



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: D. Security

Division:

TAC Section Number(s): §§12.31 – 12.34

New Amendment Repeal

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

Common preamble: Yes No

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(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:

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The Texas Department of Public Safety (the department) proposes amendments to §§12.31 – 12.34, concerning Security. The amendments to §12.31, concerning Security of Facilities, are necessary to clarify the security requirements relating to access by unauthorized individuals or the general public, to provide specific performance standards for security alarm systems, and to generally clarify the security standards for licensee’s facilities. The amendments to §12.32, relating to Security of Vehicles, are necessary to add the requirement of a trip plan reflecting certain required details of the route, product to be transported, and name of responsible registrant. The amendments to §12.33, Response to Security Breach, is necessary to provide an express 24 hour deadline for licensees to notify the department of a security breach. The amendments to §12.34, Reporting of Discrepancy, Loss or Theft, adds ‘fire on the regulated premises’ and ‘theft or loss of raw materials or by products’ to the events a licensee must report; and adds the requirement to report the circumstances believed to have contributed to the loss, theft, or fire.

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 determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the proposed amendments to §§12.32, 12.33, or 12.34. There is no anticipated economic cost to businesses required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has also determined that the proposed amendment to §12.31 may have adverse economic effects on small businesses required to comply with this rule as proposed. The department estimates there will be three licensees, all of these licensees will be small businesses. These estimates are based on an analysis of other states’ compassionate-use programs and the number of patients in Texas with intractable epilepsy, and Texas Health and Safety Code Chapter 487’s requirements that the department issue at least three licenses and that issuance of the license be necessary to ensure reasonable statewide access to, and the availability of low-THC cannabis for patients for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code. The department estimates the projected impact of this rule will be increased costs of compliance associated with the purchase of the required security equipment. Specifically, §12.31’s requirement that dispensers purchase a burglar alarm system, including video surveillance, is likely to cost \$1700 to \$2000, assuming 12-16 cameras, and monitoring can range from \$50-\$250 per month. The proposed requirement of steel security doors for certain areas may cost approximately \$1,200, assuming three doors at \$400 each. A locking safe or metal locking container may cost approximately \$2,000.

In preparing these rules the department considered the alternatives of granting exemptions or grace periods from the requirements for small and micro businesses. However, these rules are intended to implement Texas Health and Safety Code, Chapter 487’s requirements that, among other things, licensees have the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products. The department is not authorized to create grace periods or other exemptions from the statutory requirements, reflected in Texas Health and Safety Code, §487.102. Moreover, an exemption or grace period would be inconsistent with the health, safety, or environmental and economic welfare of the state. The department believes the proposed

requirements are the minimum necessary requirements to protect these interests. 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 reduction in the potential for diversion of marijuana or related products.

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>

§12.31. Security of Facilities.

(a) A licensee or applicant for licensure must maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion of the low-THC cannabis and any derivative products. The standards provided in this subchapter are minimum standards only.

(b) During the regular course of business activities, and except as provided by subsection (d) of this section, a licensee may not allow access to the facility's cultivation, processing, or product storage areas by unauthorized individuals or to the public. All cultivation of low-THC cannabis shall take place in an enclosed, secured [During the regular course of business activities, a dispensing organization licensed under the Act may not allow access to the facility's low-THC cannabis area to unauthorized personnel or to the public. The licensee must establish and maintain a] building, or an enclosure within a building[, or an enclosed yard] that provides reasonably adequate protection [security] against the diversion of low-THC cannabis or raw

materials used in or by-products created by the production or cultivation of low-THC cannabis; limit access to each area to the minimum number of individuals or employees necessary for the licensee's activities; and designate an individual or a limited number of individuals with responsibility for each area where a controlled item is cultivated, processed, dispensed, produced, or stored; and authority to enter or control entry into the area. Access to the enclosed, locked area is limited to a licensee, director, manager or registered employee when acting in his or her official capacity.

(c) Access to the licensee's cultivation, processing, or product storage areas [regulated premises] by authorized employees [personnel] shall at a minimum be restricted by a physical barrier with a mechanical locking device compliant with life safety requirements that must be kept closed and locked at all times when not immediately being used to enter or exit the area. These areas [The area] shall be clearly and conspicuously marked at all access points with signage indicating access is restricted to individuals registered with the Texas Department of Public Safety under Chapter 487 of the Texas Health and Safety Code, in contrasting block letters at least one inch in height.

(d) When unregistered individuals, whether employees [personnel] or contractors, business guests or visitors, or maintenance or other service providers not regulated under the Act, are to be present in or are to pass through regulated premises, the unregistered individuals must be continuously escorted by a registrant. Unregistered individuals must be provided a visitor's badge reflecting the individual's name and the date of issuance. All ingress and egress by unregistered individuals must be recorded in a daily log. The log must include the full name of each unregistered individual entering the regulated premises, the time of arrival, the time of departure, and the purpose of the visit. The requirements of this subsection do not apply to representatives of the department or other law enforcement agencies of this state who tour the facility as part of their official duties.

(e) Licensees must have an alarm system capable of continuously monitoring the regulated premises for fire and intrusion by means of camera recording, door switches, motion sensors, and fire and smoke detectors. The system must have the capability of immediately alerting local law enforcement of a fire at any time, of a security breach during non-business hours, and of being manually activated by staff during business hours. The camera monitoring system must be capable of recording at least 90 days of footage to an external hard drive at a minimum resolution of 720 x 350, with camera coverage of all regulated areas, including all ingress or egress areas, and the building exterior. Point of sale areas, if applicable, must have a camera placed in a manner to provide visual identification of any patient or legal guardian seeking to fill a prescription for low-THC cannabis. Exterior lighting must be sufficient to support camera monitoring. The system must comply with local city or county alarm permitting requirements. The system must be capable of continuous function upon total power loss for a minimum period of five (5) minutes.

(f) Access to the licensee's cultivation, processing, or product storage areas must be through a metal security door on a metal frame with hinges that are protected from ingress. The metal door must have secure locking capability. The door, door frame, and locking mechanism must be compliant with life safety requirements. If the door utilizes magnetic locks, the lock must work independently without exterior power. Post-cultivation low-THC cannabis products must be stored in a locking safe or metal locking container, in compliance with Title 21 Code of Federal Regulations, §1301.72.

(g) The licensee's cultivation, processing, production, or raw material storage areas should have no windows unless the windows are shatter resistant or burglar proof, or are reinforced with metal bars or grates to prevent entry.

(h) In the event the licensee's facility shares space, or has an adjacent building, the facility must ensure no mutual access points exist, including ceiling or roof areas which would enable unauthorized access from the adjacent structure.

(i) Final low-THC cannabis products and raw materials, including plants in any stages of growth, may not be visible from the exterior of the building during non-business hours.

§12.32. Security of Vehicles.

(a) Any vehicle used by a dispensing organization for the transportation of low-THC cannabis must have a vehicle security system and a securely attached and locked container within the vehicle. It is the responsibility of the licensee to ensure that only authorized registered employees [personnel] have access to the locked secure container within the vehicle.

(b) Prior to transportation of any product, licensee shall complete a trip plan that includes:

(1) The name of the registrant responsible for the transportation;

(2) The date and start time of the trip;

(3) The anticipated route of transportation and destination; and

(4) A detailed invoice or log of the specific type of product and amount to be transported.

(c) Promptly following transportation, the licensee shall enter the end time of the trip and any changes to the trip plan, including any changes to the amount of product delivered to the location.

§12.33. Response to Security Breach.

(a) The licensee must immediately report any unauthorized intrusion or other security breach of the regulated premises to both the local law enforcement agency with primary response jurisdiction and within twenty four (24) hours to the department.

(b) Following any security breach the licensee shall review existing security procedures for any deficiencies that may have contributed to the breach. The licensee shall remedy the deficiency and report the remedial measures to the department.

(c) The licensee must rekey or change the combinations of any locks opened in the breach, and change any passwords that may have been used in the breach.

§12.34. Reporting of Discrepancy, Loss or Theft.

(a) A licensee or registrant must report to the department not later than the second day following the date the licensee or registrant learns of:

(1) A notable inventory discrepancy;

(2) An inventory loss or theft; or

(3) A fire on the regulated premises; or

(4) [(3)] A loss or theft during transport.

(b) The report required by subsection (a) of this section must reflect the name and registration or license number of the individual preparing the report, the date of the report, and the details listed in this subsection, as applicable:

(1) Date of discovery;

(2) Amount of low-THC cannabis, raw materials, or by-products involved, including amounts transported and received;

(3) Physical location at issue;

(4) Date transported, name of registered [carrier or] employee involved in the transport; or

(5) Description of any suspected criminal activity, or [.]

(6) Circumstances believed to have contributed to the loss, theft, or fire.

(c) A fire on the regulated premises which must be reported immediately to the State Fire Marshal's Office.