

## MEMORANDUM OF UNDERSTANDING

Between

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS (DPS)

and

SCHERTZ POLICE DEPARTMENT (Allied Agency)

### I. General Agreement

In accordance with Transportation Code § 621.402, DPS has established the following parameters for approved Allied Agencies seeking to enforce the defined state laws within Transportation Code Chapter 621, Subchapter F.

In order to maximize the uniform enforcement of statute, the parties enter into this Memorandum of Understanding (MOU) regarding training, approved scale use, annual scale re-calibration standards, violation report requirements, and mandated annual reporting.

### II. DPS Responsibilities

In order to better implement and maintain the standards in this MOU, DPS will:

1. Train, retrain (as necessary or desirable), test and certify the officers of any qualified Allied Agency.
2. Forward any weight enforcement complaints or challenges to the issuing Allied Agency.

DPS may conduct random, in-person observation of weight enforcement inspections conducted by an Allied Agency in order to ensure that Allied Agency's officers are adhering to DPS certification standards.

### III. Allied Agency Responsibilities

#### A. Certification Training

Allied Agency must enroll their commissioned, full-time officers in the 40 hour, Basic CVE course conducted at the direction of the DPS Motor Carrier Bureau. A commissioned officer must obtain 80% or better to become certified as a "weight enforcement officer." After initial certification, mandated re-certification training will take place following each legislative session. Weight enforcement officers must obtain 80% or better to maintain certification. DPS will immediately suspend any officer who fails to re-certify and Allied Agency must prohibit that officer from conducting or assisting with any weight enforcement activities.

Allied Agency may discontinue agency certification at any time by notifying DPS in writing. If a certified officer separates from an Allied Agency, Allied Agency must notify DPS within ten days.

## **B. Application of Statute**

During the course of duty, an Allied Agency weight enforcement officer must adhere to the “reasonable suspicion” requirements in weighing a commercial motor vehicle as inferred by Transportation Code § 621.402. There must be an articulable reason to detain a vehicle prior to utilizing any type of approved scale to determine actual weight. A fixed location signaling all commercial traffic to enter a weight enforcement site is in direct conflict with this mandate.

## **C. Approved Scales**

Allied Agency must purchase and utilize scales from the approved Scale List found at the following URL: <http://www.dps.texas.gov/cve/Publications/approvedScaleList.pdf>.

The approved scales must be re-calibrated during each calendar year by a certified scale technician or vendor. All individual scale calibration records must be retained for the current year plus the two previous years and are subject to review during contested judicial proceedings and random DPS audit.

## **D. Violation Report Requirements**

In addition to typical driver and vehicle information and infractions, the following information must be included on all weight enforcement violation reports:

1. US DOT Number / TX DMV Number;
2. State identification / registration identification of units and company unit numbers (license plate numbers for the power units and towed vehicle);
3. Registered weights and the Gross Vehicle Weight Ratings of each vehicle;
4. Axle configuration diagram with corresponding axle distance measurements and the recorded actual weights measured of each axle, tandem axle and tri-axle;
5. Overweight permit number;
6. Load disposition; and
7. Gross weight and group weight.

## **E. Annual Reporting Requirements**

Allied Agency must submit an annual report of its weight enforcement activities for each calendar year to DPS. The report must be directed to the Motor Carrier Bureau in Austin, Texas and must be received by January 31 of each year for the prior year’s enforcement activities. The annual reporting requirements under this Section will survive the termination date of this MOU.

## **F. Statutory Financial Reporting / Remittance Requirements**

Allied Agency must comply with Transportation Code § 621.506(g) and report that data to DPS. This includes: (1) sending the required 50 percent share to the State of Texas’s Comptroller of Public Accounts if the fine meets the statutory criteria; and (2) only imposing the minimum dollar fine unless the vehicle’s weight was determined by a scale given or approved by DPS.

Allied Agency must comply with the reporting and fiscal requirements mandated by this MOU and TRC 621.506. Prior renewal, verification of fiscal standing with the Texas Comptroller of Public Accounts will be conducted.

#### IV. Termination of Certification

**\*\*\* UNLESS RENEWED, THIS MOU WILL EXPIRE ON August 1, 2021 \*\*\***

To prevent a loss of authority to conduct weight enforcement inspections, please mail, email, or FAX your renewal request to DPS no more than 60 but no less than 30 days prior to the expiration of this MOU. If the renewal has not been executed by the Allied Agency before the MOU expiration date, certified officers must cease performing all weight enforcement activities, until the renewal has been fully executed.

DPS may issue a warning to Allied Agency if Allied Agency fails to comply with MOU requirements in such a way that DPS deems that the weight enforcement action being taken is contrary to established training and statute. Failure to immediately correct any compliance issue or comply with the required remittance of assessed fines to the Texas Comptroller's Office may result in the termination of the established MOU and the decertification of Allied Agency.

**V. Program Coordinators**

Allied Agency’s weight enforcement coordinators are responsible for all communications and contacts required to manage this MOU. The coordinators must provide any updates regarding contact information within 30 calendar days. The current program coordinators for this MOU are:

**Allied Agency:**

**Department of Public Safety of the State of Texas:**

\_\_\_\_\_  
Program Coordinator

\_\_\_\_\_  
Captain Omar Villarreal, Manager  
Program Coordinator

\_\_\_\_\_  
Address

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Address

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Email Address

\_\_\_\_\_  
[Omar.Villarreal@dps.texas.gov](mailto:Omar.Villarreal@dps.texas.gov)  
Email Address

**Evidence of Acceptance:**

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Signature of Authorized Official

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Political Subdivision

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Name

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Title

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Date

## MEMORANDUM OF UNDERSTANDING

Between

DEPARTMENT OF PUBLIC SAFETY OF THE STATE OF TEXAS (DPS)

and

SCHERTZ POLICE DEPARTMENT (Allied Agency)

### I. GENERAL AGREEMENT

#### A. Introduction and Statutory Authority

DPS and Allied Agency enter into this Memorandum of Understanding (MOU) in order to maximize the effective utilization of commercial motor vehicle, driver, and cargo inspection resources; to avoid duplication of effort, to expand the number of inspections performed; to advance uniformity of inspections; and to minimize delays in schedules incurred by the industry inherent to this type of enforcement activity.

1. Due to the need for a basic delineation of routine responsibilities for the federal, state, county, and municipal agencies, it is agreed:
  - DPS will inspect vehicles operating over public highways and at carrier terminal facilities.
  - Allied Agencies must, as a routine practice, confine inspection activities to vehicles operating over public highways and city streets in their jurisdictions with the exception of municipal police officers certified under Tex. Transp. Code § 644.101. These certified municipal police officers may conduct vehicle inspections at carrier terminal facilities.
2. The Federal Motor Carrier Safety Administration (FMCSA) has imposed timeliness and accuracy standards on DPS regarding interstate and intrastate motor carrier information. DPS, in turn, has established timeliness and accuracy standards for Allied Agencies engaged in the inspection of commercial motor vehicles (CMV).
3. Allied Agencies and their authorized inspection representatives (Program Coordinators) must implement procedures in accordance with the minimum standards in this MOU.
4. In order to advance uniformity in the inspection of CMV and their operators, Allied Agencies must adopt the Commercial Vehicle Safety Alliance's (CVSA) North American Standard Roadside Inspection Procedures and the North American Standard Out-of-Service Criteria as adopted by DPS under the following:
  - Tex. Transp. Code Ch. 644, located at <http://www.statutes.legis.state.tx.us/>;

- 37 Tex. Admin. Code Chapter 4, Subchapter B; 37 Tex. Admin. Code Chapter 16, Subchapter A; and 37 Tex. Admin. Code Chapter 21 located at <http://www.sos.texas.gov/tac/index.shtml>; and
- The most current version of the CMV Enforcement Guidance Documents provided by DPS to the Allied Agencies:

#### CVSA Levels of Inspection

- Level 1 North American Standard
- Level II Walk-a-round Inspection
- Level III Driver-Only Inspection
- Level IV Special Inspection
- Level V Vehicle-Only Inspection (Terminal)

The State of Texas has an inspection quality agreement with the FMCSA in its Commercial Vehicle Safety Plan. Inspections found to be non-compliant with this policy may be nullified by the DPS Motor Carrier Bureau (MCB) from the carrier's safety profile and from the inspector's certification record by the authority of the Assistant Division Director of the DPS Texas Highway Patrol (THP) or that person's designee.

If amendments to 37 Tex. Admin. Code Chapter 4, Subchapter B require amending this MOU, DPS will do so within a reasonable period of time. The date of any amendment under this paragraph will not affect the renewal date described in Section IV, unless otherwise indicated by DPS.

## **II. DPS RESPONSIBILITIES**

DPS will:

- A. Train, retrain (as necessary or desirable), test, and certify Allied Agency inspectors as per the agreement between DPS and the CVSA.
- B. Approve inspection forms for all inspections conducted in conformance with this MOU.
- C. Approve vehicle and driver out-of-service stickers.
- D. Supply CVSA decals on a cost-recovery basis to Allied Agencies.
- E. Supply software necessary for the data entry of all inspection information, on a cost recovery basis to Allied Agencies.
- F. Supply Allied Agencies with inspection data, upon request.
- G. Forward challenges of data in inspections or crash reports to Allied Agencies for their inspections.

- H. Conduct random in-person observation of inspections conducted by Allied Agency in order to ensure Allied Agency's inspectors maintain practical proficiency in the program.

### III. ALLIED AGENCY RESPONSIBILITIES

#### A. Certification Testing

Allied Agency must:

1. Enroll its commissioned, full-time officers who have not met the minimum certification requirements for enforcement of Tex. Transp. Code Ch. 644 in training programs required by 37 Tex. Admin. Code § 4.13(b) prior to using these officers as inspectors for commercial vehicle enforcement. Allied Agency must reimburse DPS for costs associated with any training provided by DPS under 37 Tex. Admin. Code § 4.13(b)(5).
2. Implement a program to ensure its officers perform the required number of inspections annually, as specified in 37 Tex. Admin. Code § 4.13(c), and successfully complete the required annual certification training to maintain certification. To further program goals and achieve the highest quality in inspections, Allied Agency must ensure its officers conduct more than the minimum number of inspections required annually to maintain certification and that inspections are evenly distributed throughout the year to maintain enforcement continuity.
3. Immediately suspend from performing CVSA enforcement and inspections, any officer who fails to maintain certification or who fails to perform the required number of inspections following CVSA's North American Standard Uniform Inspection Procedures and the North American Standard Out-of-Service Criteria guidelines.
4. Send a representative to the annual MCSAP meeting held by DPS to ensure familiarity with all updated policies and procedures.

#### B. Policies and Guidelines

Allied Agency must:

1. Conduct inspections only by using CVSA-certified officers.
2. Only conduct inspections on-duty. No inspections may be performed at any time for the specific purpose of benefitting a carrier's safety profile whether on-site or off-site (such as a roadside or at an inspection facility). Compensation for inspections of any kind by other entities (including carriers and carrier employees) is prohibited.
3. Not use inspection as a pretext to search commercial vehicles.

4. Ensure traffic stops performed on a commercial vehicle are made by either a CVSA certified inspector or by a peace officer using probable cause or reasonable suspicion guidelines. An absence of these requisites will be cause for inspection report invalidation and a program participation review.
5. Use the most current forms approved by DPS during the inspection process. Forms and software may not be altered without the prior, written approval of DPS.
6. Ensure that CVSA-certified inspectors have adequate tools and resources to conduct queries into motor carrier registration and operating authority while conducting roadside inspections.
7. Perform Level I, IV, and V inspections requiring undercarriage inspection and brake measurements utilizing an inspection pit or with a referring officer for safety.
8. Perform only Level V terminal inspections on motor coaches for certification purposes except for unusual circumstances (such as post-crash investigations). All other inspections must be conducted roadside. Level I, II, IV and V motor coach inspections must only be performed by Passenger Vehicle Inspection certified inspectors.
9. Forward inspection data electronically to DPS within ten calendar days following the date of inspection for processing and final compliance using the most recent version of reporting software.
10. Forward crash reports involving commercial motor vehicles to Texas Department of Transportation (TxDOT) no later than ten calendar days after the date of the crash investigation.
11. Allow DPS to conduct random in-person observation of inspections conducted by Allied Agency in order to ensure that Allied Agency's inspectors maintain practical proficiency in the program.
12. Not use its certification to enforce federal safety regulations as a primary method to generate program revenue through enforcement penalties, or to enhance criminal interdiction activities.
13. Not allow officers certified to enforce federal safety regulations to participate in secondary employment activities that present a conflict of interest related to their commercial vehicle enforcement duties. This prohibition includes Allied Agency officers trained by DPS that are no longer assigned to commercial vehicle enforcement units but remain employed by the Allied Agency.
14. Require all defects disclosed during the inspection process to be corrected.
15. Adopt the Recommended Out-of-Service Criteria and other defect repair verification procedures as developed by CVSA.
16. Honor CVSA inspection decals affixed to those vehicles by all authorized agencies. CVSA decals will be affixed to vehicles which pass the Level I or V CVSA inspection with no disqualifying violations under the North American Standard Roadside Inspection Procedures and the North American Standard Out-of-Service Criteria.

17. Maintain the official copy of all reports of inspections conducted by its CVSA certified inspectors for the current calendar year, plus two additional years. The official copy may be in paper or retrievable electronic form, and it must bear the signature of the commercial motor vehicles driver involved in the inspection. A copy must be provided to DPS upon DPS's request.
18. Conduct mock inspections and safety presentations as requested by the carrier and as approved by supervisors. Allied Agency may conduct safety presentations that include a mock (walk-around) inspection, but no documented inspection may be performed as part of a walk-around or safety presentation.
19. Note circumstances in the inspection report when more than two citations are issued during an inspection. An important aspect of the MCSAP is consistency in the inspection process and uniform enforcement. While it is recognized that uniform enforcement may include the issuance of a citation by the inspecting officer, it is also recognized that there may be exceptional occasions when the issuance of multiple citations may be warranted.
20. Document all violations (citations and warnings) discovered on the inspection report as violations, including violations of local ordinances. All CMV contacts must be recorded on the inspection report.
21. Investigate and determine whether a correction to data needs to be made when data in an inspection or crash report is challenged. Allied Agency must notify the motor carrier and DPS in writing of the results of the investigation within ten calendar days. If a correction is necessary, the Allied Agency must make the correction and forward the corrected reports to DPS immediately. Retaliatory actions against motor carriers who file data challenges are strictly prohibited.
21. Must notify DPS in writing within ten calendar days any time an officer's certification status changes (is certified, suspended, or decertified for different types of inspections, or transfers out of the CVSA inspection program). A cumulative list of officers whose status has changed must be sent to DPS by January 31 of each year.
22. Must comply with the annual fiscal requirements mandated by TRC 644.102 in reporting the total amount of fines collected, actual enforcement program expenses and the remittance of mandated funds to the Texas Comptroller of Public Accounts.

#### IV. TERMINATION OF CERTIFICATION

**\*\*\* UNLESS RENEWED, THIS MOU WILL EXPIRE ON AUGUST 1, 2021.\*\*\***

##### A. Renewal of this MOU

To prevent a loss of authority to conduct CVSA inspections, please mail or FAX your renewal request to the Department no more than 60 nor less than 30 days prior to the expiration of this MOU. If the renewal has not been executed by the Allied Agency before the MOU expiration date, certified officers must cease performing all CVSA inspections, until the renewal has been fully executed.

##### B. Decertification

1. DPS may decertify Allied Agency, or individual officers conducting inspections for Allied Agency, for failure to demonstrate practical proficiency in the program during random in-person observations by DPS, or by audits of inspections submitted.
2. DPS may decertify Allied Agency, or individual officers conducting inspections for Allied Agency, for using the certification as a primary method of generating program revenue or enhancing criminal interdiction activities.
3. DPS may decertify Allied Agency, or individual officers conducting inspections for Allied Agency, if officers to engage in secondary employment activities that present a conflict of interest with their commercial vehicle enforcement duties.
4. DPS may decertify Allied Agency, or individual officers conducting inspections for Allied Agency, for failure to comply with the provisions of the MOU, training, officer certification, or data-sharing requirements, including the requirement that Allied Agency reimburse DPS for training expenses and the requirement that Allied Agency forward information and respond to requests in a timely manner, or any other provisions of 37 Tex. Admin. Code §§ 4.13 and 4.14. Reimbursement can be made by check or money order, payable to the Department of Public Safety of the State of Texas.
5. DPS may decertify Allied Agency for failure to comply with the annual fiscal requirements mandated by Tex. Transp. Code § 644.102. Allied Agency must properly report fines collected, actual expenses, and the amount of remittance sent to the State of Texas's Comptroller of Public Accounts.

##### C. Termination of Certification

1. Termination of certification, whether by decertification, request of Allied Agency, or by failure to renew, will result in the inability of Allied Agency, to retain expenses for any enforcement actions taken after the effective date of the termination of certification. All reporting requirements, including the list of officers suspended and no longer certified which is normally due by January 31 of each year, inspection data reports, and crash

reports must be provided to DPS immediately upon discontinuation in the certification program.

2. Allied Agency may discontinue certification at any time by notifying DPS Program Coordinator in writing.
3. The CVSA and Federal Motor Carrier Safety Administration require officers to complete a minimum number of inspections annually in order for officers to renew their certifications. The purpose of this requirement is to ensure officers achieve and maintain practical proficiency in inspecting commercial motor vehicles. Therefore, DPS will decertify Allied Agency, or individual officers conducting inspections for Allied Agency, for failure to report any inspections to DPS within a six month period or for failure to evenly space the required number of inspections throughout the year.
4. Any Termination of Certification terminates Allied Agency's authority to enforce federal safety regulations under Texas Transp. Code Ch. 644, and Allied Agency's eligibility for reimbursement of expenses from penalties assessed. DPS will notify the program coordinator for Allied Agency and the Comptroller of Public Accounts in writing of any Termination of Certification.
5. DPS may issue a warning to Allied Agency if Allied Agency fails to conduct any inspections within a three month period. DPS may also issue a warning if Allied Agency fails to comply with MOU requirements in such a way that DPS deems the quality or timeliness of inspection data could be compromised, or certified officers would fail to maintain practical proficiency in the program. Failure to correct the compliance issues within three months, or such other period as DPS may specify, can result in termination of the MOU and decertification of Allied Agency.

## V. PROGRAM COORDINATORS

The parties' program coordinators are responsible for all communications and contacts *required to manage this MOU*. The parties must provide any updates regarding contact information *within 30 calendar days*. The current program coordinators for this MOU are:

**Allied Agency:**

**Department of Public Safety of the State of Texas:**

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Program Coordinator

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Captain Omar Villarreal, Manager  
Program Coordinator

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Address

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Texas Highway Patrol Motor Carrier Bureau  
P.O. Box 4087  
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Address

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Fax Number

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**Evidence of Acceptance:**

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Political Subdivision

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date