

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

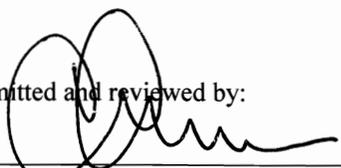
The Texas Transportation Commission (commission) finds it necessary to propose the repeal of §3.20 and §3.25, amendments to §§3.21 - 3.24, and new §3.20, §3.25, and §3.26 relating to complaint resolution to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, repeals, and new sections attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the repeal of §3.20 and §3.25, amendments to §§3.21 - 3.24, and new §3.20, §3.25 and §3.26 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

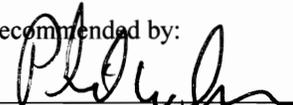
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Government and
Public Affairs Division

Recommended by:



Executive Director

112873 OCT 27 11

Minute
Number

Date
Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes the
3 repeal of §3.20 and new §3.20, amendments to §§3.21 - 3.24, the
4 repeal of §3.25, and new §3.25 and §3.26, all concerning
5 complaint resolution.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 Senate Bill 1420, 82nd Legislature, Regular Session, 2011, made
9 changes to Transportation Code, §201.801, related to complaint
10 resolution. The amendments, repeals, and new sections
11 incorporate those statutory changes into the department's
12 existing rules related to complaint resolution. They prescribe
13 the policies and procedures by which complaints may be filed, by
14 which submitted complaints will be recorded and resolved, and by
15 which the department will notify customers of its complaint
16 process. The amendments standardize the department's complaint
17 resolution process and facilitate submission of complaints
18 through the use of technologies that were not available when the
19 rules were initially adopted.

20

21 Current §3.20 is repealed and replaced with a new §3.20, which
22 sets out the new requirements adopted by the legislature in SB
23 1420 for handling customer complaints. The new provisions
24 restate parts of Transportation Code, §201.801, and require the
25 department to maintain a system to promptly and efficiently act

1 on complaints filed with the department; to maintain information
2 about the parties to and the subject matter of a complaint, a
3 summary of the review or investigation of the complaint, and the
4 disposition of the complaint; to periodically notify the parties
5 to the complaint of its status until final disposition unless
6 notice would jeopardize an undercover investigation; and to make
7 information available describing its procedures for complaint
8 investigation and resolution. The new section states that the
9 subchapter prescribes the policies and procedures applicable to
10 the department's complaint process.

11
12 Amendments to §3.21 exempt from the application of the
13 subchapter reports and investigation requests that are made to
14 the department's internal compliance office. The department has
15 a separate process for handling internal compliance matters.

16
17 Amendments to §3.22 recognize that an electronic complaint is a
18 form of written complaint. The amendments add a definition of
19 the term "person" to clarify that the term includes individuals,
20 organizations, and all other legal entities. That definition is
21 accompanied by changing the phrase "person or organization,"
22 which is used in the current rules, to "person" throughout the
23 subchapter. The amendments delete the definition of "resolution
24 letter" because it is no longer used in the subchapter. The
25 amendments also delete the definition of "resolved" because it

1 was meaningless and the matter is addressed in a substantive
2 provision in §3.25.

3

4 Amendments to §3.23 clarify that a written complaint should be
5 addressed to the Public Information Officer. The "Report-a-
6 Pothole" toll-free number has been added as an option for
7 submitting an oral complaint. Those amendments update the rules
8 to reflect the ways that information is currently collected by
9 the department. The amendments also add language to authorize
10 the filing of an electronic complaint through the department's
11 Internet site or by submitting an email to AskTxDOT@txdot.gov.
12 The amendments delete current subsection (d) which states that
13 complaints will not be accepted through the Internet.

14

15 Amendments to §3.24 delete the requirements that information
16 about the ways for filing complaints be printed on the state
17 travel maps and accompany applications and other information
18 provided to entities regulated by the department. Much of the
19 deleted language is no longer relevant because of the growth of
20 electronic communication methods. The amendments reflect that
21 printed material and mailings, which were previously used to
22 communicate with the public, are no longer a significant means
23 of communication. The department has broad authority to
24 determine the most effective methods to provide information to
25 the public concerning complaint filing procedures in order to

1 facilitate submission of complaints to the department and
2 therefore, the listing of those specific methods is no longer
3 necessary.

4
5 Current §3.25 is repealed and replaced with new §3.25 and §3.26.
6 New §3.25 removes the requirement that to be reviewed a
7 complaint must be "found to be valid." All complaints filed
8 under §3.23 will be reviewed and resolved. The changes provide
9 that the department will determine the actions that have been or
10 will be taken on the complaint or that no action will be taken.
11 The department will advise the complainant of the actions taken
12 or to be taken or that a determination has been made to take no
13 action and the reason for that determination. Finally, if the
14 department has not made a determination on the complaint within
15 90 days after it is received, the department periodically will
16 notify the complainant of the progress that is being made on the
17 complaint until it is resolved. A complaint is considered to be
18 resolved when the department informs the complainant of the
19 determination that the department has made on the complaint.

20
21 New §3.26 reflects the changes to the requirements made by SB
22 1420 for the collection, analysis, and reporting of complaint
23 information by the department. Subsection (a) provides that the
24 department will maintain a computer database for complaints.
25 The database will contain information on all complaints

1 concerning the department whether filed with a business office
2 of a district, division, office, or region of the department.
3 It will contain the information appropriate for the compilation
4 and analysis of detailed complaint data. In addition to the
5 information that is required to be kept under the current rules
6 the database will include the length of time required to provide
7 a response to the customer from the date the complaint was
8 received and if applicable, the county and district where the
9 person, thing, or condition that is the subject of the complaint
10 is located. New subsection (b) states that the department will
11 provide detailed statistics and analyze trends on a district and
12 division basis, and will analyze trends related to similar
13 complaints. New subsection (c) states that the department will
14 report complaint information monthly to region, division, and
15 office directors, district engineers, and other upper level
16 positions and quarterly to the Texas Transportation Commission
17 (commission). The new provisions of §3.26 will standardize and
18 facilitate department analysis of complaint statistics and trend
19 analysis, in order to identify needed improvements.

20

21 FISCAL NOTE

22 James Bass, Chief Financial Officer, has determined that for
23 each of the first five years the amendments, repeals, and new
24 sections as proposed are in effect, there will be no fiscal
25 implications for state or local governments as a result of

1 enforcing or administering the amendments, repeals, and new
2 sections.

3
4 Coby Chase, Director, Government and Public Affairs Division,
5 has certified that there will be no significant impact on local
6 economies or overall employment as a result of enforcing or
7 administering the amendments, repeals, and new sections.

8

9 PUBLIC BENEFIT AND COST

10 Mr. Chase has also determined that for each year of the first
11 five years the sections are in effect, the public benefit
12 anticipated as a result of enforcing or administering the
13 amendments, repeals, and new sections will be more efficient and
14 timely processing of customer complaints. There are no
15 anticipated economic costs for persons required to comply with
16 the sections as proposed. There will be no adverse economic
17 effect on small businesses.

18

19 SUBMITTAL OF COMMENTS

20 Written comments on the proposed repeal of §3.20 and §3.25, the
21 amendments to §§3.21 - 3.24, and new §3.20, §3.25, and §3.26 may
22 be submitted to Coby Chase, Director, Government and Public
23 Affairs Division, Texas Department of Transportation, by mail at
24 125 East 11th Street, Austin, Texas 78701-2483, by fax to
25 (512)463-9896, or by electronic mail to AskTxDOT@txdot.gov. If

1 electronic mail is used for comment submission, the subject line
2 should contain the phrase, "Complaint Resolution Comments." The
3 deadline for receipt of comments is 5:00 p.m. on December 12,
4 2011.

5

6 STATUTORY AUTHORITY

7 The repeals, amendments, and new sections are proposed under
8 Transportation Code, §201.101, which provides the commission
9 with the authority to establish rules for the conduct of the
10 work of the department, and more specifically, Transportation
11 Code, §201.801, which requires the commission to adopt rules to
12 establish the department's complaint resolution process.

13

14 CROSS REFERENCE TO STATUTE

15 Transportation Code, §201.801.

SUBCHAPTER C. COMPLAINT RESOLUTION

§3.20. Purpose. [~~Transportation Code, Section 201.801, requires the department to make information available to the public and appropriate state agencies describing its complaint resolution process. The sections under this subchapter prescribe the policies and procedures by which complaints may be filed, resolved, and recorded, and by which the department will notify consumers and service recipients of its complaint process.~~]

(a) Transportation Code, §201.801, requires the department to:

(1) maintain a system to promptly and efficiently act on complaints filed with the department;

(2) maintain information about the parties to and the subject matter of a complaint and a summary of the review or investigation of the complaint and the disposition of the complaint;

(3) periodically notify the parties to the complaint of its status until final disposition unless notice would jeopardize an undercover investigation; and

(4) make information available describing its procedures for complaint investigation and resolution.

(b) This subchapter prescribes the policies and procedures

1 by which complaints may be filed, resolved, and recorded, and by
2 which the department will notify customers of its complaint
3 process.

4
5 §3.21. Applicability. The policies and procedures of this
6 subchapter do not apply to a:

7 (1) contested case under §§1.21-1.38 [~~§§1.21-1.61~~] of
8 this title (relating to Procedures in Contested Case
9 [~~Procedure~~]);

10 (2) vendor protest of a delegated purchase under
11 Government Code, Chapter 2155;

12 (3) department employee complaint governed by the
13 department's Human Resources Manual; [~~or~~]

14 (4) routine inquiry, report of a condition on a state
15 highway, or request for information; or [~~or~~]

16 (5) report of a matter or an investigation request
17 submitted to the department's internal compliance office
18 established under Transportation Code, Chapter 201, Subchapter
19 F-1.

20
21 §3.22. Definitions. The following words and terms, when used
22 in this subchapter, shall have the following meanings, unless
23 the context clearly indicates otherwise.

1 (1) Complainant--A person [~~or organization~~] who files a
2 complaint.

3 (2) Complaint--An oral or written statement, including an
4 electronic complaint submitted under §3.23(c) of this subchapter
5 (relating to Filing a Complaint), concerning a matter which the
6 department has the authority to resolve, and that:

7 (A) expresses dissatisfaction about:

8 (i) a department policy, program, procedure, action,
9 or operation; or

10 (ii) an action or operation of a department
11 contractor; and

12 (B) requests or implies that the department respond or
13 take some action.

14 (3) Department--The Texas Department of Transportation.

15 (4) Person--An individual, firm, corporation, company,
16 partnership, or other legal entity.

17 [~~(4) Resolution letter--The written document officially~~
18 ~~closing a complaint file, specifying the action or measure taken~~
19 ~~to resolve a complaint or explaining why no action or measure~~
20 ~~was taken.]~~

21 [~~(5) Resolved -- The action taken by the department.]~~

22

23 §3.23. Filing a Complaint.

1 (a) Written complaint. A person [~~or organization~~] may file
2 a written complaint addressed to the department, attention:

3 Public Information Officer [~~Office~~], at:

4 (1) its main business office, 125 East 11th Street,
5 Austin, Texas 78701-2483; or

6 (2) any other business office of the department.

7 (b) Oral complaint. A person [~~or organization~~] may file an
8 oral complaint:

9 (1) at any department business office in person or by
10 telephone[~~, as listed in the local telephone directory~~]; or

11 (2) by calling: [~~1-800-558-9368 (55-TxDOT)~~].

12 (A) 1-800-558-9368 (55-TxDOT); or

13 (B) 1-888-885-8248 (Report-a-Pothole).

14 (c) Electronic complaint. A person may file an electronic
15 complaint by completing and submitting the standard "Contact Us"
16 form on the department's Internet site at www.txdot.gov or by
17 submitting an email to AskTxDOT@txdot.gov.

18 (d) [(e)] Content. A complaint should contain the
19 following information:

20 (1) the name of the complainant [~~name, mailing address,~~
21 ~~and telephone number of the complainant~~];

22 (2) the mailing address, telephone number, or email
23 address of the complainant;

1 (3) [~~(2)~~] a concise statement of the nature of the
2 complaint, including the underlying facts; and

3 (4) [~~(3)~~] the specific action or measure, if any,
4 requested of the department.

5 ~~[(d) For purposes of this subchapter, written complaints~~
6 ~~will not be accepted through the Internet.]~~

7

8 §3.24. Notice to Customers [~~Consumers and Service Recipients~~].

9 The department will provide contact information [~~notice of~~
10 ~~mailing addresses and/or telephone numbers~~] as may be
11 appropriate to geographical locations and subject matter for
12 purposes of directing complaints to the department. In addition
13 to any other method used by the department to provide the
14 information, the department will publish notice of how to direct
15 complaints: [~~Relevant information will at a minimum be provided~~
16 ~~as follows.~~]

17 ~~[(1) General publication. The department will publish~~
18 ~~notice of how to direct complaints.]~~

19 (1) [~~(A)~~] in selected public information literature;

20 ~~[(B) in the official state travel map;]~~

21 (2) [~~(C)~~] on the department's Internet site; and

22 (3) [~~(D)~~] at each business office of the department.

23 ~~[(2) Notice to entities regulated by the department. The~~

1 ~~department will include notice of how to direct complaints~~
2 ~~concerning the department's regulation of a regulated entity in~~
3 ~~an:]~~

4 [~~(A) application for an outdoor advertising license and~~
5 ~~license renewal issued in Transportation Code, Chapter 391,~~
6 ~~Subchapter C:]~~

7 [~~(B) application for rural road sign permit and permit~~
8 ~~renewal issued under Transportation Code, Chapter 394:]~~

9 [~~(C) information piece concerning the control of~~
10 ~~outdoor advertising signs:]~~

11 [~~(D) information piece concerning screening of~~
12 ~~junkyards under Transportation Code, Chapter 391, Subchapter E:~~
13 ~~and]~~

14 [~~(E) application for a permit issued under Chapter 28~~
15 ~~of this title (relating to Oversize and Overweight Vehicles and~~
16 ~~Loads) authorizing the movement of oversize and overweight~~
17 ~~vehicles and loads.]~~

18

19 §3.25. Complaint Resolution.

20 (a) Review. The department will promptly review a
21 complaint filed under §3.23 of this subchapter (relating to
22 Filing a Complaint) and will make every reasonable effort to
23 resolve the matter consistent with applicable law.

1 (b) Resolution. After reviewing the complaint the
2 department will determine:

3 (1) the action that the department plans to take, or that
4 action has been taken, to address the matter that is the subject
5 of the complaint; or

6 (2) that the department will take no action on the
7 matter.

8 (c) Department response.

9 (1) The department will provide to a person who files a
10 complaint under §3.23 of this subchapter an oral, written, or
11 electronic response that sets out the department's determination
12 under subsection (b) of this section. If the department
13 determines that it will take no action, the response will
14 provide the reasons that determination was made.

15 (2) If the department does not provide a response under
16 paragraph (1) of this subsection within 90 days after the date
17 the complaint was received by the department, the department
18 periodically will notify the complainant of the status of the
19 complaint until it is resolved. A complaint is considered to be
20 resolved when the department informs the complainant of the
21 department's determination under subsection (b) of this section.

22 [~~(a) Department response.~~]

23 [~~(1) Review. The department will promptly review a~~

1 ~~complaint found to be valid and will make every reasonable~~
2 ~~effort to resolve the matter consistent with applicable law.]~~

3 ~~[(2) Written complaints. The department will respond to~~
4 ~~each written complaint by providing a resolution letter to the~~
5 ~~complainant. The department will provide the person who filed~~
6 ~~the complaint, and each person or entity that is the subject of~~
7 ~~the complaint, information about the department's policies and~~
8 ~~procedures relating to complaint investigation and resolution.]~~

9 ~~[(3) Oral complaints. The department may respond in~~
10 ~~writing or orally to an oral complaint.]~~

11 ~~[(b) Recordkeeping.]~~

12 ~~[(1) File. The department will maintain an information~~
13 ~~file for each written complaint and its disposition. The file~~
14 ~~will contain:]~~

15 ~~[(A) the date the complaint is filed;]~~

16 ~~[(B) the name of the person filing the complaint;]~~

17 ~~[(C) the subject matter of the complaint;]~~

18 ~~[(D) a record of each person contacted in relation to~~
19 ~~the complaint;]~~

20 ~~[(E) a summary of the results of the review or~~
21 ~~investigation of the complaint; and]~~

22 ~~[(F) if the department takes no action on the~~
23 ~~complaint, an explanation of the reasons that no action was~~

1 ~~taken.]~~

2 ~~[(2) Notification. If the department does not provide a~~
3 ~~resolution letter to the complainant within 90 days of the date~~
4 ~~the complaint is filed, the department will notify the~~
5 ~~complainant of the status of the complaint on the 91st day and~~
6 ~~every 90 days thereafter until a resolution letter is provided.]~~

7

8 §3.26. Complaint Data Collection, Analysis, and Reporting.

9 (a) Data collection. The department will maintain a
10 computer database for complaints. The database will contain for
11 each complaint filed under §3.23 of this subchapter (relating to
12 Filing a Complaint) customer information that is appropriate for
13 the compilation and analysis of detailed complaint data. The
14 information will include:

15 (1) the date the complaint is filed;

16 (2) the name of the person filing the complaint;

17 (3) the subject matter of the complaint;

18 (4) a record of each person contacted in relation to the
19 complaint;

20 (5) a summary of the results of the review or
21 investigation of the complaint;

22 (6) if the department takes no action on the complaint,
23 an explanation of the reasons that no action was taken;

1 (7) the length of time required to provide a response to
2 the customer from the date that the complaint was received by
3 the department; and

4 (8) if applicable, the county and district where the
5 person, thing, or condition that is the subject of the complaint
6 is located.

7 (b) Data analysis.

8 (1) The department will provide detailed statistics and
9 analyze trends on a district and division basis.

10 (2) The department will identify trends related to
11 similar complaints, including the number of persons who filed
12 each type of complaint.

13 (c) Data reporting. The department will report complaint
14 information:

15 (1) monthly to region, division, and office directors,
16 district engineers, and individuals filling senior leadership
17 positions; and

18 (2) quarterly to the Texas Transportation Commission.