneficial, in that they allow EAN business units to manage titling and registration while relieving tax offices of processing burdens associated with a large vehicle fleet. EAN Holdings recommends including commercial fleet buyers, as defined by Transportation Code, §501.0234(b)(4), in the definition of dealer deputy to accurately reflect the current classification provided by statute. This will allow commercial fleet buyers to qualify under the Dealer Deputy category in §217.166.

RESPONSE

The department agrees that a commercial fleet buyer should be eligible to serve as a dealer deputy. The department added a definition of commercial fleet buyer and amended the definition of dealer deputy to include a commercial fleet buyer.

SECTION 217.163(j) - FULL SERVICE DEPUTIES

COMMENT

The department received many comments opposing the three-party agreement proposed in subsection 217.163(j). TACA, and Bee, Brazoria, Brazos, Cass, Erath, Grayson, Hidalgo, Jones, Kaufman, Lubbock, McLennan, Montgomery, Nacogdoches, Navarro, San Patricio, and Wharton Counties each submitted individual comments generally opposing department involvement in the agreement between the TACs and full service deputies, including the ability for the department to approve or terminate the agreement. Many of these comments expressed a preference that the department notify the TAC should the department receive knowledge of a bad actor.

Travis County commented that the three-party agreement is unnecessary and would usurp county authority to be able to determine for themselves who they may contract with for services. Travis County also commented that the department's authority to terminate a full service deputy's access to the department's registration and titling system (RTS) should require the department to first work with TACs to attempt to address the issues, an administrative appeal process, or the filing of criminal charges.

The Deputies commented that the proposed rules give the department the authority to directly interfere in the relationship be-

tween the TACs and the full service deputies, asserting instead that the department's authority is limited to "merely setting and allocating fees and authorizing a lease of RTS terminals."

RESPONSE

Initially, the department disagrees that its authority is so limited as stated by the Deputies. In 2013, the legislature added §520.0071 to the Transportation Code (HB 2202 by Pickett/McClendon and HB 2741 by Phillips). Section 520.0071(a) requires the board to adopt rules that prescribe: (1) the classification types of deputies performing titling and registration duties; (2) the duties and obligations of deputies; (3) the type and amount of any bonds that may be required by a TAC for a deputy to perform titling and registration duties; and (4) the fees that may be charged or retained by deputies. That same statute, in subsection (b), permits a TAC, with approval of the county commissioners court, to deputize an individual or business entity to perform titling and registration services in accordance with rules adopted under subsection (a). Subsection (b) ties together all three entities - the department, who outlines the duties and obligations of deputies; the TAC, who chooses who to deputize with commissioners court approval; and the deputy, who agrees to adhere to the duties and obligations required under rules adopted by the board, in addition to any additional obligations a TAC may wish to impose.

In addition, Transportation Code, §520.004, Department Responsibilities, states that the department has jurisdiction over the registration and titling of, and the issuance of license plates to, motor vehicles in compliance with the applicable statutes. Further, Transportation Code, §1001.002 requires the department to administer and enforce Transportation Code, Title 7, Subtitle A (which includes Chapters 501, 502, 503, 504, and 520) in addition to other chapters of the Transportation Code and Occupations Code.

The department does not seek, by this rule, to select who a county chooses to deputize. However, the department is aware of instances where full service deputies have processed questionable vehicle titling transactions through the RTS system. This has resulted in the service of criminal search warrants in at least two cases. The department must maintain appropriate controls over the processing of transactions through its system, and must take measures to ensure that all transactions follow legal requirements in order to appropriately administer and enforce Transportation Code, Title 7, Subtitle A.

The department appreciates the concerns that have been raised by commenters regarding a three-party agreement and modified the rule to instead require an addendum that sets forth the limitations and responsibilities of having access to RTS. A full service deputy's access to RTS will be dependent on acknowledgment of the addendum and its inclusion into the full service deputy's contract or agreement with a county.

The addendum will be drafted by the department, must be signed by a full service deputy, and must be specifically incorporated by reference into the county's contract or agreement with the full service deputy. The addendum will include some, but not all, of the terms originally proposed for the three-party agreement, including: (1) the full service deputy must identify owners; (2) the full service deputy must identify all personnel who will be given access to the department's registration and titling system (RTS); (3) the full service deputy agrees to cooperate with any investigation by law enforcement; (4) access to RTS may be terminated if a full service deputy is the subject of a criminal investi-

gation involving a crime of moral turpitude, but the department will provide for an appeal process to adequately address any due process concerns; (5) a full service deputy must reject any transaction that appears irregular on its face; (6) the department may conduct an inventory of state assets and accountable items provided by the state via the county; and (7) the department may conduct an audit of the full service deputy's operations governed by the Transportation Code and department rules.

COMMENT

The Deputies commented that paragraphs 217.163(j)(1) - (9) should be eliminated entirely or amended to require the department to provide information to a TAC to support a request that the TAC suspend or cancel deputy status of any person the department believes should not be operating as the TAC's deputy, but ultimately leave the decision to the TAC. The Deputies also contend that the department has no direct enforcement authority over a TAC's deputies, but that the department is limited to merely providing equipment or adopting forms. The Deputies question the department's authority to promulgate each requirement in subsection 217.163(j), asserting that the department has only general rulemaking authority, and only authority for rules that are "necessary and appropriate," citing Transportation Code, §1002.001. The Deputies suggest that at most, §217.163(j) should require the TAC to collect the information the department proposes to collect, and require the TAC to perform audits of full service deputies, not the department.

RESPONSE

The department agrees that Transportation Code, §1002.001 gives the department general rulemaking authority. The department was also given clear rulemaking authority by the legislature in Transportation Code, §520.0071, which specifically mandated that the department adopt rules that 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 legislative bill analyses on both HB 2202 and HB 2741 acknowledge the express grant of rulemaking authority to the board in Transportation Code, §520.0071. The rules are clearly within this specific statutory grant of authority.

COMMENT

TACA commented that the record retention portion of the rule should require full service deputies to follow the retention schedules as directed by the Texas Library and State Archives Commission since a full service deputy's records are governmental records.

RESPONSE

The department agrees with this comment, and has amended the rule accordingly. The records retention requirement was originally proposed as part of the three-party agreement between the TAC, full service deputy, and the department. However, since the rule will not require a three-party agreement, the department has made the record retention requirement an individual subsection of §217.163.

COMMENT

The Deputies comment that each provision of §217.163(j) increases the full services deputies' costs of doing business.

RESPONSE

The department disagrees that identifying owners, identifying personnel with access to RTS, cooperating with law enforcement, rejecting irregular transactions, and allowing the state to conduct an inventory of its assets or audit a full service deputy's operations or similar requirements could increase an entity's costs of doing business. Full service deputies should already be performing many if not all of these requirements. Furthermore, the Deputies have provided no data reflecting how these requirements will increase their costs.

COMMENT

NCTCOG commented that participants in the Mobile Emissions Enforcement Working Group, which includes law enforcement representatives from emissions enforcement task forces throughout Texas, have reported increased fraud in certain areas surrounding vehicle inspection and registration, and therefore is concerned about the potential for increased fraudulent activity with the deputy structure without adequate oversight. NCTCOG suggest that registration renewals issued by deputies be audited in a timely manner to ensure the emissions inspection was properly performed prior to registration issuance, and that the department should perform these audits in consultation with the Texas Commission on Environmental Quality and the Texas Department of Public Safety.

RESPONSE

The department agrees with the need for adequate oversight and works with the other named state agencies to review transactions that were unable to be electronically verified. As such, no rule change is needed at this time.

SECTION 217.165 - INSPECTION DEPUTIES

COMMENT

Rep. Pickett, TACA, and Aransas, Bee, Brazoria, Hidalgo, Jones, Lavaca, McLennan, Montgomery, Nacogdoches, and San Patricio Counties each submitted comments expressing general opposition to the creation of an Inspection Deputy. Several of the commenters expressed that the proposed category of Inspection Deputy was redundant of limited service deputy and unnecessary.

RESPONSE

The department does not agree that an Inspection Deputy would be redundant, as an Inspection Deputy would have to be certified as an inspection station under Transportation Code, Chapter 548, and could be subject to additional requirements as specified by the TAC. However, the department will not adopt §217.165, Inspection Deputies at this time, and is withdrawing that section.

SECTION 217.167 - BONDING REQUIREMENTS

COMMENT

EAN Holdings commented requesting that the maximum permissible bonding limit for dealer deputies be increased from \$2,000,000 to \$5,000,000. EAN Holdings explained that the current EAN bond in force in Dallas County and Harris County exceeds the maximum amount in the proposed rule, and if adopted as proposed, the rule would conflict with the agreements currently in place with local tax offices. EAN Holdings explains that if the current bonding level is reduced to match the proposed rule, their ability to keep vehicles in service will be significantly reduced. The suggested increased maximum amount would accommodate what is in place today, which is an amount that is a function of the number of outstanding titling

and registration authorizations allowed by each tax office, with an additional allowance to address the foreseeable need to increase initial titling and registration authorizations.

RESPONSE

The department agrees with this comment and amended the rule accordingly.

COMMENT

Hidalgo County commented that the proposed minimum bond amount required of dealer deputies is too high, explaining that their office only enters agreements with franchise dealerships, and the current bond amount required is \$5,000. Hidalgo County comments that higher bond amounts will discourage participation in the webDEALER program.

RESPONSE

The department disagrees that a \$5,000 bond is a sufficient amount for the state property inventory a franchise dealer might hold. The department also disagrees that a higher bond amount will discourage participation in webDEALER. A dealer is only required to be deputized if the dealer maintains inventory and issues license plates and registration stickers through the webDEALER application.

COMMENT

Bexar County commented that bonding requirements for limited and full service deputies should be set by the TAC according to value and length of time that inventory is held.

RESPONSE

The rule as proposed gives the TAC the authority to set the amount of the required bond, subject to a minimum and maximum amount set in rule. As such, the department is complying with the legislative directive to prescribe the bonding amount by rule, but giving the counties some flexibility within the established guidelines.

SECTION 217.168 - DEPUTY FEE AMOUNTS

SECTION 217.168(b)(1) AND (c)(1)

COMMENT

The Deputies assert that the price limits on full service deputies are too low, citing the many years they have been in business without complaint to the department, that no one is required to use a full service deputy, and explaining that their prices are based on the competitive market for their services and their necessary expenses to operate profitably. The Deputies also point out there are two distinct markets for their services with differing dynamics affecting prices and costs: (1) car dealers and other high-volume customers (who usually get a discount); and (2) walk-in customers who often require a lot of time and attention. The Deputies assert the proposed price limits would affect each full service deputy differently depending on the customer and transaction mix.

RESPONSE

The assertion that the department has not received complaints against full service deputies is not instructive, as the department would not necessarily be the entity to receive any such complaints. The department is not aware that any existing title service company provides department contact information to its customers or any information regarding complaints in general.

Further, it would seem more logical for a customer to complain about a full service deputy to the county that deputized the entity.

The department appreciates that private title service companies have been operating under a particular business model for many years. However, a private company's business model does not provide the legal justification for adopting a rule one way or another in light of the specific statutory authority granted to the department, especially when those businesses may not have been charging fees consistent with statute. The department set the fee amounts after reviewing financial data provided by several full service deputies as well as data gathered by TTI. The fee amounts appear to be more than sufficient for full service deputies to maintain their operations statewide.

With the increased fee amounts in the adopted rule, the department believes that all full service deputies should be able to maintain operations. This is based on a review of the current charges as reported by all of the deputy offices, noting that the adopted fee is at or above what at least half of the deputies currently charge for their services and within \$10 of those that currently charge more, as well as an analysis of impact performed against the confidential financial information submitted by the full service deputies, including those that charge more, represented by Mr. Aleshire.

COMMENT

The Deputies commented that during all of the decades they have been in business, no state rule or law has set the prices they could charge for their services.

RESPONSE

The department disagrees with this comment. At least as far back as 1995, the Transportation Code authorized a full service deputy to charge an additional fee not to exceed \$5 for each motor vehicle registration issued. See former Transp. Code, §502.114, Acts 1995, 74th Leg., ch. 165, (S.B. 971), eff. Sept. 1, 1995; transferred, redesignated, and amended as former Transp. Code, §520.008 by Acts 2011, 82nd Leg., Ch. 1296 (H.B. 2357), eff. January 1, 2012. As noted above, 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 regarding the types of deputies authorized to perform titling and registration duties under §520.0071.

The language of former §520.008 and §502.114, subsection (b), is as follows: "A full-service deputy may charge and retain an additional motor vehicle registration fee not to exceed \$5 for each motor vehicle registration issued." By way of example, a regular registration fee for a vehicle with a gross weight of 6,000 pounds or less is \$50.75, unless otherwise provided in Transportation Code, Chapter 502. Applying the former statute, a full service deputy would have been permitted by law to charge an additional \$5 to the regular registration fee.

As to charges for title transactions, the deputies are correct in that the department is also not aware of any statute that authorized a charge for full service deputies. The department would caution full service deputies in relying on silence in the law as a basis for charging any amount they deem appropriate. See, e.g., Texas Attorney General Opinion JM-348 (1985) ("It has long been established that unless a fee is provided by law for an official service required to be performed and the amount is fixed by law, a fee may not be charged."). The Transportation Code authorizes fees for various title transactions. See, e.g.,

Transportation Code, §501.097, authorizing \$8 application fee for nonrepairable or salvage vehicle title; §501.100, authorizing \$65 rebuilder fee for rebuilt salvage title; and §501.138, authorizing \$28 or \$33 title application fees.

COMMENT

The Deputies also commented that all of the "fees" they collect have been turned over daily to the TACs, including the "\$5 registration fee." They charge a "voluntary service charge" which their customers choose to pay.

RESPONSE

The proposed fee amounts in the rules apply to services specific to processing a registration or title transaction. The rule specifically excludes related transactions by a full service deputy that are not transactions performed through the department's automated vehicle registration and title system, such as fees for copying, faxing, transporting, or delivering documents required to obtain or correct a motor vehicle title or registration. A full service deputy may charge any "voluntary service charge" it deems appropriate for such services.

COMMENT

The Deputies commented that the proposed rules will cause each full service deputy to become unprofitable.

RESPONSE

The department has reviewed the information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to \$10 for a registration or registration renewal transaction (\$1 retained from the processing and handling fee in §217.183 of this title and a \$9 convenience fee) and up to \$20 for a title transaction. As stated elsewhere in this preamble, the department believes these amounts are sufficient for current full service deputies to continue operation based on their current charges and historical income statements.

COMMENT

The Deputies commented that the study performed by TTI was flawed and contained unsubstantiated and false, incomplete data as to what it cost deputies to be available for, and to provide, the registration and titling services they provide.

RESPONSE

The department contracted with TTI to conduct research regarding the costs associated with processing vehicle registration and title transactions. The TTI report was one of several pieces of information used by the department in proposing the fees in this chapter. TTI reviewed a statistically significant sample of all transaction types and conducted its study using established internal methodologies. The full service deputies were given the opportunity to participate in the study and provide relevant data and information. TTI used what was provided by the deputies in conducting the study.

COMMENT

The Deputies commented that the proposed rule has no mechanism adjusting the price in the future.

RESPONSE

The department believes the adopted fee amounts are sufficient for the full service deputies to continue business operations. The board has the discretion to amend the rule when necessary, consistent with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001. The board is also committed to reviewing the fee amounts after six months of implementation (January 1, 2017) to ensure the rules are still appropriate as adopted.

COMMENT

The Deputies suggest that the final rule include a clause grandfathering the rates full service deputies currently charge.

RESPONSE

The department disagrees with this comment. Allowing full service deputies to charge any amount the full service deputy deems appropriate would be contrary to the legislative mandate that the department set the amounts a deputy may charge for registration and title transactions. As stated above, the department has reviewed the information provided by the Deputies and believes the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model.

COMMENT

The Deputies suggest that the department delay the effective date of the rules to September 1, 2016, to give the legislature time to amend the statutes.

RESPONSE

The department assumes that the Deputies mean to suggest that the effective date of the rules be amended to September 1, 2017. However, the department does not agree that it should delay its mandate established by the legislature in 2013 any longer based on legislation that may or may not be passed in the future. Should the legislature amend the Transportation Code so as to render the adopted rules unnecessary, the statutes would control and the department would amend or repeal rules, as necessary. The rules clearly indicate that deputies must be in compliance beginning January 1, 2017. Assuming the rules are effective no later than September 1, 2016, the deputies will have at least four months to prepare for the upcoming changes, and the deputies are already on notice of the rule contents. As stated before, this proposal follows at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by TTI, additional data gathered by department staff, and information from multiple conversations and 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.

COMMENT

The Deputies suggest that the rules allow the TACs to determine the maximum amount a full service deputy may charge and retain. Bexar County commented that the full and limited service deputies should be allowed to charge the fees they currently charge, or that the fee amounts in the rules be modified to avoid any negative impact to the deputies, because the department deviated from the TTI Report and the department has no record of complaints against any full service title company in Texas.

RESPONSE

The department disagrees with this suggestion. The statute mandates that the department set the fee amounts, and does not give the department the discretion to delegate this duty. By setting a maximum authorized fee amount, the department is complying with the legislative directive to prescribe the fee amount by rule, but giving the counties some flexibility to work with full service deputies within the established guidelines.

COMMENT

Travis County commented that the proposed fee amounts for full service deputies are too low; the department should consider an alternative since the proposal was based in part on the TTI Report; there are no provisions to adjust fees periodically; capping fees runs contrary to free market principles; and if the full service deputies are closed, Tax Office employees would have to immediately begin processing about 100,000 additional vehicle titles at an estimated cost to local taxpayers of about \$1 million plus space for 17 new employees. Travis County recommends that the department delegate setting auto title service fees to counties or set a broad fee range for registration and title fees as was done with bonds and authorize tax assessors to establish fee caps within the range.

Bexar County commented that the proposed fee of \$5 for a registration and \$15 for a title transaction will cause full service deputies to close and will therefore increase costs to Bexar County taxpayers. The closing of full service title companies would require a minimum of three additional tax offices in Bexar County plus personnel staffing, with estimated start-up costs between three and six million dollars and annual operational costs between two and three million dollars. The closure of full service deputies would also reduce options to the citizens of Bexar County by eliminating the availability of 21 additional locations for citizens to choose from, while impacting established small businesses and causing the layoff of their employees.

RESPONSE

As stated above, the department has reviewed information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to \$10 for a registration or registration renewal transaction (\$1 retained from the processing and handling fee in §217.183 of this title and a \$9 convenience fee) and up to \$20 for a title transaction.

Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

COMMENT

Williamson County commented that it would be preferable to see a range of fees allowed for full service deputies instead of the proposed \$15, and that the fee should be reflective of the current market and agreed upon, contractually, by the full service deputy and the TAC. Nueces County commented that there should be no rule dictating what a full service deputy is allowed to charge. Instead, Nueces County commented that the open market and what people are willing to pay should determine what they should charge.

The Texas Conference of Urban Counties (TCUC) commented that arbitrary price caps on the amount that title service providers can recover threatens a successful public-private partnership, and will increase costs to counties. TCUC requested that the department conduct a "serious, data intensive examination of the impact of these proposed rules in collaboration with [their] association and other impacted stakeholders - including each major urban county."

RESPONSE

As discussed above, the legislature has mandated that the department set the fee amounts a deputy may charge or retain, and did not give the department the authority to delegate this duty. Furthermore, the department would note that based on comments received during its April 7, 2016 Board Meeting, significant barriers to entry may exist in counties currently utilizing full service deputies -- markets may not be open to competition in the form of new entrants and the department is not aware of any county that awards full service deputy contracts through competitive bidding processes.

The department has reviewed information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to \$10 for a registration or registration renewal transaction (\$1 retained from the processing and handling fee in §217.183 of this title and a \$9 convenience fee) and up to \$20 for a title transaction.

Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

COMMENT

Bee County commented that no deputy, whether a full service, limited service, or dealer deputy, should be allowed to retain any amount from the processing and handling fee referenced in the proposed rules. Bee County recommends that in order to allow for proper disbursement of fees and allow counties to continue to receive current revenue levels, §217.168(a) should be deleted, and the remainder of the rule should allow a full service deputy to charge a convenience fee of \$5 and allow a limited service deputy to charge a fee of \$1. TACA also submitted a comment recommending that a limited service deputy be allowed to charge the customer a convenience fee of \$1 so there is no reduction in fees paid to the county.

RESPONSE

The department disagrees with this comment. The proposed fee structure and fee amounts follow at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and 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.

SECTION 217.168(b)(2)

COMMENT

The Deputies commented that there is no factual basis why the proposed rule permits dealer deputies to charge the same amount for title transactions as a full service deputy, and noted that the department charges \$15 for a bonded title rejection letter.

Jones and Lubbock Counties submitted comments opposing allowing dealer deputies to charge for title transactions as proposed by the rule. Jones and Lubbock Counties each commented generally that a dealer should not be permitted to charge for title transactions, as they have the authority to charge a documentary fee for the handling and processing of documents for the sale of the motor vehicle and allowing a fee for title transactions would amount to allowing a dealer deputy to charge customers twice. Lubbock County also commented that dealers should not be paid to perform a job function that is required and for which they are already reimbursed.

TACA and Bee County commented that a dealer deputy should only be allowed to retain \$10 from the \$15 fee for title transactions, and the remaining \$5 should be remitted to the TAC to compensate the TAC for their continued service in reviewing and accepting the title transaction.

RESPONSE

Initially, the department addresses the Deputies' comment regarding compensation amounts for different entities or transaction types. The objective in setting the fees for deputies was to recognize the costs involved in providing the service and set the appropriate fee. While the department has strived to standardize fees for customers, a uniform fee among deputy types is not a requirement under Transportation Code, §520.0071. In addition, the department would note that under these rules, full service deputies are compensated at a higher rate than counties for title transactions.

The amount the department charges for a bonded title rejection letter, authorized by Transportation Code, §501.053, was established in Texas Administrative Code, §217.3(g), later renumbered as §217.9, following publication in the *Texas Register* for public comment and final adoption at a department board meeting.

The department does not agree with the comments that suggest a dealer deputy not be allowed to charge for a title transaction or that the dealer deputy should remit a portion of the fee to the counties. Transportation Code, §520.0071 authorizes the department to prescribe an amount a dealer deputy may charge or retain for title transactions. A dealer deputy may not wish to charge any amount for a title transaction and cover its costs for such work with the documentary fee. The documentary fee a dealer deputy may charge is authorized by Finance Code, §348.006. The Texas Office of Consumer Credit Commissioner has jurisdiction over the filing of documentary fees by motor vehicle dealers.

However, in response to the remaining comments regarding the fee amount for dealer deputies for title transactions, the department reduced the maximum amount that a dealer deputy may charge for such transaction to \$10.

SECTION 217.168(c)(2)

COMMENT

Kroger and Food Town both submitted comments recommending that the fee amount a limited service deputy be permitted to retain be increased from \$1 to \$2 to cover increased expenses.

Kroger also recommended the increased fee amount to assist with covering increased labor time for transactions that require verification of safety inspections.

RESPONSE

The department disagrees with this comment and will not amend the amount a limited service deputy is permitted to retain. The amount proposed for adoption was developed based on at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and 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.

COMMENT

Travis County commented that it disagrees with the department's conclusion that the rules would have no adverse impact on local government or small and micro-businesses, because the fee limits would force full service deputies to close, and the department appears to assume the counties could cover the shortfall full service deputies may experience.

RESPONSE

The department disagrees with the contention that the rules will have an adverse impact on local government or small and micro-businesses. The department has reviewed the information provided by the Deputies and believes the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. In addition, the adopted rules increase compensation for full service deputies. Until the effective date of these rules, statute authorizes full service deputies to charge \$5 for a registration transaction and does not authorize a fee for title transactions. Adoption of these rules, authorized by Transportation Code, §520.0071, increases compensation by \$5 for a registration transaction and \$20 for a title transaction.

COMMENT

The Deputies assert that the rule proposal fails to comply with Government Code, Chapter 2006. They assert specifically that alleging the full service deputies' prices have been previously regulated at \$5 for a registration transaction is false, and regardless, the department's justification admits the full service deputies almost universally have been charging \$10 to \$15 for registration transactions. The Deputies also commented that the proposal fails to provide the required assessment and fails to provide a means by which to mitigate the harm the rules will have on small business.

RESPONSE

As discussed above, former Transportation Code, §520.008, and former §502.114 before that, authorized a full service deputy to charge an additional \$5 for a registration transaction. No statute authorized a full service deputy to charge an additional fee for a title transaction. The fee amounts proposed were developed following at least two years of work by department staff analyzing all relevant legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and 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. Additional information provided by the deputies confirms the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. In addition, the adopted rules increase compensation amounts for full service deputies.

Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic impact on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. The department has stated multiple reasons why the proposed rules would not have an adverse economic impact on small or micro-businesses, including the increase in allowable charges by the adoption of these rules. While the Deputies may disagree with the department's reasons, the department complied with Government Code, Chapter 2006 by analyzing any potential for impact against the statutory standards applicable to full service deputies prior to the rule proposal, and by adopting the rules based on data provided by deputies, data gathered by TTI, public comment and feedback, and its review of the legislation authorizing the rules.

STATUTORY AUTHORITY

The amendments and new sections are adopted 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.

§217.162. 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) Commercial fleet buyer--An entity that, in compliance with Transportation Code, §501.0234(b), is deputized under this subchapter, utilizes the dealer title application process developed to provide a method to submit title transactions to the county in which the commercial fleet buyer is a deputy, and has authority to accept an ap-

plication for registration and application for title transfer that the county tax assessor-collector may accept.

(3) Dealer deputy--A motor vehicle dealer, as defined by Transportation Code, §503.001(4), including a commercial fleet buyer, 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.

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

(5) 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.

(6) 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.

(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) A full service deputy must maintain records in compliance with the State of Texas Records Retention Schedule as promulgated by the Texas State Library and Archives Commission.

(k) Beginning January 1, 2017, a full service deputy must sign an addendum provided by the department outlining the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. Any contract or agreement, or renewal of the contract or agreement, between the county and the full service deputy that authorizes the full service deputy to provide registration and titling services in the county must specifically incorporate the addendum by reference, and the contract or agreement may not supersede or contradict any term within the addendum. An addendum described by this subsection is required for each location at which the full service deputy operates. The addendum must be incorporated into any agreement or contract between the full service deputy and the county beginning January 1, 2017. The county must provide the department a current copy of each contract or agreement, including any amendments, with a full service deputy within 60 days of execution.

§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) or a limited service deputy under §217.164 of this title (relating to Limited Service 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 \$5,000,000, as determined by the county tax assessor-collector.

(d) A limited service 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 \$20, 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 \$10, 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 \$9, 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 adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §§217.201 - 217.207

The Texas Department of Motor Vehicles (department) adopts 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. Sections 217.203, 217.204, 217.205, and 217.206 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2937) and will be republished. The department amended §217.206 to clarify the language, and the amendments to §§217.203, 217.204, and 217.205 were made in response to comments. Sections 217.201, 217.202, and 217.207 are adopted without changes to the proposed text as published and will not be republished.

EXPLANATION OF ADOPTED 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. 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.

The department drafted Subchapter J after doing the following: 1) conducting an audit of the department's administration of statutes and rules through the county tax assessor-collectors; 2) reviewing recognition or accountability programs created by other state agencies; and 3) meeting with the Performance Quality Recognition Program Working Group (Working Group).

The department's internal audit division audited the department's administration of statutes and rules through county tax assessor-collectors. The audit report presented information and ideas, which the department used as a starting point to draft Subchapter J. The audit methodology for compiling information and ideas included the following: 1) conducting research into achievement programs, such as the Ohio Environmental Protection Agency Encouraging Environmental Excellence Program; 2) obtaining feedback from the Tax Assessor-Collectors Association of Texas (TACA); 3) interviewing senior managers at the department; and 4) conducting a survey of 50 county tax assessor-collector offices that are geographically dispersed and of various sizes to gain a better understanding of current practices and how these practices could relate to a recognition program. The department received 44 (88 percent) responses; however, the respondents skipped some questions.

The department reviewed recognition or accountability programs created by other Texas state agencies, such as the following programs: 1) the Job Corps Diploma Program, 19 Tex. Admin. Code §97.2001 (2009) (Tex. Educ. Agency, Job Corps Diploma Program Accountability Procedures); and 2) the Nursing Education Performance Recognition Program, 19 Tex. Admin. Code §4.183 (2007) (Tex. Higher Educ. Coordinating Bd., Nursing Education Performance Recognition Program).

The department created the Working Group, which is made up of department employees and nine county tax assessor-collectors from counties that are geographically dispersed and of various sizes. The Working Group was charged with providing input on the development of a program and rules to recognize outstanding performance and efficiency in processing title and registration transactions in a county tax assessor-collector office. In addition to reviewing the audit report and discussing the reason for the Recognition Program, the Working Group reviewed, discussed, and provided input on the draft of Subchapter J at three meetings.

Subchapter J provides standards for the uniformity and service quality for counties by establishing objective criteria for the different levels of recognition. Most of the current recognition criteria for the minimum recognition level contain the standards for uniformity because the factors indicate whether the county tax assessor-collector complied with statutes, rules, and policies governing motor vehicle transactions. Most of the current recognition criteria for a higher recognition level are based on factors that indicate service quality, such as low error rates and whether transactions are processed in a timely manner.

Subchapter J also states the nature and requirements of the procedures for the Recognition Program, as required by Government Code, §2001.004. For example, Subchapter J provides when an application can be submitted and how a county tax assessor-collector can request the department to review its decision to deny an application or to demote or revoke a recognition level.

COMMENTS AND RESPONSES

The department received written comments from TACA and from county tax assessor-collectors from certain counties, which are referenced by county.

COMMENT

Hansford County commented that the Recognition Program would: 1) enforce the department's and the county's office policies; and 2) help encourage the county with its quality of service to the public.

Hemphill County commented that it does not favor the Recognition Program because: 1) it is just an additional form of spending money when the county doesn't need to be spending money; and 2) their customers are the ones who show the county tax assessor-collectors how they are doing. Wharton County objects to the Recognition Program because: 1) county tax assessor-collectors take their responsibility and their constitutional liability very seriously; 2) the county doesn't see the benefit of having the Recognition Program; and 3) each county tax assessor-collector should implement their own incentive program, rather than having another program regulated by the state. Lubbock County commented that: 1) the Recognition Program must remain voluntary because the criteria require the county to maintain an excessive amount of recordkeeping, and the Recognition Program will require a huge amount of man hours to track, document, and maintain; and 2) the same criteria should be applied to the department.

RESPONSE

The department will proceed with adopting the proposed new Subchapter J to implement the voluntary Recognition Program. The department is adopting this subchapter to comply with Transportation Code, §520.004, which requires the department by rule to establish standards for uniformity and service quality for counties.

COMMENT

Williamson County commented that criteria in §217.203(c) should include the criteria in §217.203(b) because the Recognition Program was intended to build on each level of recognition.

RESPONSE

The department made the suggested change in §217.203(c), as well as a conforming change in §217.203(d).

COMMENT

Brazoria County commented that §217.204(d) should be deleted and the language in §217.204(c)(2) should be amended because a county tax assessor-collector who is exonerated after their recognition level has been revoked should not have to wait to be re-elected to be eligible for reinstatement of their previously awarded recognition level. They should be allowed to follow the same procedure as the county tax assessor-collector whose recognition level was demoted to a lower level. Bee County, Cass County, Midland County, Montgomery County, Moore County, Navarro County, Refugio County, San Patricio County, and TACA made similar comments.

RESPONSE

The department amended §217.204(d) to allow a county tax assessor-collector whose recognition has been revoked to follow the same procedure as a county tax assessor-collector whose recognition was demoted to a lower level. However, when a recognition level is demoted or revoked, the county tax assessor-collector must wait an entire state fiscal year before apply-

ing for: 1) a higher recognition level if the recognition level was demoted; or 2) a recognition level if the recognition level was revoked. The recognition level is not reinstated. Any recognition level will be based on the county tax assessor-collector's performance during the state fiscal year immediately preceding the application, regardless of the reason for the demotion or revocation.

If a county tax assessor-collector's recognition level is demoted or revoked, §217.207 provides a review process that allows a county tax assessor-collector to request the department to review its decision. In addition, the decision to demote or revoke will be made based on the same criteria that is used to award the recognition level. Some of the comments talked about a situation in which the county tax assessor-collector is exonerated, which means a conviction for a crime is reversed. The burden of proof in a criminal case is much higher than the burden of proof used for the Recognition Program. Also, the elements of a crime in a criminal case are different than the criteria used in the Recognition Program.

COMMENT

Hansford County and Hemphill County object to the requirement for the county to timely pay registration fee collections because the COGNOS system does not timely provide the county with the report and does not work properly. Also, Hansford County stated the county may have to wait for funds from any IRP registrations.

RESPONSE

The department will not hold it against a county tax assessor-collector if the department or a department system is responsible for the county tax assessor-collector's failure to comply with the recognition criteria.

COMMENT

Aransas County commented that §217.205 is not specific enough regarding when the department would revoke or demote a recognition level if the department discovers information that shows the county tax assessor-collector no longer complies with the criteria for the recognition level.

RESPONSE

The department amended §217.205(c) to clarify when the department may revoke a recognition level and when the department may demote a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for the recognition level.

STATUTORY AUTHORITY

The new subchapter is adopted 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; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Government Code, §2001.004; and Transportation Code, §520.004.

§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. In addition to the recognition criteria listed in subsection (b) of this section, 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 subsections (b) and (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 until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the recognition level was revoked.

(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.

(1) The department may revoke a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for any recognition level.

(2) The department may demote a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for the current recog-

niton level, but still complies with the criteria for a recognition level. The recognition level will be demoted to the highest recognition level for which the county tax assessor-collector qualifies.

(d) Notice of department decision to award, deny, revoke, or demote 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. If a recognition level is demoted during the first year of the county tax assessor-collector's re-election term of office and the recognition level

was awarded during the county tax assessor-collector's prior term of office, the demoted recognition level expires on the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c) 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.

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

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

