

# VEHICLE STORAGE FACILITIES

*Administrative Rules of the Texas Department of Licensing and Regulation  
16 Texas Administrative Code, Chapter 85*

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**85.1. Authority.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

These rules are adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2303.

**85.10. Definitions.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **Abandoned nuisance vehicle**--A motor vehicle that is at least 10 years old and is of a condition only to be demolished, wrecked, or dismantled.
- (2) **Act**--The Vehicle Storage Facility Act, Texas Occupations Code, Chapter 2303.
- (3) **Affidavit of Right of Possession**--A form prescribed by the department and provided by the licensee for use by an immediate family member certifying right of possession to a vehicle stored at a vehicle storage facility.
- (4) **Commission**--The Texas Commission of Licensing and Regulation.
- (5) **Day**--Twenty-four continuous hours.
- (6) **Department**--The Texas Department of Licensing and Regulation.
- (7) **Executive director**--The executive director of the department.
- (8) **Fence**--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.
- (9) **Immediate family**--A vehicle owner's parents, spouse, children, brothers, and sisters.
- (10) **Impoundment**--The following actions when performed on a stored vehicle:
  - (A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;
  - (B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;
  - (C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or
  - (D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.
- (11) **License holder** or **Licensee**--The person to which the department issued a license.
- (12) **Main entrance**--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.
- (13) **Notice of Right of Possession for Salvage**--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

- (14) **Person**--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.
- (15) **Primary lien holder**--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.
- (16) **Principal**--An individual who:
  - (A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:
    - (i) 10% of a corporation's outstanding stock; or
    - (ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;
  - (B) has the controlling interest in a business;
  - (C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;
  - (D) holds a position as a member of the board of directors or other governing body of a business; or
  - (E) holds a position as an elected officer of a business.
- (17) **Proof of loss claim form**--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.
- (18) **Registered owner**--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.
- (19) **Vehicle**--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.
- (20) **Vehicle owner**--A person:
  - (A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;
  - (B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;
  - (C) who holds a vehicle through a valid lease agreement;
  - (D) who is an unrecorded lienholder with a right to possession; or
  - (E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.
- (21) **Vehicle storage facility (VSF)**--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.
- (22) **Vehicle transfer**--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

**85.20. Exemptions.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) These rules do not apply to a vehicle parked or stored at a VSF with the consent of the vehicle's owner.
- (b) These rules do not apply to VSFs operated by persons licensed under Texas Occupations Code, Chapter 2301.

**85.200. License Required--Vehicle Storage Facility.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

A person may not operate a VSF unless the person holds a VSF license issued by the department. For purposes of this section, each VSF physical location or lot is a separate facility and must obtain a VSF license.

**85.201. License Requirements--Vehicle Storage Facility License.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

To be eligible for a VSF license, an applicant must:

- (1) submit a completed application on a department approved form;
- (2) pay the fee required under §85.800;
- (3) provide proof of insurance required under §85.400;
- (4) successfully pass a criminal background check;
- (5) provide the name, and address of each partner if the applicant is a partnership;
- (6) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;
- (7) provide the name, and address of each owner of the VSF and the percentage of ownership interest each holds in the facility;
- (8) provide the name, and address of the operator or manager of the VSF if it is not operated or managed by one of the owners;
- (9) provide the facility's physical address, mailing address, and telephone number;
- (10) state the VSF's storage capacity;
- (11) state the height of any fence enclosing the VSF and the date it was installed;
- (12) include a statement indicating whether the facility has an all weather surface, signs posted in the proper locations, and lighting, as required by these rules; and
- (13) adopt the model drug testing policy provided in these rules or file an alternate drug testing policy for approval under these rules.

**85.202. License Approval Vehicle Storage Facility.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

The department may deny a VSF license application if the applicant:

- (1) knowingly supplied false or incomplete information on the application;
- (2) in the three years preceding the date of application, the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:
  - (A) a felony; or
  - (B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; or
- (3) the VSF for which the license is sought does not meet the standards for storage facilities established by

these rules.

**85.203. License Requirements--Vehicle Storage Facility License Renewal.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) To renew VSF license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the applicable fee required under §85.800; and
  - (3) successfully pass a criminal background check.
- (b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a VSF that requires a license under this chapter.
- (c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**85.204. License Requirements--Vehicle Storage Facility Employee License.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482)*

- (a) To be eligible for a VSF employee license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the fee required under §85.800;
  - (3) successfully pass a criminal background check; and
  - (4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.
- (b) A person may not work at a VSF unless the individual holds a license issued under this chapter. A VSF may not employ a person unless the person holds a license issued by the department.
- (c) For purposes of this chapter, persons operating or managing a VSF as sole proprietor or other unincorporated business organization are employees of the VSF and required to obtain a VSF employee license.

**85.205. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License.** *(New section adopted effective May 3, 2010, 35 TexReg 3482)*

- (a) An applicant for a dual vehicle storage facility and towing operator employee license must:
  - (1) meet the requirements under:
    - (A) §85.204; and
    - (B) 16 TAC §86.208 and §§86.209, 86.210, or 86.211.
  - (2) submit to the department:
    - (A) an application on a department-approved form; and
    - (B) pay the required license fee under §85.800.
- (b) A person holding a license issued under this section may:

- (1) work at a vehicle storage facility; and
  - (2) perform towing operations.
- (c) An applicant holding a valid vehicle storage facility license who seeks to obtain a dual vehicle storage facility and towing operator employee license may request an expedited license by:
- (1) meeting the requirements under subsection (a);
  - (2) submit an application on a department-approved form; and
  - (3) pay the required license fee under §85.800.

**85.206. License Requirements--Vehicle Storage Facility Employee License Renewal; Dual Vehicle Storage Facility Employee and Towing Operator License.** *(New section adopted effective May 3, 2010, 35 TexReg 3482)*

- (a) To renew a VSF employee license or dual VSF employee and towing operator license, an applicant must:
- (1) submit a completed application on a department-approved form;
  - (2) pay the applicable fee required under §85.800;
  - (3) successfully pass a criminal background check; and
  - (4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under §85.725, the applicant must submit a negative drug test to the department.
- (b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any duties of a VSF employee that requires a license under this chapter.
- (c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**85.207. License--Notice of Proposed Denial, Opportunity to Comply.** *(New section adopted effective May 3, 2010, 35 TexReg 3482)*

- (a) If the department recommends denial of an application for a license under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.
- (b) The notice must state the reason for the department's decision.
- (c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

**85.208. Department Notifications to Licensee.** *(New section adopted effective May 3, 2010, 35 TexReg 3482)*

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee.

**85.209. Licenses--License Terms.** *(New section adopted effective May 3, 2010, 35 TexReg 3482)*

A license issued by the department is valid only for the person who applied for the license; applies only to the single VSF or person named on the license; and is valid for 12 months from the date of issuance.

**85.400. Insurance Requirements.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) An applicant or VSF licensee is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license, submitting a license renewal, changing a business name or affiliation, and upon request of the department.
- (b) The certificate of insurance must be obtained from and submitted by an insurance company licensed to do business in Texas pursuant to the Texas Insurance Code.
- (c) The facility name and address shown on the proof of insurance form must be the same as the name and address on the license. The VSF licensee is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured facility.
- (d) The VSF licensee must obtain insurance for the insured facility that meets the following requirements:
  - (1) Insurance coverage shall be in an amount of not less than:
    - (A) \$9,000 per claim if the VSF has space to store not more than 50 motor vehicles;
    - (B) \$18,000 per claim if the facility has space to store 51 to 99 motor vehicles; and
    - (C) \$25,000 per claim if the facility has space to store 100 or more motor vehicles.
  - (2) The VSF licensee's insurance policy must be kept in full force and effect so long as the facility is operating.
  - (3) The certificate of insurance must contain a provision obligating the insurer to give the department thirty-day notice before the effective date of a policy cancellation date. Notice must be in a form acceptable to the department.
- (e) The department may revoke a VSF license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.

**85.450. Inspections--General.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) All VSFs shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.
- (b) Inspections shall be performed during the normal operating hours of the VSF. The department may conduct inspections under the Act and these rules with or without advance notice.
- (c) The department inspector will contact the VSF owner, manager, or representative upon arrival at the VSF, and before proceeding with the inspection.
- (d) The VSF owner, manager, or representative shall cooperate with the inspector in the performance of the inspection.

**85.451. Periodic Inspections.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) Each VSF shall be inspected at least once every two years.
- (b) The VSF owner, manager, or representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.
- (c) On completion of the inspection, the VSF shall be advised in writing of the inspection results.

- (d) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations, in accordance with §85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.
- (e) Based on the results of the periodic inspection, a VSF may be moved to a risk-based schedule of inspections. The department will notify the owner of the VSF, in writing, if the facility becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

**85.452. Risk-based Inspections.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482)*

- (a) Risk-based inspections are those required in addition to periodic inspections required under §85.451 for VSFs determined by the department to be a greater risk to the public.
- (b) To determine which licensee will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.
- (c) The owner of the VSF shall pay the fee required under §85.800 for each risk-based inspection.
- (d) VSFs subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Tier	Criteria	Total Inspection Frequency (includes both periodic and risk-based inspections)
Tier 1	Violation of signage requirements as determined by the department; or Violation of the rules determined by the department to pose a potential economic harm to property; or Repeated violations relating to unlicensed activity.	Once each year
Tier 2	A serious or repeated violation relating to documentation and records requirements; or Failure to maintain required records; or Serious or repeated violations relating to unlicensed activity.	Twice each year
Tier 3	Repeated, serious violations related to VSF technical requirements; or A significant violation of notifications rules, particularly those that threaten economic harm; or Significant or repeated violations relating to unlicensed activity; or Violations related to improper disposal of vehicles.	Four times each year

- (e) At the time of inspection of a VSF, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.
- (f) Upon completion of the inspection, the owner of the VSF shall be advised in writing of the results.
- (g) The inspection report will identify violations that must be corrected by the VSF. The report will also indicate the corrective actions required to address the violations, in accordance with §85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.
- (h) VSFs on a risk-based inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the VSF, in writing, if there is a change in the VSF's risk-based schedule or if the VSF is returned to a periodic inspection schedule.

**85.453. Corrective Actions Following Inspection.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) When corrective actions to achieve compliance are required:
  - (1) the department shall provide the VSF a list of required corrective actions;
  - (2) within 10 days after receiving the list of required corrective actions, the VSF shall complete all corrective actions and provide written verification of the corrective actions to the department; and
  - (3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.
- (b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with §85.900.

**85.650. Towing and Storage Advisory Board.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective January 16, 2012, 37 TexReg 112)*

- (a) The advisory board consists of the ten members appointed by the chairman of the commission with the approval of the commission. The ten members include:
  - (1) one representative of a towing company operating in a county with a population of less than one-million;
  - (2) one representative of a towing company operating in a county with a population of one-million or more;
  - (3) one owner of a vehicle storage facility located in a county with a population of less than one-million;
  - (4) one owner of a vehicle storage facility located in a county with a population of one-million or more;
  - (5) one law enforcement officer from a county with a population of less than one-million;
  - (6) one law enforcement officer from a county with a population of one-million or more;
  - (7) one parking facility owner;
  - (8) one representative of property and casualty insurers who write automobile insurance in this state;
  - (9) one member of a booting company; and
  - (10) one public member.
- (b) The advisory board shall include representation for each classification of towing.
- (c) Advisory board members serve terms of six years, with the terms of two or three members, expiring on February 1 of each odd-numbered year.
  - (1) A member may not serve more than two full consecutive terms.
  - (2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.
- (d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

- (e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.
- (f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.
- (g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

**85.700. Responsibilities of the Licensee--Proof of Exempt Status.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

Vehicle storage facilities shall be responsible for providing proof regarding whether or not a vehicle was stored with the vehicle owner's consent.

**85.701. Responsibilities of Licensee--Advertising.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

A licensee may not engage in false, misleading, or deceptive advertising.

**85.702. Responsibilities of Licensee--Changes to VSF Operator and VSF Employee License.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) A licensed VSF operator shall notify the department of changes to any of following information:
  - (1) change in the business name no later than the effective date of the change;
  - (2) change of mailing or physical address no later than the effective date of the change;
  - (3) change in the facility's storage capacity no later than the effective date of the change; or
  - (4) change in the company's drug testing policy.
- (b) VSF employees licensed under these rules must submit a change of mailing address to the department within thirty days of the change.

**85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective January 16, 2012, 37 TexReg 112)*

- (a) Applicability. If a vehicle is removed by the vehicle owner within 24 hours after the VSF receives the vehicle, notification as described in subsections (b)–(i) does not apply.
- (b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.
  - (1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified, electronic certified, or registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.
  - (2) Vehicles not registered in Texas. After accepting for storage a vehicle not registered in Texas, the VSF shall notify the vehicle's current registered owner and all recorded lien holders within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle.
- (c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.

- (d) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark and to be timely filed if:
  - (1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or
  - (2) the notice was published as provided for by subsection (e).
- (e) Notice by publication. Notice to the registered owner and the primary lienholder of a vehicle towed to a VSF may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:
  - (1) the vehicle is registered in another state;
  - (2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;
  - (3) the identity of the registered owner cannot be determined;
  - (4) the registration does not contain an address for the registered owner; or
  - (5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.
- (f) Notice by publication is not required if each notice sent in accordance with subsection (b) is returned because:
  - (1) the notice was unclaimed or refused; or
  - (2) the person to whom the notice was sent moved without leaving a forwarding address.
- (g) Only one notice is required to be published for an abandoned nuisance vehicle.
- (h) Form of notifications. All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, or electronic certified mail.
  - (1) All mailed notifications shall state:
    - (A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;
    - (B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";
    - (C) the first date for which a storage fee is assessed;
    - (D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;
    - (E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;
    - (F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";
    - (G) a notice of the towed vehicle owner's right under Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

- (H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.
- (2) All published notifications shall state:
  - (A) the full name, street address, telephone number, and VSF license number of the VSF;
  - (B) a description of the vehicle; and
  - (C) the total amount of charges assessed against the vehicle.
- (3) Notices published in a newspaper may contain information for more than one towed vehicle.
- (i) If authorized, a notification fee may not be charged unless the notification is actually sent or performed before the vehicle is released.

**85.704. Responsibilities of Licensee--Second Notice; Consent to Sale.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective January 16, 2012, 37 TexReg 112)*

- (a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 15<sup>th</sup> day after the date notice is mailed or published under §85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.
- (b) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under §85.703, the operator of the VSF shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.
- (c) Notice under this section must include:
  - (1) the information listed in §85.703(i);
  - (2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);
  - (3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice is provided is:
    - (A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and
    - (B) a consent to the sale of the vehicle at a public sale.
- (d) Notwithstanding subsection (b), if publication is required for notice under this section, the notice must include:
  - (1) the information listed in §85.703(i)(2); and
  - (2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:
    - (A) a waiver of all right, title, and interest in the vehicle; and
    - (B) a consent to the sale of the vehicle at a public sale.
- (e) The operator shall pay any excess proceeds to the person entitled to those proceeds.

**85.705. Responsibilities of Licensee--Report to Law Enforcement.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482, amended effective January 16, 2012, 37 TexReg 112)*

- (a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the local law enforcement agency with jurisdiction over the area from which the

vehicle was towed:

- (1) a general description of the vehicle;
  - (2) the state and number of the vehicle's license plate, if any;
  - (3) the vehicle identification number of the vehicle, if it can be ascertained;
  - (4) the location from which the vehicle was towed; and
  - (5) the name and location of the vehicle storage facility where the vehicle is being stored.
- (b) The report required by this section must be made by:
- (1) telephone;
  - (2) electronically;
  - (3) delivered personally;
  - (4) by facsimile, or
  - (5) in any manner prescribed by a law enforcement agency.
- (c) VSF records shall indicate specifically to whom the report required by subsection (b) was reported and in what manner, as well as the time and date of the report, or the unique control or tracking number assigned to the report by local law enforcement documenting the report.
- (d) This section does not apply to a vehicle received as a result of an incident management tow requested by law enforcement unless the law enforcement agency requests a report of incident management tows within its jurisdiction.

**85.706. Responsibilities of Licensee--Documentation and Records.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective January 16, 2012, 37 TexReg 112)*

- (a) Retention of written documentation. Vehicle storage facility licensees must maintain a copy of the original written documentation regarding their operations for a period of two years from the date of the release or disposal of the vehicle. Written documentation shall be in the form of:
- (1) motor vehicle registration checks;
  - (2) notification letters;
  - (3) certified return receipts;
  - (4) tow tickets (if applicable);
  - (5) bills for service;
  - (6) auction sales receipts;
  - (7) inventory (if applicable);
  - (8) certificates of authority to demolish; and
  - (9) any authorized document used to release a vehicle, including but not limited to a title, affidavit of right of possession and control, or court order.
- (b) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the VSF.

These records shall contain:

- (1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;
  - (2) the date, time and location from which the vehicle was towed, and name of person or company who authorized the tow;
  - (3) the tow operator's TDLR license number, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, §502.180, and §504.508;
  - (4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identification) and identification number provided by the individual to whom the vehicle was released;
  - (5) the date of any vehicle transfer, and the address of the location to which the vehicle was transferred along with the name of the towing company and tow operator's with TDLR license number, who made the transfer;
  - (6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any law enforcement auction sales receipt, or any transfer document issued by the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or if the vehicle has been disposed of or demolished; and
  - (7) all amounts received at the time the vehicle was released, including the specific nature of each charge.
- (c) Nonconsent tow tickets. The VSF shall ensure that nonconsent tow tickets (if applicable) contain the licensed name of the towing company, publicly listed telephone number, the towing company certificate of registration number and the TDLR license number of the towing operator.
- (d) Regulatory documents. A VSF may not accept a vehicle for storage unless the VSF makes and maintains a copy of the towing operator's valid TDLR operator's license and tow truck cab card for the operator and truck delivering the vehicle for storage. The copies required by this subsection must be current and valid on the date a vehicle is delivered to the VSF for storage.
- (e) Availability of documentation. All documents required by this chapter shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a law enforcement officer, during the same hours the VSF must ensure that vehicles are available for release to the vehicle owner.
- (f) Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was released or disposed of.

**85.707. Responsibilities of Licensee--Notice of Complaint Procedure.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) Each VSF shall notify the vehicle owner of the department's website and email address, mailing address, and telephone number, for purposes of directing complaints regarding the vehicle storage to the department.
- (b) The licensee may use a legible sticker or rubber stamp to convey the required information required by subsection (a). The notice shall be included on:
  - (1) a sign prominently displayed to the public at the place of payment, with letters at least one inch in height, and a contrasting background; and
  - (2) the front page of any bill for service.

**85.708. Responsibilities of Licensee--Rights of Owner or Authorized Representative.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective January 16, 2012, 37 TexReg 112)*

- (a) A VSF must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.
- (b) When a person demonstrates ownership or right to possession of a motor vehicle stored at a VSF, the person or his/her authorized representative shall:
  - (1) be entitled to inspect a copy of the tow ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so (reasonable opportunity to view the tow ticket displayed behind a glass enclosure satisfies this requirement);
  - (2) be given access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated by a law enforcement officer (the VSF must require a receipt from the person to whom the personal belongings are released for any such property removed from the stored vehicle by the vehicle owner or authorized representative);
  - (3) have access, during normal business hours, to the vehicle for the purposes of insurance and/or repair estimates; and
  - (4) on request, have access to the current nonconsent towing fees schedule relating to required posting at a VSF for the towing company that towed the vehicle to the VSF.
- (c) When right of possession is demonstrated by submission of a proof of loss claim form from an insurance company, subsection (b)(2) does not apply.
  - (1) For purposes of this subsection, when an insurance company presents a proof of loss claim form, the term "access" includes, but is not limited to:
    - (A) verifying the present existence of such vehicle,
    - (B) confirming the loss,
    - (C) taking measurements and photographs of the interior and exterior of said vehicle,
    - (D) recording or attempting to ascertain mileage,
    - (E) verifying the VIN plate or label,
    - (F) opening or attempting to open doors, hood or trunk panels,
    - (G) writing a repair estimate, documenting features, options and conditions, and
    - (H) when authorized by the owner, operator or lessee of the vehicle, removing the vehicle from the VSF.
  - (2) Upon the request of an insurer presenting a proof of loss claim form, or upon the request of a tow truck operator possessing a notice of right of possession for salvage form, a VSF shall provide a legible copy of the tow ticket created by the towing operator responsible for towing the vehicle to the VSF to either:
    - (A) the insurer, within three business days of the insurer presenting the proof of loss claim form; or
    - (B) the tow truck operator, at the time the tow truck operator presents a copy of the notice of right to possession for salvage form to the VSF.

- (3) The VSF may provide the copy of the tow ticket to the insurer, via regular mail, facsimile, or by other electronic means, provided the insurer provides the VSF with a specific mailing address, facsimile phone number, web address or email address to which to send the tow ticket.
- (d) A VSF may not request a vehicle owner or operator to sign an authorization form for a tow, repair or any other service if the storage of the vehicle is the result of a tow initiated by law enforcement.

**85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482)*

Unless authorized by another law or regulation, a VSF shall not allow a tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter the storage area of the facility.

**85.710. Responsibilities of Licensee--Release of Vehicles.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective September 1, 2010, 35 TexReg 7786; amended effective January 16, 2012, 37 TexReg 112)*

- (a) Release of vehicles. The VSF must comply with the following requirements when releasing vehicles.
  - (1) The VSF shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:
    - (A) the justice court that has jurisdiction in the precinct in which the vehicle is towed; and
    - (B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.
  - (2) The VSF shall provide the owner or the owner's representative with a tow ticket. The tow ticket may be combined with a VSF Invoice; provided, the combined tow ticket and VSF Invoice comply with the following requirements:
    - (A) tow charges must be separated from VSF storage charges and each category of charges must be preceded by a heading or label identifying the charges as "Tow Charges" or "Storage Charges";
    - (B) tow charges must appear on the combined statement of charges exactly as stated on the tow ticket prepared by the tow operator and provided to the VSF at the time the vehicle is presented for storage; and
    - (C) the combined statement of charges meet and contain all required elements of a separate VSF invoice and tow ticket; provided the license number and name of the tow operator may be excluded.
  - (3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:
    - (A) a notarized power-of-attorney;
    - (B) a court order;
    - (C) a certificate of title;
    - (D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

- (E) name and address information corresponding to that contained in the files of the Texas Department of Motor Vehicles;
  - (F) a current automobile lease or rental agreement executed by the operator of the vehicle or a person holding a power of attorney executed by the person named in the lease agreement;
  - (G) appropriate identification of any state or federal law enforcement agency representative; or
  - (H) the most recent version of a department-approved form or electronic version of a department-approved form published on the department's website; which the VSF must make available to the vehicle owner or person seeking possession of or access to the vehicle.
- (4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.
  - (5) A VSF must accept evidence of financial responsibility (insurance card), as required by §601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.
  - (6) Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:
    - (A) pay the charges for services regulated under this chapter or Chapter 86 of this title, including charges for and associated with delivery or storage of the vehicle; and
    - (B) present valid photo identification issued by this state, another state, a federal agency or a foreign government.
  - (7) If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.
  - (8) If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.
  - (9) For purposes of determining when the one hour for release of a vehicle starts, the VSF must clearly note on the receipt the time of the call requesting vehicle release and have the person requesting release separately initial the notation.
- (b) A VSF may not require an owner, operator or agent of an owner or operator of a vehicle to sign an authorization or release form to release the vehicle from the VSF if that form:
    - (1) changes the status of the law enforcement initiated tow from a nonconsent status to a consent tow status;
    - (2) changes the status of the storage resulting from a nonconsent tow from a nonconsent storage status to a consent storage status; or
    - (3) imposes any additional charges not regulated by the department.

**85.711. Responsibilities of Licensee--Forms of Payment for Release of Vehicle.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept credit cards, debit cards or electronic checks.

**85.712. Responsibilities of Licensee--Release of Vehicles; Payment by Lienholder or Insurance Company.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) A lienholder who repossesses a vehicle delivered to a VSF is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.
- (b) An insurance company that pays a claim of total loss on a vehicle in a VSF is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

**85.713. Responsibilities of Licensee--Release of Vehicles From Law Enforcement Hold.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) The licensee may not refuse to release the vehicle to the vehicle's owner or insurance company due to nonpayment by the law enforcement agency that directed the towing and storage of the vehicle for evidentiary or examination purposes.
- (b) Pursuant to 37 Texas Administrative Code §4.16, relating to commercial vehicle rules and enforcement procedures, a commercial motor vehicle stored at the direction of the Texas Department of Public Safety shall not be released until the amount of delinquent administrative penalty assessed against the vehicle owner has been paid.

**85.714. Responsibilities of Licensee--Provide Insurance Information to Vehicle Owner.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that on file with the department.

**85.715. Responsibilities of Licensee--Publicly Listed Telephone Number.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

All VSFs shall have a publicly listed telephone where the VSF can be contacted. If the telephone number is changed from the number in the most recent VSF application, the VSF shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

**85.716. Responsibilities of Licensee--Inspection of Stored Vehicles.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

When the VSF accepts a vehicle towed without the vehicle owner's consent, the VSF shall inspect the vehicle and note as an addition on the tow ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the tow ticket. If the license plate number or vehicle identification number on the tow ticket is incorrect, the VSF shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

**85.717. Responsibilities of Licensee--Removal of Parts; Dismantling or Demolishing Stored Vehicles.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

Except as provided for by these rules, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed VSF. Vehicles may be dismantled or demolished only if the VSF has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

**85.718. Responsibilities of Licensee--Use of Stored Vehicles Prohibited.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

No stored vehicle may be used for personal or business use without the written consent of the vehicle's owner.

**85.719. Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sunroofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in this chapter.
- (b) Impoundment of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the impoundment of the stored vehicle.
- (c) Impoundment Fees. A VSF operator is entitled to charge a fee for impoundment if, in addition to the requirements set out in subsection (b), the VSF operator, at a minimum:
  - (1) conducts a written inventory of any unsecured personal property contained in the vehicle;
  - (2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; or
  - (3) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation or analogous state agency.

**85.720. Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective January 16, 2012, 37 TexReg 112)*

A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without consent of the vehicle owner or owner's authorized representative.

**85.721. Responsibilities of Licensee--Vehicle Transfers.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

When a motor vehicle has been delivered to a VSF, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of VSF capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The VSF must send notice in accordance with these rules, except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a VSF, the licensee shall:

- (1) charge only those fees otherwise permitted by §85.722 after the vehicle is towed to another location without the vehicle owner's permission;
- (2) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the VSF until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and
- (3) maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

**85.722. Responsibilities of Licensee--Storage Fees and Other Charges.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective January 16, 2012, 37 TexReg 112)*

- (a) For the purposes of this section, "VSF operator" includes a garage, parking lot, or other facility that is:
  - (1) owned by a governmental entity; and
  - (2) used to store or park at least 10 vehicles each year.

- (b) The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.
- (c) Notification fee.
  - (1) A VSF may not charge a vehicle owner more than \$50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF operator may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.
  - (2) If a vehicle is removed by the vehicle owner within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.
  - (3) If a vehicle is removed by the vehicle owner before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF operator may not charge a notification fee to the vehicle owner.
- (d) Daily storage fee. A VSF operator may not charge less than \$5.00 or more than \$20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length. A VSF operator shall charge a fee of \$35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length.
  - (1) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.
  - (2) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in §85.703 of these rules, is mailed or published.
  - (3) A VSF operator that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days before the date the request for owner information is sent to the appropriate governmental entity. Such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.
  - (4) A VSF operator shall charge a daily storage fee after notice, as prescribed in §85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.
- (e) Impoundment fee. A VSF operator may charge a vehicle owner an Impoundment fee if Impoundment is performed in accordance with these rules. The Impoundment fee may not exceed \$20. If the VSF operator charges a fee for Impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.
- (f) Governmental or law enforcement fees. A VSF operator may collect from a vehicle owner any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.
- (g) Environmental hazard fee. A VSF operator may collect from a vehicle owner a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.
- (h) Additional fees. A VSF operator may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, §2308.2065.

**85.723. Responsibilities of Licensee--Disposal of Certain Vehicles.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) Applicability. A VSF operator may not dispose of a vehicle unless the operator has complied with all provisions of the Act, including §§2303.151-2303.154 and §2303.157, concerning notification and disposal of abandoned vehicles.

- (b) Documentation and records. A VSF operator shall keep complete and accurate records of any vehicle disposed of under these rules. These records shall include:
  - (1) a copy of all forms completed by the VSF and provided to the vehicle buyer;
  - (2) copies of all notifications issued to the registered owner and all recorded lienholders, regardless of whether the notifications were mailed or published; and
  - (3) a copy of all forms submitted to governmental authorities to dispose of and demolish an abandoned nuisance vehicle.

**85.724. Responsibilities of Licensee--Disposition of Abandoned Nuisance Vehicle.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

- (a) A VSF that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under §2303.151 or §2303.152 of the Act.
- (b) The VSF must:
  - (1) notify the Texas Department of Transportation that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee to the Texas Department of Transportation; or
  - (2) notify the appropriate law enforcement agency and pay a fee to that agency.
- (c) A law enforcement agency described by subsection (b)(2) may sign a document issued by the Texas Department of Transportation.
- (d) Public sale. A VSF may dispose of a vehicle through a public sale in compliance with §2303.157 of the Act. Disputes over the sale or dispersal of proceeds from the sale of the vehicle may be pursued through a court of appropriate jurisdiction.

**85.725. Responsibilities of Licensee--Drug Testing Policy.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective January 16, 2012, 37 TexReg 112)*

- (a) A VSF adopting paragraphs (1)-(12) will comply with Texas Occupations Code, §2303.160.
  - (1) Purpose and Scope. This drug testing policy provides guidance to supervisors and VSF employees about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all VSF employees and all VSF job applicants.
  - (2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2303 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.
  - (3) Consent Form.
    - (A) Before a drug test is administered, VSF employees and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.
    - (B) The consent form shall set forth the following information:
      - (i) the procedure for confirming and verifying an initial positive test result;

- (ii) the consequences of a verified positive test result; and
    - (iii) the consequences of refusing to undergo a drug test.
  - (C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's and applicant's system.
- (4) Compliance with Drug Testing Policy. The failure or refusal by a VSF employee or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.
- (5) General Rules. This drug testing policy is governed by these general rules:
- (A) VSF employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.
  - (B) VSF employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.
  - (C) All VSF property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. VSF property includes, but is not limited to, vehicles, desks, containers, files, and lockers.
  - (D) Any VSF employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and *nolo contendere*) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The VSF will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and *nolo contendere*).
- (6) Types of Tests.
- (A) Pre-employment. All applicants for positions requiring a VSF employee license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.
  - (B) Annual. All VSF employees employed by a VSF must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.
  - (C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.
    - (i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a VSF employee for random urine drug testing and the actual presentation for specimen collection.
    - (ii) Random donor selection dates will be unannounced with unpredictable frequency.
    - (iii) Each licensed VSF participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed VSF employees employed by or under contract with the VSF.
  - (D) Return-to-Duty and Follow-Up.
    - (i) Any VSF employee who has violated this drug testing policy and is allowed to

return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a VSF employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

- (ii) The VSF employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.
- (7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.
- (8) Specimen Collection Procedures.
- (A) All urine specimens will be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services (DHHS).
  - (B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.
  - (C) If the analysis of the primary specimen confirms the presence of drugs, the VSF employee has 72 hours to request sending the split specimen to another federal DHHS certified laboratory for analysis. The VSF employee will be required to pay for his or her split specimen test(s).
  - (D) For the VSF employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the VSF employee will be notified, and the MRO will notify the company.
  - (E) The VSF will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:
    - (i) VSF employee's name;
    - (ii) VSF employee license number;
    - (iii) date of the positive test;
    - (iv) substance detected by the drug test; and
    - (v) disciplinary action imposed for violation of the drug testing policy.
- (9) Reporting and Reviewing of Drug Testing Results.
- (A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.
  - (B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the federal Department of Transportation.
  - (C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the VSF employee by telephone upon exchange of acceptable identification.
  - (D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any

other person except under written authorization from the VSF employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

- (10) Distribution of Information to VSF Employee. The minimal distribution of information for all VSF employees will include the display and distribution of:
  - (A) informational material on the physical and mental effects of drugs;
  - (B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;
  - (C) the company's policy regarding the use of prohibited drugs and/or alcohol; and
  - (D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.
- (11) Consequences of a Confirmed Positive Drug Test.
  - (A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.
  - (B) If a VSF employee's positive drug test result has been confirmed, the VSF employee will stand down from VSF duties and may be subject to disciplinary action up to and including termination.
  - (C) The company may consider the following factors in determining the appropriate disciplinary response: the VSF employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.
  - (D) No disciplinary action may be taken pursuant to this drug policy against VSF employees who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.
- (12) Exceptions.
  - (A) VSF employees subject to random drug testing under Title 49 Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the VSF employee tested negative and the negative test results are submitted to and verified by the MRO.
  - (B) VSF employees holding a valid towing operator license issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 86 are exempt from this section.
- (b) Independent drug testing policy.
  - (1) A VSF may file an independent drug testing policy.
  - (2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).
- (c) Compliance. A VSF must adopt and implement a drug testing policy compliant with subsection (a) or (b).

**85.800. Fees.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482)*

- (a) Application fees.

- (1) Vehicle Storage Facility License
  - (A) Original Application--\$250
  - (B) Renewal--\$250
- (2) Vehicle Storage Facility Employee License
  - (A) Original Application--\$75
  - (B) Renewal--\$75
- (3) Dual Vehicle Storage Facility and Tow Operator License
  - (A) Original Application--\$150
  - (B) Expedited Dual License--\$75
  - (C) Renewal--\$150
- (b) Revised/Duplicate License/Certificate/Permit/Registration--\$25
- (c) Risk-based Inspections--\$150
- (d) Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).
- (e) All fees are nonrefundable except as provided for by commission rules or statute.

**85.900. Administrative Sanctions and Penalties.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

A person that violates Texas Occupations Code, Chapter 2303, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapters 2303, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2303 and applicable agency rules.

**85.1000. Technical Requirements--Facility Fencing Requirements.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

Enclosure and security of stored vehicles.

- (1) Fencing. If not enclosed by a five-foot high fence on or before September 1, 1985, all VSFs shall be completely enclosed by a fence at least six feet high with a gate, which is locked at all times when the licensee or an agent or employee is not at the storage lot. No two VSFs may operate within the same fenced area.
- (2) Security of vehicles.
  - (A) No vehicle may be stored or kept at any licensed VSF unless it is kept inside the fenced or enclosed area at all times. For purposes of this subparagraph, the term "enclosed" shall mean inside a building.
  - (B) A vehicle accepted for storage in a VSF must be secured to prevent theft of the vehicle or its contents, including but not limited to locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

**85.1001. Technical Requirements--Storage Lot Surface.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

All VSFs shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche, that enables the safe and effective movement of stored vehicles upon all portions of the lot, both

under their own power and under tow, at all times, regardless of prevailing weather conditions. The surface shall also be free of overgrown vegetation.

**85.1002. Technical Requirements--Storage Lot Lighting.** *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

All VSFs shall maintain illumination levels adequate for nighttime release of vehicles. The term "adequate" shall mean sufficient to allow inspection of a vehicle for damage at the time of release. At a minimum, there must be one lighting fixture containing at least a 250-watt element for each 1/4 acre of storage area.

**85.1003. Technical Requirements--Storage Lot Signs.** *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective September 1, 2010, 35 TexReg 7786; amended effective January 16, 2012, 37 TexReg 112)*

- (a) Facility information. All VSFs shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:
  - (1) the registered name of the storage lot, as it appears on the VSF license;
  - (2) street address;
  - (3) the telephone number for the owner to contact in order to obtain release of the vehicle;
  - (4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and
  - (5) the storage lot's state license number preceded by the phrase "VSF License Number."
- (b) All VSFs shall have a sign in view of the person who claims the vehicle setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. The sign must be located so it is clearly visible to a vehicle owner at the place of payment and shall have letters at least 1 inch in height with a contrasting background.
- (c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that:
  - (1) "Nonconsent tow fees schedules available on request." The VSF shall provide a copy of a nonconsent towing fees schedule on request; and
  - (2) The nonconsent towing fees provided for viewing must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code §2308.2065.
- (d) Instruments accepted for release of vehicle. VSFs shall have a sign describing the documents that may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described in §85.710(a)(3)(A) – (G), and shall also state: "Affidavit of Right of Possession Furnished Upon Request." This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.
- (e) A VSF must conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle."
- (f) Combination signs. A VSF may combine the signs described in subsections (b), (c), (d), and (e), if the combination sign meets the requirements of each of the separate signs.

**85.1004. Technical Requirements--Company Records.** *(New section adopted effective, January 16, 2012, 37 TexReg 112)*

- (a) General records to be maintained. Except as provided in paragraphs (1) and (2), every vehicle storage facility shall maintain at a principal office in Texas all records and information required by the department.

- (1) Texas firms. If a vehicle storage facility wishes to maintain records at a location other than its principal office in Texas, the vehicle storage facility shall make a written request to the department. A vehicle storage facility may not begin maintaining records at an alternate location until the request is approved by the department.
  - (2) Out-of-state firms. A vehicle storage facility whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a vehicle storage facility may maintain such records at an out-of-state facility if the vehicle storage facility reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted under this chapter.
- (b) Preservation and destruction of records. All books and records generated by a vehicle storage facility must be maintained for not less than two years at the vehicle storage facility's principal business address.