



## Texas Department of Agriculture License Suspension and Revocation Guidelines

COMMISSIONER SID MILLER

The Texas Department of Agriculture (the department) publishes these internal guidelines for license suspension and revocation, which have not been previously communicated in writing, in order to provide greater transparency for licensees<sup>1</sup> and other interested stakeholders. The guidelines were developed and are being published to encourage consistency in the department's internal enforcement processes as well as adequate enforcement responses to instances of egregious noncompliance. Although monetary penalties will remain the department's primary and first-choice method of deterrence, license suspensions and revocations are an important tool for dealing with recalcitrant or egregious violators who are not deterred by such penalties.

The intent of this publication is to inform interested stakeholders regarding the types of enforcement actions TDA is authorized to and may take in response to habitual, repetitive, frequent, or egregious noncompliance. These guidelines are designed to complement previously published guidelines regarding the assessment of monetary penalties, as well as specific suspension and revocation guidelines for particular programs, such as the Grain Warehouse and Organic Certification programs. Due to generally high rates of compliance and the effectiveness of monetary penalties in deterring most potential violators, the department anticipates that very few licensees will be subject to license suspension or revocation under these guidelines.

Each business or individual that obtains a license with the department is assigned a client number. Each client then receives an account number for each location or group of locations required by law to obtain a separate license. These separate licenses have unique license numbers, also referred to as account numbers, that are associated with the one client number. The client number is not a license number, but merely an internal tracking number tying related license/account numbers together for the efficient billing of regulatory fees and bulk issuance of license renewal forms.

When applying these guidelines, the violation history for a particular licensed location will be used as the basis for determining whether a license suspension or revocation is warranted. Only those violations at that particular location, committed under the particular license, and subject to a monetary penalty will be considered to be a prior violation. Minor violations handled without the assessment of monetary penalties will not be considered a prior violation.

As these are merely guidelines, nothing within the guidelines should be read as restricting or limiting the department's discretion to take appropriate action outside of the guidelines should extraordinary circumstances exist or in response to habitual, repetitive, frequent, or egregious noncompliance not described within the guidelines. A particular incident of noncompliance may have unique characteristics that would warrant a departure, as justice requires, to avoid an overly harsh result or to ensure an adequate deterrent effect. Thus, persons subject to the effects of these guidelines are encouraged to promptly respond to a notice of proposed suspension or revocation and provide the department's Enforcement Division with accurate and complete information regarding the violation and any mitigating circumstances.

---

<sup>1</sup> The term "license" includes a permit, certificate, approval, registration, or any other similar form of permission issued by a state agency and required by law. See Tex. Gov't Code § 2001.003(2).

Prior to publication, the department sought and received input from various representatives of the regulated community. Valuable suggestions from these industry groups have been incorporated into the guidelines.

Special Note: Because these suspension and revocation guidelines, in conjunction with the use of statistical risk analysis and additional risk response inspections, will identify and address most instances of habitual, repetitive, frequent, or egregious noncompliance as a separate parallel process, the department is concurrently amending its [Weights and Measures penalty guidelines](#) to remove those provisions designed to address the same situations, such as references to suspensions and revocations, a large number of automatic penalty increases for subsequent violations, and minimum penalty amounts for some violations. Changes to other department penalty guidelines to reflect the implementation of the suspension and revocation guidelines will follow as deemed necessary. Under all such guidelines, the department retains the discretion to depart from the guidelines whenever the available evidence indicates unique circumstances that demonstrate the need for a more or less harsh enforcement response.

## License Suspension and Revocation Guidelines

**EFFECTIVE DATE:** July 1, 2013.

### **PURPOSE**

To provide internal guidelines for suspension or revocation of a license issued by the Texas Department of Agriculture (TDA).

### **NOTIFICATION**

A written statement will be included in each Notice of Violation and Warning Letter, whether manually prepared or auto-generated, that a license suspension or revocation may be imposed for frequent, repetitive, or habitual violations.

TDA shall devise and implement public outreach activities designed to inform regulated businesses of TDA's license suspension and revocation guidelines.

### **LICENSE SUSPENSION**

Except in the most egregious circumstances, license suspension shall be utilized by TDA as a precursor to license revocation.

A license issued by TDA (by licensed location) shall be suspended if the licensee commits three or more similar violations of any type within a continuous three-year period, unless this action is rejected by the special circumstances review process outlined below.

A license issued by TDA (by licensed location) shall be suspended without regard to the number of violations by the licensee if the licensee commits one of the following violations, unless expressly prohibited by the governing statute or other law:

- Violation of a TDA stop-sale order, out-of-order tag, cease and desist order, seizure order, or any other similar agency notice prohibiting or requiring an action.
- Failure or refusal to prepare, maintain, or within a time period specified in a request, submit or permit review of required records.
- Two or more weights and measures predominance violations within a continuous two-year period.
- Engaging in pest control practices in a manner that could create a significant risk of substantial harm to an individual, the public health, the safety of the public or others, or the environment.
- Performing work in a category for which a certified applicator or technician is not licensed or an apprentice is not trained.
- Operating during a period in which required insurance or bonding is not in effect.
- Failure to meet requirements necessary to maintain or retain a license.
- Refusal to permit a TDA inspection required by statute or rule.
- Providing false information to TDA either knowingly or with gross negligence. False information is provided with gross negligence if true and accurate information was readily available or verifiable or the information was submitted without regard to whether the information was true and accurate.

Each license suspension order shall specify the actions, deadlines, and standards for avoiding a related subsequent license revocation, including the timeframe within which license revocation could occur as the result of the licensee's failure to comply with the terms of the order.

The duration of a license suspension under these guidelines will be determined based upon the nature, circumstances, extent, and gravity or the hazard or potential hazard of the violation, but shall be no less than 10 business days.

#### **LICENSE REVOCATION**

A license issued by TDA (by licensed location) shall be revoked if the licensee commits five or more similar violations of any type within a continuous three-year period, unless this action is rejected by the special circumstances review process outlined below.

A license issued by TDA (by licensed location) shall be revoked without regard to the number of violations by the licensee if the licensee commits one of the following violations, unless expressly prohibited by the governing statute or other law:

- Obtaining a license that the person was not otherwise qualified for or entitled to through fraud, deceit, or other intentional or knowing misrepresentation in the application process.
- Submitting a required document to TDA that the person knew contained false information.
- Repeated material acts of misrepresentation or the making of material false statements with the intent to deceive or defraud and for the purpose of inducing another person to reasonably act thereon to that person's detriment.
- Cheating on an examination or practical test required for issuance of the license.
- The commission of any criminal act in whole or part through display or use of the issued license.
- Engaging in pest control practices in a manner that caused substantial actual harm to an individual, the public health, the safety of the public or others, or the environment.
- Performing work in a category for which a certified applicator or technician is not licensed or an apprentice is not trained, during or after a suspension for the same.
- Grossly negligent or intentional poisoning of a person or an animal or plant with significant economic, environmental, or historical value.
- Repeated or persistent refusal to comply with a TDA order or to permit inspection by a TDA inspector.

The duration of a revocation under these guidelines shall be for a time period of one year unless the nature, circumstances, extent, and gravity or the hazard or potential hazard of the violation justifies a different time period or the time period for revocation expressly established by the governing statute is different.

#### **SPECIAL CIRCUMSTANCES REVIEW**

The Enforcement Division will determine whether special circumstances exist that may warrant a deviation from these guidelines. Cases involving such circumstances shall be submitted to a special circumstances review committee comprised of one representative from the Enforcement Division and two representatives of the Agriculture and Consumer Protection (ACP) Division. The Deputy General Counsel or the deputy's designee shall act as chairman of the committee.

Other agency staff may attend for purposes of providing expert advice regarding the regulated industry or to provide other input as requested. The committee, however, shall deliberate and make its final determination without the presence of other agency staff.

The committee will review each submitted case to determine whether a departure from these guidelines is warranted or not. If the committee determines that departure is not warranted, these guidelines shall be immediately implemented with respect to the particular case. If the committee determines that a departure is warranted, the committee's chair shall submit the committee's

recommendation to depart from these guidelines to the Chief of Staff within 48 hours of said determination.

The Chief of Staff shall approve or reject the committee's recommendation within 7 business days of submission. If no decision is made within the specified time period, the recommendation is rejected.

#### **SCOPE**

These guidelines supplement, but do not supersede, the license suspension and revocation procedures in the Organic Certification and Grain Warehouse programs or any other program for which an ACP-approved written license suspension and revocation policy currently exists or is later adopted. These guidelines also do not supersede any license revocation, suspension, or voidance imposed by operation of law. When applying these guidelines, the violation history for a particular licensed location will be used as the basis for determining whether a license suspension or revocation is warranted. These guidelines shall not be construed to limit or restrict in any manner TDA's statutory authority to suspend or revoke a license.