



For issue of: PI Working ACK

Proposed Rulemaking Action

Agency Code: 0201

Title 37: Public Safety and Corrections

Part 1: Texas Department of Public Safety

Chapter: 12. Compassionate-Use/Low-THC Cannabis Program

Subchapter: C. Compliance and Enforcement

Division:

TAC Section Number(s): §12.21 and §12.23

New  Amendment  Repeal

Does this filing have adoption by reference material associated with it?  Yes  No

Common preamble:  Yes  No

File Name: CH12SubC

Graphics Included?  Yes  No

Graphics File Name:  
(Place name of graphics file in the comment section.)

Verification/Certification

I verify that I have reviewed the submitted document and that it conforms to all applicable Texas Register filing requirements. The submitted document has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Agency Liaison: Duncan R. Fox or Susan Estringel

Certifying Official: D. Phillip Adkins

Title: General Counsel

Signature:

Date of Verification:

Phone Number for public inquires about submission: (512) 424-5848

The Texas Department of Public Safety (the department) proposes amendments to §12.21 and §12.23, concerning Compliance and Enforcement. The amendments to §12.21, concerning Inspections, are necessary to clarify the authority of certain state and local regulatory agencies to inspect a licensee's premises, and to update a cross reference necessitated by the amendment to another section. The amendments to §12.23, concerning Revocation, is necessary to clarify the process by which a license may be revoked based on a dishonored or reversed payment.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and consistency with statute and legislative policy.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Compassionate Use Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

<rule>

§12.21. Inspections.

(a) Submission of an application for a license as a dispensing organization constitutes permission for entry by the department to the regulated premises of the dispensing organization at any time during regular business hours.

(b) While conducting an inspection or engaging in activity reasonably related to the inspection, the department may be assisted by a peace officer, [or] a representative of the State Fire Marshal's Office or another [an] appropriate state or local regulatory agency.

(c) Within thirty (30) calendar days of the date of receipt of the written notice of violation, the dispensing organization shall provide the department with notification of all corrective actions taken and the dates of the corrections.

(d) Onsite inspections may include but are not limited to review of:

(1) All requirements provided in §12.11(b) of this title (relating to Application for License);

(2) Security equipment and protocols as provided in Subchapter D [§12.31 and §12.32] of this title (relating to Security [of Facilities and Security of Vehicles, respectively]);

(3) Records as provided in §12.4 of this title (relating to Records).

(e) Failure to cooperate with an inspection by department or other authorized personnel may result in suspension or revocation of the individual's registration and the license of the dispensing organization.

§12.23. Revocation.

(a) The department may revoke a license or registration if the licensee or registrant:

(1) Is found to have performed a regulated function prior to issuance of the license or registration;

(2) Misrepresents a material fact in any application to the department or any other information filed pursuant to the Act or this chapter;

(3) Prepares or submits to the department false, incorrect, incomplete or misleading forms or reports on multiple occasions;

(4) Performs a regulated function while suspended;

(5) Exhibits a pattern of misconduct evidenced by previous violations for which previous suspensions have been inadequate to affect compliance;

(6) Is convicted of a disqualifying felony or misdemeanor offense pursuant to §12.3 of this title (relating to Criminal History Disqualifiers);

(7) Violates §§481.120, 481.121, 481.122, or 481.125 of the Texas Health and Safety Code; or

(8) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Following notification of the violation, the licensee will be provided with thirty (30) days to address the violation or request a hearing by submitting the request electronically through the department's website or as otherwise determined by the department. If a hearing is requested, the department will schedule a hearing before SOAH.

(c) Except as provided in subsection (b) of this section, an individual whose certificate of registration has been revoked may not be relicensed or reregistered earlier than two (2) years from the date of revocation.

(d) An individual whose registration has been revoked for a dishonored or reversed payment, as provided under subsection (a)(8) of this section may reapply at any time. Approval of the application is contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment. The department may dismiss a pending revocation proceeding based on a dishonored or reversed payment upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(e) Other than as provided in subsection (d) of this section, an individual whose license or registration has been revoked [for a dishonored or reversed payment] must follow the applicable procedures pursuant to §12.11 or §12.12 of this title (relating to Application for License and Application for Registration, respectively) for new applications.