

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.

Filed with the Office of the Secretary of State on July 19, 2016.

TRD-201603569

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Effective date: August 8, 2016

Proposal publication date: April 22, 2016

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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.

Filed with the Office of the Secretary of State on July 19, 2016.

TRD-201603558

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Effective date: August 8, 2016

Proposal publication date: April 22, 2016

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