

(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:

and
(A) the county tax assessor-collector may retain \$2.30;

(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:

and
(A) the county tax assessor-collector may retain \$2.30;

(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;

and
(B) the county tax assessor-collector may retain \$.25;

(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;

and
(B) the county tax assessor-collector may retain \$1.30;

(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.

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

TRD-201603576

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: August 8, 2016

Proposal publication date: April 22, 2016

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



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.

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

TRD-201603569

David D. Duncan

General Counsel

Texas Department of Motor Vehicle

Effective date: August 8, 2016

Proposal publication date: April 22, 2016

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



SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §§217.201 - 217.207

The Texas Department of Motor Vehicles (department) 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