Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the Texas Register does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE
PART 1. TEXAS DEPARTMENT OF AGRICULTURE
CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
SUBCHAPTER U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department or TDA) adopts new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408, published in the November 8, 2019, issue of the Texas Register (44 TexReg 6643), without changes. These rules will not be republished.

The adoption of §§19.400 - 19.408 establishes requirements and restrictions necessary to address dangers posed by destructive strains of citrus canker in parts of Brazoria, Cameron, Fort Bend, and Harris counties. Previous requirements and restrictions were adopted on an emergency basis.

The Department did not receive any comments on the proposal.

The rules are adopted under the Texas Agriculture Code, §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances and rules to provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

Chapters 12, 71, and 73 of the Texas Agriculture Code are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2019.

TRD-201904864

Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
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Proposal publication date: November 8, 2019
For further information, please call: (512) 463-7476

TITLE 16. ECONOMIC REGULATION
PART 1. RAILROAD COMMISSION OF TEXAS
CHAPTER 3. OIL AND GAS DIVISION
16 TAC §3.70

The Railroad Commission of Texas (Commission) adopts amendments to §3.70, relating to Pipeline Permits Required, without changes to the proposed text as published in the October 18, 2019, issue of the Texas Register (44 TexReg 5965). The rule will not be republished. The amendments clarify language related to production and flow lines, allow each operator to renew all its permits in the same month, clarify fee requirements for gathering pipelines, and reduce late fees for operators with 50 miles or less of pipeline.

The Commission received one comment on the proposed amendments from the Texas Oil and Gas Association (TXOGA). However, the comment merely referenced the scope of §3.70 in its comments on the Commission's amendments to Chapter 8, which were proposed concurrently with the amendments to §3.70; TXOGA did not comment on the content of proposed amendments to §3.70. The Commission appreciates TXOGA's review.

The amendments in subsection (a) reduce confusion regarding when production or flow lines do not leave a lease and, therefore, do not need a permit. The current rule language only requires production or flow lines to have a pipeline permit if the production or flow line leaves a lease. The amendments remove the language related to whether a production or flow lines leaves a lease in its entirety. Instead, the Commission will only require a permit for those production and flow lines over which the Commission has pipeline safety jurisdiction. The Commission currently exercises pipeline safety jurisdiction over two categories of production and flow lines: (1) certain onshore pipeline and gathering production facilities, as defined in §8.1(a)(1)(B) of this title (relating to General Applicability and Standards); and (2) all pipeline facilities originating in Texas waters, as defined in §8.1(a)(1)(D) of this title. The Commission does not have pipeline safety jurisdiction over production and flow lines that are not defined in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, and
therefore will no longer require a permit for those pipelines—even if the pipelines leave a lease. The Commission adopts a definition of production and flow lines similar to the definition used in API RP 80 to help reduce confusion. The Commission's intention is to clarify which production or flow lines require a permit. To determine which lines require a permit, operators can perform the following analysis: if the production or flow line meets either of the definitions in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, the operator is required to obtain a permit for the line; if the production or flow line does not meet either of the definitions in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, the operator is not required to obtain a permit for the line.

The amendments in subsection (i) clarify that the fee requirements for gathering pipelines regulated under new §8.110 (which is part of amendments to Chapter 8 proposed concurrently with the amendments to §3.70) are still designated as Group B and will continue to pay an annual fee of $10 per mile of gathering pipeline permitted to the operator. Other non-substantive amendments are adopted in subsection (i).

Amendments in subsection (j) create a new annual permit renewal timeline beginning September 1, 2020. Currently, each permit has a specific annual renewal date, which, generally, is based on the date of permit application. Individual permit renewal is burdensome for both operators and Commission staff. The amendments maintain the current renewal process for one year, but beginning September 1, 2020, operators will renew all their permits within a designated month assigned to operators alphabetically. Operators whose names begin with the letters A through C shall file in February; operators whose names begin with the letters D through E shall file in March; operators whose names begin with the letters F through L shall file in April; operators whose names begin with the letters M through P shall file in May; operators whose names begin with the letters Q through T shall file in June; and operators whose names begin with the letters U through Z and operators whose names begin with numerical values or other symbols shall file in July. For example, beginning September 1, 2020, an operator whose name begins with A shall pay all its permit renewals in February 2021.

New subsection (k) addresses renewal dates when permits are transferred or an operator adds a new permit. Subsection (k)(1) states that if a permit is transferred, in the Commission fiscal year of the transfer the acquiring operator shall renew that permit in its designated month. If the acquiring operator receives the transferred permit in a Commission fiscal year after its renewal month as passed, acquiring operator shall pay the renewal fee upon transfer. Subsection (k)(2) states that if an operator adds a new permit and pays the new permit fee, it is not required to pay the renewal fee for that permit in the same Commission fiscal year. Subsection (k)(3) states that if an operator adds a new permit after its renewal month has passed, the new permit shall be renewed the following Commission fiscal year in the operator's designated month.

Amendments in subsection (l) reflect changes to the renewal process in subsection (j).

New subsection (m) reduces the late fee for operators with a total mileage of 50 miles or less of pipeline who fail to pay the annual mileage fee on time. Corresponding changes are adopted in subsection (n) such that the existing late fees only apply to operators with a total mileage of more than 50 miles of pipeline.

The Commission adopts the amendments to §3.70 pursuant to Texas Natural Resources Code, §§81.071, enacted by the 85th Legislature (Regular Session, 2017) in House Bill 1818, which authorizes the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission proposes the amendments pursuant to §§81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §81.0531, which authorizes the Commission to assess a penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Texas Natural Resources Code §§86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Texas Natural Resources Code §§111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; Texas Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, et seq.; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.0531, 81.071, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 17, 2019.

TRD-201904869
CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) adopts amendments in Subchapter A to §8.1 and §8.5, relating to General Applicability and Standards, and Definitions; in Subchapter B to §§8.101, 8.115, 8.125 and 8.135, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, New Construction Commencement Report, Waiver Procedure, and Penalty Guidelines for Pipeline Safety Violations; in Subchapter C to §§8.201, 8.205, 8.206, 8.209, 8.210, 8.225, 8.230, 8.235, and 8.240, relating to Pipeline Safety and Regulatory Program Fees, Written Procedure for Handling Natural Gas Leak Complaints, Risk-Based Leak Survey Program, Distribution Facilities Replacements, Reports, Plastic Pipe Requirements, School Piping Testing, Natural Gas Pipelines Public Education and Liaison, and Discontinuance of Service, including one change in the title of Subchapter C; in Subchapter D to §8.301 and §8.315 relating to Required Records and Reporting, and Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility. The Commission also adopts new §8.110, relating to Gathering Pipelines, in Subchapter B.

The Commission adopts §§8.110, 8.115, and 8.301 with changes and the remaining rules without changes from the proposed text as published in the October 18, 2019, issue of the Texas Register (44 TexReg 5969). Sections 8.110, 8.115, and 8.301 will be republished. The other rules will not be republished.

The Commission received six comments, three of which were from associations. The Commission received one comment on §8.1. The Texas Oil and Gas Association (TXOGA) recommended clarifying the provisions describing rule applicability. Specifically, the Commission should clarify applicability of Chapter 8 with regard to onshore pipeline and gathering facilities and gathering and production beyond the first point of measurement as described in §8.1(a)(1)(B). Because the Commission did not propose changes on this topic, the Commission declines to adopt the section with the requested changes. However, the Commission will provide clarification regarding §8.1. Section 8.1(a)(1)(A) - (D) lists the pipelines and/or facilities that are subject to the provisions of Chapter 8. Section 8.1(a)(1)(B) describes onshore production/flow lines in Class 2, 3 or 4 locations beginning after the first point of measurement and ending at the beginning of a gathering pipeline; therefore, those lines are under the Commission's pipeline safety jurisdiction. Onshore production/flow lines in Class 1 locations (the majority of production/flow lines) are not listed in §8.1, and therefore are not subject to the Commission's pipeline safety jurisdiction.

The Commission received one comment on §8.101. The Texas Pipeline Association (TPA) requested deletion of deadlines contained in the second and third sentences of subsection (b) because the deadlines have passed and provide no historical value. The Commission disagrees because retaining the deadlines would allow the Commission to require compliance if a Commission inspector discovers an operator did not meet the deadlines.

The Commission received three comments on §8.110. GPA Midstream Association (GPA) said the term "reasonably prudent manner" used in proposed §8.110(b) is too vague. GPA suggested, "Each operator of a gathering pipeline must take appropriate action to correct a hazardous condition that creates a risk to public safety." GPA also requested that the corrective action and prevention requirements in subsection (e) be tied to the language suggested above. The Commission agrees with both suggestions and adopts §8.110 with changes to subsections (b) and (e) to address these comments. Finally, GPA expressed support for proposed language that extends incident and accident reporting to all gathering lines but requested that the report be required in writing only because telephonic reports are not always necessary in rural locations. The Commission disagrees because the new rule will help the Commission receive data on gathering lines in Class 1 and rural locations. Telephonic reports will ensure the most accurate data. However, as discussed below, the Commission adopts §8.110 with a change to require only the written incident report for certain hazardous liquids gathering lines subject to §8.110.

TXOGA also provided comments on §8.110. TXOGA requested the Commission revise subsection (d) to include a clear definition of "a threat to public safety" and "a complaint related to public safety." The Commission declines to adopt §8.110 with new definitions that were not provided for public comment. TXOGA also expressed opposition to language proposed in subsection (c), which requires non-regulated gas and liquid gathering lines in Class 1 locations and rural areas to follow the same reporting requirements as regulated other gathering lines (i.e., an incident or accident must be telephonically reported within one hour of confirmed discovery). TXOGA states that §8.110(c) is inconsistent with PHMSA requirements.

The Commission notes that the same day it approved proposed amendments to Chapter 8, including new §8.110, PHMSA issued a final rule that incorporated reporting requirements for liquid gathering lines in rural areas. PHMSA's rule (84 FR 52260) does not require telephonic notification within one hour of confirmed discovery for an accident on a liquid gathering line in a rural location. Therefore, the Commission adopts §8.110(c)(2) with a change to require only written notification in lieu of telephonic notification of an accident on a liquid gathering line in a rural location. A change was also made to §8.301 to align with the new PHMSA rule. The Commission declines to make this change for gas gathering lines.

TPA's comment on §8.110 requested that the Commission replace "reasonably prudent manner" with "utilizing processes and technologies that are technically feasible, reasonable, cost-effective, and practicable." The Commission adopts §8.110(b) with a change to incorporate language that is a combination of the language suggested by GPA and TPA.

The Commission received six comments on §8.115. CenterPoint Energy requested narrowing subsection (a)(5) to apply to a new subdivision or construction that results in a new distribution system ID. The Commission agrees and adopts §8.115(a) with the requested change. CenterPoint also requested revisions to Form PS-48 to instruct operators to file the form via email. The Commission agrees and will include such wording in upcoming revisions to the form.
CPS Energy requested clarification on whether the term "pipelines" in §8.115(a) includes services installed on each installation. The Commission confirms this is correct. CPS also asked whether the installation length for joint trench installations is the total length of pipe or the distance from originating point to terminating point of the installation. The Commission confirms that the installation length is the total length of pipe. Third, CPS requested that natural gas distribution and master meter systems be exempt from reporting requirements in subsection (a)(2) and instead fall under subsection (a)(4). The Commission agrees and notes that is the intent of subsection (a)(2), which states, "except as provided in paragraphs (4) and (5)."

Relaterly, an individual requested that the Commission revise (a)(2) to state, "Except as provided by paragraphs (4) and (5)..." instead of only referencing paragraph (4). The Commission agrees and adopts §8.110(a)(2) with that change. The same individual asked whether operators are required to notify the Commission 30 days in advance for extending a gas main 200 feet to reach a new customer. Due to changes adopted in §8.115(a), the answer is no. Notification would only be required in that instance if the extension was considered by the operator to be a new subdivision or a new system ID. The individual also requested a matrix to clarify which pipelines of which length require which type of notification. The Commission will monitor questions related to this amended provision and may add a matrix or an explanation to the Commission’s website if warranted.

GPA expressed support for §8.115(a)(7), which exempts rural gathering lines subject to new §8.110 from the construction reporting requirements. The Commission appreciates GPA’s support.

TXOGA’s comment on §8.115 stated requiring 30-day notification prior to installation of any breakout tank is inconsistent with PHMSA requirements. The proposed language creates situations where operators may need to delay replacement or installation of breakout tanks where an emergency request is not warranted. The Commission agrees and adopts §8.115(a)(3) with changes to address this concern. TXOGA also notes the requirement to notify the Commission of new, relocated, or replacement pipeline 10 miles or more within 60 days is redundant of the requirement in 49 CFR 191.22(c)(1)(ii) and 195.64(c)(1)(ii). The Commission agrees the notification is duplicative of federal requirements and the Commission has generally omitted duplicative filings in Chapter 8 but filing a new construction report with the Commission is still necessary because it affords the Commission the opportunity to receive timely, complete information.

TPA requested removing the phrase "and other facilities" in §8.115(a) because the remainder of the section sufficiently clarifies the reporting requirements for each type of pipeline. The Commission disagrees because the clarification provided in the rule does not account for all facility types. TPA requested revising subsection (a)(3) to include an exemption for temporary breakout tanks. Due to comments from TXOGA and TPA on this topic, the Commission adopts §8.115(a)(3) with changes. TPA also asked that the Commission clarify the meaning of breakout tanks. The Commission declines to clarify the meaning as the term "breakout tank" is defined under 49 CFR Part 195. Any tank meeting this definition would require notification.

The Commission received one comment on §8.210 from TPA. TPA noted gathering operators will not have all of the information needed to fully complete the required forms or reports for incident and accident reporting. TPA requested a change that allows these operators to respond that the required information is not known. The Commission understands that gathering operators may need to mark "unknown" in certain areas of the forms or reports. However, it is the Commission’s expectation that gathering operators work to compile accurate data on their lines. The Commission declines to make any changes to the rule based on this comment.

Finally, the Commission received two comments on §8.301. GPA stated that unlike related federal requirements, the proposed language does not distinguish between accidents that require telephonic reporting within one hour of discovery and those that are minor such that they only require a 30-day written report. GPA requested that §8.301 align with federal requirements instead of being more stringent. TPA also requested the Commission align §8.301 with PHMSA requirements. The Commission notes that the existing language is already more stringent than its federal counterpart. The amendments merely reorganize the section for clarification.

TPA expressed support for the clarifying amendments in §8.301 but requested the Commission replace the "and" between CFR references with "or." The Commission agrees and adopts §8.301 with "or." TPA reiterated its comment on §8.210 that gathering operators will not have all the information on their systems to fully report incidents within the one-hour deadline. The Commission understands gathering operators will not always have all pertinent information but encourages these operators to compile more accurate data on their lines.

The adopted amendments include non-substantive clarifications and corrections in the following sections. Amendments in §8.1(d), §8.210, §8.235, §8.301, and §8.315 require an operator to retain copies of United States Department of Transportation (DOT) or certain other filings and provide copies to the Commission only upon request. In §8.5, amendments to the definitions of "applicant," "director," and "division" correct the name of the Commission’s division; amendments in §8.201 and §8.209 also correct the division name. Amendments in §8.125(g) and (h) clarify references to the Hearings Division and orders. An amendment in §8.230 corrects a statutory reference. Amendments in §8.301 clarify accident reporting and other existing wording.

The Commission adopts the amendment in §8.1(b) to update the minimum safety standards and to adopt by reference the DOT pipeline safety standards found in 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards. Current subsection (b) adopted the federal pipeline safety standards as of October 31, 2017. The amendment amends the date to January 22, 2019, to capture the federal safety rule amendment summarized in the following paragraph.

Docket No. PHMSA-2014-0098: Amdt. No. 192-124, amended the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments are necessary to enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or updated consensus standards for pipe, fittings, and other components;
the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions. The effective date of these amendments is January 22, 2019.

As described in the following paragraphs, other adopted amendments align Commission rules with federal regulations adopted by the Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA provides funding for state pipeline safety programs as long as those programs comply with PHMSA’s minimum standards. Some of the amendments to Chapter 8 are adopted to ensure Texas complies with those minimum standards and retains PHMSA funding.

Some amendments change the term "natural gas" to "gas" to clarify that propane gas distribution systems must also comply with requirements for distribution systems. These amendments in §8.5 include the definitions for "master metered system," "natural gas or other gas supplier," "person responsible for a school facility," and "school facility". Amendments are also adopted in §8.5 to align the definition of "private school" with the definition provided in the Texas Education Code. Amendments in §8.205 also change the term "natural gas" to "gas", and the title of Subchapter C includes a corresponding change.

The amendments in §8.101(b)(1)(C)(iii) delete the director approval requirement for direct assessment and make other non-substantive corrections. Director approval for direct assessment is no longer needed because there is now a National Association of Corrosion Engineers (NACE) standard for direct assessment which was not available when §8.101 was originally adopted. A related change removes a request to use the direct assessment method from the definition of "applicant" in §8.1(2). A change to §8.101(e) removes outdated language.

Adopted new rule §8.110 implements certain Commission jurisdiction over gathering pipelines in Class 1 locations and rural areas, which was granted by the legislature in House Bill 2982 during the 83rd Legislative Session. Specifically, House Bill 2982 granted the Commission authority to establish safety standards and practices for gas gathering pipelines and facilities in Class 1 locations and hazardous liquids and carbon dioxide gathering pipelines and facilities in rural areas. House Bill 2982 mandated that, for the first two years the statutes were in effect, the Commission could only implement the changes to provide a process for the Commission to investigate an accident, an incident, a threat to public safety, or a complaint, and to require an operator to submit a plan to remediate the same.

As a result, since September 1, 2013, the Commission has been investigating incidents and accidents on Class 1 gathering lines and rural gathering lines and responding to complaints and other threats to the public. However, the Commission did not have regulations requiring reporting during this time. As a direct result of its investigation and response efforts, the Commission has recognized the need to compile more accurate and complete information regarding the incidents and accidents that are occurring on gathering systems located in Class 1 locations and rural areas.

The rules adopted by the Commission pursuant to House Bill 2982 must be based on the risks the transportation and facilities present to the public safety. Adopted amendments in §8.110(a) define the scope of the rule. Section 8.110(b) is adopted with a change to require an operator of a gathering line in a Class 1 location or rural area as defined in subsection (a) to take appropriate action using processes and technologies that are technically feasible, reasonable, and practicable to correct a hazardous condition that creates a risk to public safety. Adopted §8.110(c) requires operators subject to the rule to report incidents and accidents to the Commission pursuant to the Commission’s reporting requirements. Subsection (d) requires operators to conduct an investigation after an incident or accident and cooperate with the Commission during the Commission’s investigation. Subsection (e) is adopted with a change to ensure the corrective action plan requirement is related to a risk to public safety. Subsection (e) allows the Commission to require the operator to submit a corrective action plan to the Commission to remediate an accident, incident, or other hazardous condition that creates a risk to public safety, or to address a complaint the Commission has confirmed relates to public safety. Complaints will be verified by the Commission before it will require an operator to submit a remediation/corrective action plan in response. The reporting, investigation, and corrective action requirements will allow the Commission to gather accurate data and analyze any trends in incident or accident occurrences. This will allow the Commission to more thoroughly assess the risks gathering lines in Class 1 locations and rural areas present to the public safety.

Adopted amendments in §8.115 amend the time period during which each operator must notify the Commission regarding the construction of pipelines and other facilities. For construction of 10 or more miles of a new, relocated, or replacement pipeline, the operator shall notify the Commission not later than 60 days before construction, which aligns with current PHMSA requirements. The 60-day requirement applies to all pipeline operators, including gas distribution companies, master meter systems, and liquefied petroleum gas distribution companies. For construction of one or more but less than 10 miles of a new, relocated, or replacement pipeline (excluding gas distribution companies, master meter systems, and liquefied petroleum gas distribution companies), an operator shall notify the Commission not later than 30 days before construction.

The Commission adopts different requirements for new construction, relocations, or replacements less than 10 miles in length on natural gas distribution systems, liquefied petroleum gas distribution systems, and master meter systems. For relocated or replacement construction on liquefied petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required. For relocated or replacement construction on natural gas distribution systems, liquefied petroleum gas distribution systems, or master meter systems three or more miles in length but less than 10 miles in length, in lieu of notifying the Commission 30 days prior to construction, an operator may provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of the project, the city and county of location, a description of the project, and the estimated commencement date and end date. The amendments also provide the option for providing a monthly report for new construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length that results in a new subdivision or a new system ID. The option to file a monthly report will reduce the large number of reports that would be required for large distribution operators who replace and relocate lines often, while still giving small distribution operators the flexibility to simply file a construction
report. Amended §8.115 also requires notification of the installation of any breakout tank.

Amendments to §8.115 retain the requirement that the construction report be filed with the Commission on a Form PS-48, except for natural gas distribution systems, liquified petroleum gas distribution system, and master meter systems, for which operators have the option to file a monthly report in certain circumstances as described in §8.115(a)(4) and (5). The amendments also clarify that if notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. Furthermore, the amendments specify that construction reports will be valid for a period of eight months from the time they are filed with the Commission. If construction is not commenced during that eight-month period, the construction report expires and the operator must file a new report. In the alternative, operators may request one six-month extension on the original construction report. Operators may submit their request for extension to safety@rrc.texas.gov before the original construction report expires. The expiration date and limited renewal will ensure that the Commission has accurate records. The Commission has authority to conduct new construction inspections, and for planning purposes and efficient use of state resources it is important for the Pipeline Safety Department to have accurate records regarding when construction is set to commence. Section 8.115 (a)(2), (a)(3), and (a)(5) are adopted with changes to address comments on the proposed language, as discussed above.

Amendments in §8.125(a) and (g)(2) clarify that an operator must request a waiver and before the operator engages in the activities covered by the proposed waiver.

Amendments in §8.135 include clarifications to the tables for penalty guidelines and penalty worksheet in order to include sub-parts from 49 CFR Parts 192 and 195 that are not currently addressed, as well as include penalties for violations of §8.110. The amendments also revise the statutory reference for the Commission’s penalty jurisdiction over pipeline safety violations since House Bill 866 (86th Legislature) expands the authority under which the Commission may assess an administrative penalty for pipeline safety violations.

Amendments in §8.206 remove dates that have passed and, therefore, are no longer applicable. The amendments in §8.206(c) and (f) also add an additional three months in which to comply with each deadline prescribed by the rule, which is consistent with federal requirements.

Amendments in §8.209 remove dates that have passed and, therefore, are no longer applicable. For example, the Commission deletes former subsection (f)(1) because there are no longer priority 1 lines that meet the criteria in that provision or that could be replaced by that date. The amendments in §8.209(h) also implement House Bill 866 from the 86th Legislative Session, which requires operators to annually remove or replace at least eight percent of underground distribution gas pipeline facilities posing the greatest risk in the system and identified for replacement under the program. Eight percent is an increase from the current requirement of five percent. The amendments in new subsection (k) also implement House Bill 866 and prohibit a distribution gas pipeline facility operator from installing cast iron, wrought iron, or bare steel pipelines in its underground system. Any known existing cast iron pipelines are required to be replaced by December 31, 2021.

Amendments in §8.210 implement House Bill 864 from the 86th Legislative Session. These amendments require the telephonic report to be due at the earliest practical moment, but at the latest one hour following confirmed discovery of a pipeline leak or incident. One hour is also the current PHMSA reporting requirement. Other amendments that implement House Bill 864 include a requirement to submit an additional report to the Commission when more information is known by distribution operators and a requirement in subsection (e) that the Commission retain pipeline incident records perpetually. The amendments also eliminate the requirement for operators to submit written DOT incident forms and annual reports to the Commission and instead require operators to retain them and provide them to the Commission upon request.

An amendment in §8.210(e) deletes references to a regulated plastic gas gathering line and a plastic gas transmission line from the requirement for reporting repaired leaks to the Division.

The amendments in §8.225 delete most of the current wording now covered by Distribution Integrity Management Program (DIMP) requirements and adds that operators shall retain all records relating to plastic pipe installation in accordance with 49 CFR Part 192 and provide such records to the Commission upon request. Adopted new wording in §8.240 adds requirements for “soft close” programs to be utilized by distribution operators for certain customer accounts in certain short-term situations. Allowing soft-close procedures will allow distribution operators and customers an easy transition from one customer to another.

Section 8.301(a)(1)(B) and Section 8.301(a)(2)(B) are adopted with a change to conform with adopted changes in §8.110, which require only written notification in lieu of telephonic notification of an accident on a liquid gathering line in a rural location. Amendments in §8.301 clarify that the telephonic report for other accidents involving crude oil is due at the earliest practical moment, but at the latest one hour following confirmed discovery of a pipeline accident. One hour is also the current PHMSA reporting requirement. The amendments also eliminate the requirement for operators to submit written Department of Transportation incident forms and annual reports to the Commission and instead requires operators to retain them and provide them to the Commission upon request.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.211; 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the
transformation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.110, 8.115, 8.125, 8.135

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and §§81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided for §81.051 et seq.; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.110. Gathering Pipelines.

(a) Scope. This section applies to the following gathering pipelines:

(1) natural gas gathering pipelines located in a Class 1 location not regulated by 49 CFR §192.8 or §8.1 of this title (relating to General Applicability and Standards); and

(2) hazardous liquids and carbon dioxide gathering pipelines located in a rural area as defined by 49 CFR §195.2 and not regulated by 49 CFR §195.11, 49 CFR §195.11, or §8.1 of this title.

(b) Safety. Each operator of a gathering pipeline described in subsection (a) of this section shall take appropriate action using processes and technologies that are technically feasible, reasonable, and practicable to correct a hazardous condition that creates a risk to public safety.

(c) Reporting.

(1) Each operator of a gas gathering pipeline described in subsection (a) of this section shall comply with §8.210(a) of this title (relating to Reports).

(2) Each operator of a hazardous liquids pipeline described in subsection (a) of this section shall comply with §8.301(a)(1)(B) and (a)(2)(B) of this title (relating to Required Records and Reporting) except that the initial telephonic report is not required.

(d) Investigation.

(1) Each operator of a gathering pipeline described in subsection (a) of this section shall conduct its own investigation and cooperate with the Commission and its authorized representatives in the investigation of any of the following:

A. an accident as defined by 49 CFR §195.50;
B. an incident as defined by 49 CFR §191.3;
C. a threat to public safety; or
D. a complaint related to operational safety.

(2) Each operator shall provide the Commission reasonable access to the operator's facilities, provide the Commission any records related to such facilities, and file such reports or other information necessary to determine whether there is a threat to the continuing safe operation of the pipeline.

(e) Corrective action and prevention of recurrence. As a result of the investigations authorized under subsection (d) of this section, the Commission may require the operator to submit a corrective action plan to the Commission to remediate an accident, incident, or other hazardous condition that creates a risk to public safety, or to address a complaint related to public safety. Upon the Commission's review and approval of the corrective action plan, the operator shall complete the corrective action. No provision of this rule prevents the operator from implementing any corrective action at any time the operator deems necessary or prudent to correct or prevent a threat to the safe operation of the gathering pipeline and pipeline facilities.


(a) An operator shall notify the Commission before the construction of pipelines and other facilities as follows.

(1) For construction of a new, relocated, or replacement pipeline 10 miles in length or longer including liquified petroleum gas distribution systems, natural gas distribution systems, and master meter systems 10 miles in length or longer, an operator shall notify the Commission not later than 60 days before construction.

(2) Except as provided in paragraphs (4) and (5) of this subsection, for construction of a new, relocated, or replacement pipeline at least one mile in length but less than 10 miles, an operator shall notify the Commission not later than 30 days before construction.

(3) For installation of any permanent breakout tank, an operator shall notify the Commission not later than 30 days before installation. For installation of mobile, temporary, or prefabricated breakout
tanks, an operator shall notify the Commission upon placing the mobile, temporary, or prefabricated breakout tank in service.

(4) For relocated or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required. For relocated or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems at least three miles in length but less than 10 miles in length, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 for every relocated or replacement construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

(5) For the construction of a new liquified petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length in a new subdivision or that results in a new distribution system ID, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 for every initial construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

(6) For construction of a sour gas pipeline and/or pipeline facilities, as defined in §3.106 of this title (relating to Sour Gas Pipeline Facility Construction Permit), an operator shall notify the Commission not later than 30 days before construction by filing Form PS-48 and Form PS-79.

(7) Pipelines subject to §8.110 of this title (relating to Gathering Pipelines) are exempt from the construction notification requirement.

(b) Any of the notifications required by subsection (a) of this section, unless an operator elects to use the alternative notification allowed by subsection (a)(4) of this section, shall be made by filing with the Commission Form PS-48 stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. If a notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. A Form PS-48 that has been filed with the Commission shall expire if construction is not commenced within eight months of date the report is filed. An operator may submit one extension, which will keep the report active for an additional six months. After one extension, Form PS-48 will expire.

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.201, 8.205, 8.206, 8.209, 8.210, 8.225, 8.230, 8.235, 8.240

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §8.301, §8.315
Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and 81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253; §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.301. Required Records and Reporting

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR §§195.50 or 195.52, the operator shall also report to the Commission as follows:

(1) Accidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify the Division, which shall notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment but no later than one hour following confirmed discovery of the accident and include the following information:

(i) company/operator name;

(ii) location of accident;

(iii) time and date of accident;

(iv) fatalities and/or personal injuries;

(v) phone number of operator;

(vi) telephone number of operator;

(vii) telephone number of the operator's on-site person;

(viii) other significant facts relevant to the accident, such as ignition, explosion, rerouting of traffic, evacuation of any building, and media interest; and

(B) following the initial telephonic report for accidents described in paragraph (1) of this subsection, the operator shall retain its records and provide to the Commission upon request the applicable written reports submitted to the DOT. Operators of hazardous liquids gathering pipelines regulated by §8.110 of this title (relating to Gathering Pipelines) shall file with the Commission a written report on an accident described in paragraph (1) of this subsection utilizing the applicable form from the DOT within 30 calendar days after the date of the accident.

(2) Accidents involving hazardous liquids, other than crude oil, and carbon dioxide. For accidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) notify the Division of such accident by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following confirmed discovery (within one hour) and include the information listed in paragraph (1)(A)(i) - (viii) of this subsection; and

(B) within 30 days of discovery of the accident, complete and retain the written report as required by 49 CFR Part 195. An operator shall provide a copy of the accident report to the Commission upon request. Operators of hazardous liquids gathering pipelines regulated by §8.110 of this title shall file with the Commission a written report on an accident described in paragraph (2) of this subsection utilizing the applicable form from the DOT within 30 calendar days after the date of the accident.

(b) Annual report. Each operator shall retain the annual report required by 49 CFR Part 195 for its intrastate systems. An operator shall provide a copy of the annual report to the Commission upon request.

(c) Safety-related condition reports. Each operator shall submit to the Division in writing a safety-related condition report for any condition specified in 49 CFR Part 195.

(d) Facility response plans. An operator required to file an initial or a revised facility response plan, prepared under the Oil Pollution Act of 1990 for all or any part of a hazardous liquid pipeline facility located landward of the coast, with the Department of Transportation is not required to concurrently file the plan with the Commission, but shall retain a copy and provide it to the Commission upon request.

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CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas (Commission) adopts amendments to the following rules in Subchapter A, General Requirements: §§9.1-9.18, relating to Application of Rules, Severability, and Retroactivity; Definitions; LP-Gas Forms; Records; Effect of Safety Violations; License Categories, Container Manufacturer Registration, and Fees; Applications for Licenses, Manufacturer Registrations, and Renewals; Requirements and Application for a New Certificate; Requirements for Certificate Holder Renewal; Rules Examination; Transfer of Employees; Trainees; General Installers and Repairman Exemption; Military Fee Exemption; Penalty Guidelines for LP-Gas Safety Violations; Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates; Designation and Responsibilities of Company
Representatives and Operations Supervisors; and Reciprocal Examination Agreements with Other States; §9.21 and §9.22, relating to Franchise Tax Certification and Assumed Name Certificates; and Changes in Ownership, Form of Dealership, or Name of Dealership; §§9.26-9.28, relating to Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; and Reasonable Safety Provisions; §§9.35-9.38, relating to Written Procedure for LP-Gas Leaks; Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; and Reporting Unsafe LP-Gas Activities; §9.41, relating to Testing of LP-Gas Systems in School Facilities; §§9.51 and §9.52, relating to General Requirements for LP-Gas Training and Continuing Education; and Training and Continuing Education; and §9.54, relating to Commission-Approved Outside Instructors.

In Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission adopts amendments to §§9.101-9.103, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; and Objections to Proposed Stationary LP-Gas Installations; amendments to §§9.107-9.110, relating to Hearings on Stationary LP-Gas Installations; Interim Approval Order for Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; and Emergency Use of Proposed Stationary LP-Gas Installations; amendments to §§9.113-9.116, relating to Installation and Maintenance; Odorizing and Reports; Examination and Testing of Containers; and Container Corrosion Protection System; §9.126, relating to Appurtenances and Equipment; §§9.129-9.132, relating to Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; 200 PSIG Working Pressure Stationary Vessels; and Sales to Unlicensed Individuals; §§9.134-9.137, relating to Connecting Container to Piping; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; and Inspection of Cylinders at Each Filling; §§9.140-9.143, relating to System Protection Requirements; Uniform Safety Requirements; LP-Gas Container Storage and Installation Requirements; and Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, Vehicles, the Commission adopts amendments to §§9.201-9.204, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; and Maintenance of Vehicles; §9.206, relating to Vehicle Identification Labels; §9.208 relating to Testing Requirements; and §9.211 and §9.212, relating to Markings; and Manifests.

In Subchapter D, Adoption by Reference of NFPA 54 (National Fuel Gas Code), the Commission adopts amendments to §§9.301-9.303, relating to Adoption by Reference of NFPA 54; Clarification of Certain Terms Used in NFPA 54; and Exclusion of NFPA 54, §10.28; new §9.304, relating to Unvented Appliances; amendments to §§9.306-9.308, relating to Room Heaters in Public Buildings; Identification of Converted Appliances; and Installation of Piping; §§9.311, relating to Special Exception for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; and §9.313, relating to Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted. The Commission also adoptions the repeal of §9.312, relating to Certification Requirements for Joining Methods.

In Subchapter E, Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission adopts amendments to §9.401 and §9.403, relating to Adoption by Reference of NFPA 58; and Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.


The Commission received two comments from associations and 25 comments from individuals or companies.

Comments from the Texas Association of Campground Owners (the "association") include: support for the provision in §9.1 that clarifies the rules are not retroactive; support for the retraction of the four-year continuing education requirement in §9.52 combined with the adoption of only a portion of NFPA 54 §4, which will greatly reduce costs to association members; and support for amendments to §9.51 providing for a combined test in DOT cylinder filling and motor/mobile fuel. Finally, with regard to amendments in §9.140, the association said it believes the amendments provide needed clarification but also requests that the Commission consider requiring only vertical protection and adding horizontal protection on a case-by-case basis. The Commission appreciates the comments from the association. Because the Commission considers the suggested change outside the scope of this rulemaking, it declines to make any changes to §9.140 at this time.

The Texas Propane Gas Association (TPGA) and 19 commenters oppose removing the definition of "repair to container" in §9.2. The commenters suggest retaining the concept but defining it as "maintenance" rather than repair so that the definition matches the Department of Transportation's definition. The term "repair to container" was removed from the definitions because the term is not used in Chapter 9. The Commission declines to add a definition of maintenance without allowing public comment. The Commission will leave "repair to container" in §9.2 to address commenters' concerns and consider adding a definition of maintenance in a future rulemaking.

TPGA, Amerigas, and 18 other commenters expressed opposition to proposed amendments in §9.10 which require a container delivery unit driver to obtain a bobtail driver certification. Commenters noted that container delivery unit drivers do not have the same responsibilities of a bobtail driver. The Commission's intent was not to require a container delivery unit driver to be certified, but to acknowledge a bobtail driver can operate a container delivery unit. However, to reduce confusion, the Commission has removed the term "container delivery unit" from §9.10.

One comment on §9.116 requested clarification that poly piping is not required to have cathodic protection. The Commission adopts §9.116 with a change to clarify that cathodic protection is required for steel pipelines.

The Commission received 20 comments on §9.126: one from TPGA, one from Amerigas, and 18 from individuals. These comments requested that the Commission also allow for an electronic pneumatic actuator. The Commission considers this change substantive and not directly related to the proposed amendments. Therefore, the Commission will not adopt the suggested change but will consider it for a future rulemaking.

TPGA, Amerigas, and 19 other commenters expressed opposition to §9.134's requirement for a pressure test and leak test be-
cause a leak test is sufficient and in some cases a pressure test can be dangerous. The Commission agrees and adopts §9.134 with a change to remove the pressure test requirement.

TPGA, Amerigas, and 19 other commenters disagree with §9.140's requirement for additional crash protection on storage racks used to store nominal 20-pound DOT portable or any size forklift containers because locked ventilated cages provide adequate protection. These comments also request that the Commission clarify the use of bollards in other installations requiring crash protection. The Commission declines to make changes to §9.140 regarding locked ventilated cages for cylinder storage because NFPA 58 does not address safety concerns for the storage of all caged cylinders. The Commission will consider the request to clarify the use of bollards in a future rulemaking.

TPGA, Amerigas, and 21 other commenters on §9.143 requested that the Commission allow for use of an engineered safety breakaway coupler. This change is outside the scope of the current rulemaking, but the Commission will consider this change in the future.

The Commission received 19 comments on §9.308: one from TPGA and 18 from individuals. These comments oppose the requirement to comply with bonding requirements in NFPA 54 §7.12.2. Also, commenters interpret the proposed amendments to require LP-gas operators to certify that electrical work was done properly. Commenters oppose that requirement as outside their responsibility. The Commission adopts §9.308 with a change to require LP-gas operators to merely verify that a new piping system is bonded when connecting to or supplying the new system with corrugated stainless steel tubing (CSS).

TPGA and 17 commenters on §9.311 oppose eliminating the ability to use ceiling trusses to place piping in chicken houses. The floor of the chicken house is a corrosive environment. It is the Commission's understanding that NFPA 54 does not apply to chicken houses. Brooders must instead meet the requirements of NFPA 58 for piping. Therefore, the amendments would not require brooders to place pipes on the floor of the chicken house.

TPGA's comment and 18 other comments oppose amendments to §9.403 regarding the fire safety analysis in NFPA 58 §6.29.3.3. The commenters request that the Commission continue its exception to this NFPA provision which has been in place since 2001 because to require the fire safety analysis in 9.403 would be redundant. The Commission declines to make the requested change. The amendments only require the fire safety analysis for installations 10,000 gallons or larger. The amendments increase safety for local emergency responders by helping them understand the conditions specific to larger installations. To give operators time to comply, the requirement for a fire safety analysis will not take effect until two years after the effective date of the rule amendments. This two-year delayed effective date was proposed in Table §9.403 and published with the proposed rule amendments in the Texas Register.

Other comments from TPGA and commenters on §9.403 include: (1) requests to remove the provision that grandfather installations with a single-stage regulator and instead adopt the NFPA's requirement that any installation greater than 100,000 BTU's have a two-stage regulator system; (2) requests to adopt NFPA 58 §§6.22.9.3 and 6.22.9.4, which establish the maximum allowable capacity; (3) requests to adopt NFPA 58 §8.3.1 and Tables 8.3.1(a), 8.3.1(b) and 8.3.2 because without these requirements there is no restriction on the size or amount of LP-gas that can be used or stored in a commercial location; and (4) requests to adopt NFPA 58 §9.6.2.2 to ensure that there are requirements to address private transportation of containers not in commerce, which fall outside of DOT's jurisdiction. The Commission agrees with item (1) and adopts Table 9.403 with revisions such that NFPA 58 6.10.2.3 is adopted with changes to prohibit single stage regulators in fixed piping systems except for installations covered in 6.10.2.4. The Commission notes that the cylinders referenced in the NFPA sections in item (2) are outside the Commission's jurisdiction. Therefore, the Commission declines to adopt those sections of the NFPA. The Commission also declines to adopt NFPA 58 §8.3.1 and Tables 8.3.1(a), 8.3.1(b) and 8.3.2 as requested in item (3). The current version of Chapter 9 also does not adopt those sections of the NFPA by reference. By not adopting NFPA 58 §8.3.1 and its tables the Commission prohibits storage of any container inside a building frequented by the public, which addresses the concern raised in the comments. The Commission agrees with item (4) and adopts Table 9.403 with a change such that the existing language is retained and the proposed changes are removed.

TPGA and 16 other commenters on §9.403 oppose adoption of NFPA 58 Chapter 15, which would require an Operations and Maintenance Manual for storage over 10,000 gallons. The manual should be a business decision, not a Commission requirement. The Commission disagrees. The amendments adopt NFPA 58 Chapter 15 to increase safety at large installations by documenting operating procedures for transferring product, including actions to be taken in an unintended release of product, and procedures for maintaining the mechanical integrity of the system. The Commission notes that the requirement for an operations and maintenance manual will not go into effect until one year after the effective date of the amendments to §9.403. The one-year delayed effective date was proposed in Table 9.403 and published in the Texas Register with the proposed rule amendments. NFPA 58 Chapter 15, specifically 15.1 through 15.3.2.2, includes provisions addressing the required content of operations and maintenance manuals.

The Commission adopts the amendments, new rule and repeal to update and clarify the Commission's liquefied petroleum gas (LP-gas) rules. Amendments also implement changes from the 86th Legislative Session. House Bill 2714 removed the requirement that manufacturers of LP-gas containers obtain a license from the Commission and instead requires registration with the Commission. Adopted amendments to reflect this statutory change are found in §§9.2, 9.4-9.7, 9.15, 9.16, 9.21, 9.22, and 9.26. Operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020 to allow Commission programming efforts to be completed. Sections 9.6 and 9.7 are adopted with a change to specify the June 1, 2020 effective date. Tables 9.15(e) and 9.15(k), are adopted with changes to add rows and correct row numbers and NFPA references.

new NFPA versions effective September 1, 2020. Section 9.308 is adopted with a change to require LP-gas operators to merely verify that a new piping system is bonded when connecting to or supplying the new system with corrugated stainless steel tubing (CSSST). The table in §9.313 is adopted with minor changes to correct errors in the proposed version. Section 9.401 is adopted with changes to reflect the adoption of new NFPA versions effective September 1, 2020. The table in §9.403 is also adopted with changes due to comments as described above.

The remaining amendments are non-substantive and clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language throughout Chapter 9 is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.


Amendments to §9.2 remove definitions of terms that no longer appear in Chapter 9 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "registered manufacturer" and "service station," as those terms are now used throughout the chapter, and clarify several existing definitions. Section 9.2 is adopted with a change to retain the definition of "repair to container" as discussed in the comment summary above.

Amendments in §9.3 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process, which is consistent with forms referenced in other Commission chapters.

Amendments in §9.5 include changes to implement the registration requirement from House Bill 2714. "Manufacturer registration" is included along with references to applications for license and exemptions. However, the amendments also condense the list of potential applicants and use "applicant" when possible to encompass all types of people seeking Commission authorization to conduct LP-gas related activities. In addition, the amendments clarify when certain violations of a person who holds a position of ownership or control in the applicant will be attributed to an applicant. The intent of this provision is the same; the amendments merely remove unnecessary language and reorganize the provision to make it more straightforward.

Section 9.6 is adopted with a change to specify that operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020. Generally, amendments adopted in §9.6 update license categories to include licenses currently offered by the Commission, including Categories A1 and A2. The amendments also clarify the Category D and Category I licenses. For example, the amendments remove language related to the service and repair of an LP-gas appliance not required to be vented to the atmosphere. This language was moved to new §9.304, relating to Unvented Appliances, to reduce confusion. Finally, amendments to §9.6 implement House Bill 2714. These provisions remove language related to manufacture and fabrication from existing license categories and add new subsection (d) which states that a container manufacturer registration authorizes the manufacture, assembly, repair, testing, and sale of LP-gas containers. The original registration fee is $1,000; the renewal fee is $600.

Section 9.7 is also adopted with a change to specify that operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020. Generally, amendments adopted in §9.7 clarify license requirements and reorganize the section to group related requirements together and remove repetitive language that is contained within other rules. An amendment to subsection (a) reflects NFPA updates. New subsection (h) contains the requirements for obtaining a registration authorizing the manufacture of containers. Subsection (i) details the steps the Alternative Fuels Safety Department (AFS) follows to review and approve license and registration applications. Finally, amendments in §9.7 add "registered manufacturer" in several subsections to implement House Bill 2714.

Amendments in §9.8 move language from §9.7 regarding requirements for individuals who perform work, directly supervise LP-gas activities, or are employed in any capacity requiring contact with LP-gas. The amendments also ensure "certificate" and "certificate holder" are used throughout §9.8 instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Corresponding changes are also made in other sections for consistency.

Amendments in §9.9 clarify requirements for certificate renewal and steps to renew a lapsed certificate.

Section 9.10 is adopted with a change to remove the term "container delivery unit" from the provision related to bobtail driver examinations. Amendments adopted in §9.10 add language from §9.7 and §9.8 that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder. The amendments also clarify where and when examinations are available and what an examinee must bring to the exam site. Further, the amendments incorporate the management-level examinations and their descriptions into §9.10(d)(2) instead of including those descriptions in a table. Finally, the amendments clarify the process for obtaining a management-level certificate.

Amendments in §9.11 change the title to "Transfer of Employees" to more accurately describe the rule's contents. The amendments also update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Amendments in §9.13 simplify the name of an exempt individual's proof of exemption such that "registration/examination exemption certificate" is changed to "exemption card." Amendments also update department names and other references and remove repetitive language from other sections.

Amendments in §9.17(a) clarify filing requirements for outlets. The amendments change "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operators supervisor's departure. The amendments in subsection (d) update manual requirements to contemplate the use of electronic manuals in addition to printed manuals. The amendments also reorganize the section so that related requirements are found in the same subsection or paragraph. Section 9.17(a)(7) is adopted with a change to correct a typographical error in the proposed language.
Amendments in §9.26 incorporate insurance requirements for registered manufacturers. Table 9.26(a) is adopted with a change to incorporate rule requirements for manufacturers into the table.

Section 9.51 is adopted with a change to remove the dispenser operator exam. The exam was not added in the proposed amendments to §9.10 and was not intended to be included in §9.51. Other amendments to §9.51 move applicable language into §9.51 from other sections or tables. The amendments update subsection (j) to reflect the Commission's online registration process and allow an individual to register for a course using only the last four digits of his or her Social Security Number. Finally, amendments in §9.51 update department names and incorporate changes to reflect amendments in other sections.

Amendments in §9.52 move language from a table into the rule. Further, the amendments clarify the process for individuals who fail to complete required training; remove dates that have already passed and thus are no longer applicable; and clarify how much credit a certificate holder can receive for an approved CETP course.

Amendments to §9.54 include general updates and clarifications. The amendments in subsection (h) specify the process for renewal of an outside instructor approval and what happens upon failure to renew. Amendments in subsection (i) detail the process for outside instructors when AFS revises its course materials. The amendments in subsection (l) remove language requiring AFS to send information related to complaints through certified mail.

Amendments to §9.101 remove language related to local requirements due to Texas Natural Resources Code §113.054, which was added by the legislature in 2011. Amendments also make minor updates and reorganize parts of the section for clarity.

Amendments in §9.109 incorporate new terminology used by AFS such that a “safety rule violation” is now called a “non-compliance item.”

Amendments in §9.126 incorporate specific requirements for ASME containers with an individual water capacity of over 4,000 gallons. These requirements were moved from Table §9.403 to simplify the table.

Amendments in §9.132 incorporate clarifying language from Texas Natural Resources Code §113.081(a).

Amendments in §9.134 allow a licensee to connect to piping installed by an unlicensed person provided the licensee has verified that the piping is free of leaks and has been installed according to the rules in Chapter 9. Section 9.134 is adopted with a change to remove the requirement for a pressure test in addition to a leak check.

Amendments in §9.202, in addition to general updates and clarifications, clarify existing filing requirements for registering an LP-gas transport or container delivery unit. The amendments align Commission rules with U.S. Department of Transportation requirements.

Finally, new §9.304 contains language moved from §9.6 related to the Category D license. The section exempts certain individuals who service, install, and repair LP-gas appliances not required to be vented to the atmosphere from the requirement to obtain a Category D license.

**SUBCHAPTER A. GENERAL REQUIREMENTS**


The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **AFS**--The Commission's Alternative Fuels Safety Department within the Commission's Oversight and Safety Division.

(2) **Advanced field training (AFT)**--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(3) **AFT materials**--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(4) **Aggregate water capacity (AWC)**--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(5) **Bobtail driver**--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(6) **Breakaway**--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(7) **Certificate holder**--An individual:

   (A) who has passed the required management-level qualification examination, pursuant to §9.10 of this title (relating to Rules Examination);

   (B) who has passed the required employee-level qualification examination pursuant to §9.10 of this title;

   (C) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or
(D) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(8) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(9) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(10) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, cylinder exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(11) Commission--The Railroad Commission of Texas.

(12) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(13) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(14) Continuing education--Courses required to be successfully completed at least every four years by certificate holders to maintain certification.

(15) Director--The director of AFS or the director's delegate.

(16) DOT--The United States Department of Transportation.

(17) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, and owner-employees.

(18) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(19) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(20) Licensed--Authorized by the Commission to perform LP-gas activities through the issuance of a valid license.

(21) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(22) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at the Secretary of State's web site or the Commission's web site.

(23) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(24) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(25) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(26) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(28) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(29) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of ASTM International (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(30) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(31) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas activities and is authorized by the licensee to implement operational changes.

(32) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(33) Outside instructor--An individual, other than a Commission employee, approved by AFS to teach certain LP-gas training or continuing education courses.

(34) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(35) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(36) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(37) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding
school buses and mass transit or special transit vehicles, or airport courtesy vehicles.

(38) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(39) Registered manufacturer-- A person who has applied for and been granted a registration to manufacture LP-gas containers by the Commission.

(40) Repair to container--The correction of damage or deterioration in an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(41) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current rules in this chapter.

(42) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(43) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(44) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(45) Service station--An LP-gas installation that, for retail purposes, operates a dispensing station and/or conducts cylinder filling activities.

(46) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(47) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Non-specification unit" in this section.)

(48) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(49) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(50) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(51) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in transferring LP-gas between containers.

(52) Transport--Any bobtail or semitrailer equipped with one or more containers.

(53) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(54) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(55) Ultimate consumer--A person who buys a product to use rather than for resale.

§9.6 License Categories, Container Manufacturer Registration, and Fees.

(a) A prospective licensee may apply to AFS for one or more licenses specified in subsection (b) of this section. Beginning June 1, 2020, a prospective container manufacturer may apply to AFS for a container manufacturer registration specified in subsection (d) of this section. Prior to June 1, 2020, container manufacturers must be licensed as Category A, A1, or A2 in order to manufacture containers in the state of Texas. Fees required to be paid shall be those established by the Commission and in effect at the time of application or renewal and shall be paid at the time of application or renewal.

(b) The license categories and fees are as follows.

(1) A Category A license for container assembly and repair authorizes the assembly, repair, installation, subframing, testing, and sale of ASME or DOT LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. A Category A license includes all activities covered by a Category A1 and Category A2 license. The original license fee is $1,000; the renewal fee is $600.

(2) A Category A1 license for ASME container assembly and repair authorizes the assembly, repair, installation, testing, and sale of ASME containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is $1,000; the renewal fee is $600.

(3) A Category A2 license for U.S. Department of Transportation (DOT) container assembly and repair authorizes the assembly, repair, installation, subframing, testing, and sale of LP-gas DOT containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is $1,000; the renewal fee is $600.

(4) A Category B license for transport outfitters authorizes the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems. The original license fee is $400; the renewal fee is $200.

(5) A Category C license for carriers authorizes the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. The original license fee is $1,000; the renewal fee is $300.

(6) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, and the service, installation, and repair of piping and appliances. A Category D license does not authorize the installation of motor fuel containers, motor fuel systems, recreational vehicle containers, or recreational vehicle systems. The original license fee is $100; the renewal fee is $70. Persons with certain licenses issued by the Texas State Board of Plumbing Examiners or the Texas Department of Licensing and Regulation may register with AFS as described in §9.13 of this title (relating to General Installers and Repairman Exemption).

(7) A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP-gas at retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers, and except the sale and installation of LP-gas motor or mobile fuel systems that service an engine with a rating of more than 25 horsepower. The original license fee is $750; the renewal is $300.
(8) A Category F license for cylinder filling authorizes the operation of a cylinder filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves. The original license fee is $100; the renewal fee is $50.

(9) A Category G license for dispensing stations authorizes the operation of LP-gas dispensing stations filling ASME containers designed for motor or mobile fuel. The original license fee is $100; the renewal is $50.

(10) A Category H license for cylinder dealers authorizes the transportation and sale of LP-gas in cylinders. The original license fee is $1,000; the renewal is $300.

(11) A Category I license for service stations and cylinder filling authorizes any cylinder activity set out in Category F and dispensing station operations set out in paragraph (9) of this subsection. A Category I license does not authorize the transportation of LP-gas. The original license fee is $150; the renewal is $70.

(12) A Category J license for service stations and cylinder facilities authorizes the operation of a cylinder filling facility, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. The original license fee is $1,000; the renewal is $300.

(13) A Category K license for distribution systems authorizes the sale and distribution of LP-gas through mains or pipes, and the installation and repair of LP-gas systems. The original license fee is $1,000; the renewal is $300.

(14) A Category L license for engine and mobile fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems. The original license fee is $100; the renewal is $50.

(15) A Category M license for recreational vehicle installers and repairmen authorizes the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. The original license fee is $100; the renewal is $70.

(16) A Category N license for manufactured housing installers and repairmen authorizes the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. The original license fee is $100; the renewal is $70.

(17) A Category O license for testing laboratories authorizes the testing of LP-gas containers, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is $400; the renewal is $100.

(18) A Category P license for portable cylinder exchange authorizes the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted. The original license fee is $100; the renewal fee is $50.

(c) A military service member, military veteran, or military spouse shall be exempt from the original license fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal or transport registration fees specified in §9.7 and §9.202 of this title (relating to Applications for Licenses, Manufacturer Registrations, and Renewals; and Registration and Transfer of LP-Gas Transports or Container Delivery Units, respectively).

(d) A container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LP-gas containers. The original registration fee is $1,000; the renewal fee is $600.

§9.7. Applications for Licenses, Manufacturer Registrations, and Renewals.

(a) In addition to complying with NFPA 54 §4.1, no person may engage in any LP-gas activity until that person has obtained a license from the Commission authorizing the LP-gas activities, except as follows:

(1) A person is exempt from licensing under Texas Natural Resources Code §113.081(b) but is required to obtain a license before engaging in any LP-gas activities in commerce or in business.

(2) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided by §113.081(g) if the entity is performing LP-gas activities on its own behalf but is required to obtain a license if performing LP-gas activities for or on behalf of a second party.

(3) An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer is not subject to licensing requirements but shall comply with all other rules in this chapter.

(4) An ultimate consumer is not subject to licensing requirements if performing LP-gas activities dealing only with the ultimate consumer; however, a license is required to register a transport, bobtail, or cylinder delivery unit. An ultimate consumer's license does not require a fee or a company representative.

(b) An applicant for license shall not engage in any LP-gas activities until he has employed a company representative who meets the requirements of §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), or for Category D applicants only, who meets the requirements of §9.17 of this title or has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption).

(c) Licensees, registered manufacturers, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and/or manufacturer registrations and certificates for employees at that location available for inspection during regular business hours. In addition, licensees and registered manufacturers shall maintain a current version of the rules in this chapter and shall provide access to these rules for each company representative and operations supervisor. The rules shall also be available to employees during business hours.

(d) Licenses and manufacturer registrations issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(e) If a license or registration expires, the person shall immediately cease LP-gas activities.

(f) An applicant for a new license shall submit to AFS:
(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and the applicant's properly qualified company representative and the following forms or documents as applicable:
   (A) LPG Form 1A if the applicant will operate any outlets pursuant to subsection (g) of this section;
   (B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;
   (C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another licensee;
   (D) any form required to comply with §9.26 of this title (relating to Insurance and Self-Insurance Requirements);
   (E) a copy of the current certificate of account status if required by §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates); and/or
   (F) copies of the assumed name certificates if required by §9.21 of this title; and
   (2) payment for all applicable fees. If the applicant submits the payment by mail, the payment shall be in the form of a check or money order. If the applicant pays the applicable fee online, the applicant shall submit a copy of the online receipt via mail, email, or fax.
   (g) A licensee shall submit LPG Form 1A listing all outlets operated by the licensee.
      (1) The licensee shall employ at each outlet an operations supervisor who meets the requirements of §9.17 of this title.
      (2) Each outlet shall be listed on the licensee's renewal as specified in subsection (i) of this section.
   (h) Beginning June 1, 2020, a prospective container manufacturer may apply to AFS to manufacture LP-gas containers in the state of Texas. Beginning June 1, 2020, a person shall not engage in the manufacture of LP-gas containers in this state unless that person has obtained a container manufacturer's registration as specified in this subsection.
      (1) Applicants for container manufacturer registration shall file with AFS LPG Form 1M, and any of the following applicable forms or documents:
         (A) any form required by §9.26 of this title;
         (B) a copy of current certificate of account status if required by §9.21 of this title;
         (C) copies of the assumed name certificates if required by §9.21 of this title;
         (D) a copy of current DOT authorization. A registered manufacturer shall not continue to operate after the expiration date of the DOT authorization; and/or
         (E) a copy of current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.
      (2) By filing LPG Form 1M, the applicant certifies that it has read the requirements of this chapter and shall comply with all applicable rules, regulations and adopted standards.
      (3) The required fee shall accompany LPG Form 1M. An original registration fee is $1,000; the renewal fee is $600.
         (A) If submitted by mail, payment shall be by check, money order, or printed copy of an online receipt.
         (B) If submitted by email or fax, payment shall be a copy of an online receipt.
      (4) If a manufacturer registration expires or lapses, the person shall immediately cease the manufacture, assembly, repair, testing and sale of LP-gas containers in Texas.
         (i) AFS will review an application for license or registration to verify all requirements have been met.
            (1) If errors are found or information is missing on the application or other documents, AFS will notify the applicant of the deficiencies in writing.
            (2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.
            (3) If all requirements have been met, AFS will issue the license or manufacturer registration and send the license or registration to the licensee or manufacturer, as applicable.
            (j) For license and manufacturer registration renewals:
               (1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.
               (2) The renewal notice shall include copies of applicable LPG Forms 1, 1A, and 7, or LPG Form 1M showing the information currently on file.
               (3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.
               (4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.
               (5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any LP-gas activities authorized by the license or registration.
               (6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees).
               (7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

ADOPTED RULES    January 3, 2020    45 TexReg 135
§9.10. Rules Examination.

(a) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on LPG Form 16. If a licensee is not listed on the form, AFS will send the certificate to the individual's personal address.

1. Successful completion of any examination shall be credited to and accrue to the individual.

2. An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(b) An applicant for examination shall bring to the exam site:

1. a completed LPG Form 16; and
2. payment of the applicable fee specified in subsection (c) of this section.

(c) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination.

1. Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFS and on the Commission's website, and shall be updated at least monthly. Examinations may be conducted at the Commission's AFS Training Center in Austin, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule its examinations and locations at its discretion.

2. Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

3. Exam fees.

(A) The nonrefundable management-level rules examination fee is $70.

(B) The nonrefundable employee-level rules examination fee is $40.

(C) The nonrefundable examination fee shall be paid each time an individual takes an examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(j)(2)(A) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall pay the charge specified for the applicable examination.

(E) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal, training, or continuing education fees specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal, §9.51 of this title, and §9.52 of this title (relating to Training and Continuing Education).

4. Time limits.

(A) An applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other management-level and employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official time-keeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(d) This subsection specifies the examinations offered by the Commission.

(1) Employee-level examinations.

(A) The Bobtail Driver examination qualifies an individual to operate a bobtail, to perform all of the LP-gas activities authorized by the Transport Driver, DOT Cylinder Filler, and Motor/Mobile Filler examinations, and to perform leak checks and pressure tests, light appliances, and adjust regulators and thermocouples. The Bobtail Driver examination does not authorize an individual to connect or disconnect containers, except when performing a pressure test or removing a container from service.

(B) The Transport Driver examination qualifies an individual to operate an LP-gas transport equipped with a container of more than 5,000 gallons water capacity, to load and unload LP-gas, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to operate a bobtail or to install or repair transport systems.

(C) The On-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The On-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(D) The Non-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on vehicles such as industrial forklift trucks and lawn mowers. The Non-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor fuel containers or cylinders.

(E) The Mobile Fuel Technician examination qualifies an individual to install LP-gas mobile fuel containers, cylinders, and LP-gas mobile fuel systems, and replace container valves on mobile fuel equipment such as trailers, catering trucks, mobile kitchens, tar kettles, hot oil units, auxiliary engines and similar equipment. The Mobile Fuel Technician examination does not authorize an individual to fill LP-gas mobile fuel containers or cylinders.

(F) The DOT Cylinder Filler examination qualifies an individual to inspect, refill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filler examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(G) The Recreational Vehicle Technician examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems on recreational vehicles. The Recreational Vehicle Technician examination does not authorize an individual to fill LP-gas containers.

(H) The Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers, appliances, and stationary engines. The Service and Installation Technician examination does not authorize an individual to fill containers or operate an LP-gas transport.

(I) The Appliance Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation Technician examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(J) The Motor/Mobile Fuel Filler examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Filler examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

(2) Management-level examinations.

(A) The Category A examination qualifies an individual to assemble, repair, install, subframe, test, and sell both ASME and DOT containers and cylinders, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(B) The Category A-1 examination qualifies an individual to assemble, repair, install, test, and sell ASME containers, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(C) The Category A-2 examination qualifies an individual to assemble, repair, install, subframe, test, and sell DOT cylinders.

(D) The Category B examination qualifies an individual to subframe, test, and sell transport containers; test LP-gas storage containers; install, test, and sell LP-gas motor or mobile fuel containers and systems; and install and repair transport systems and motor or mobile fuel systems.

(E) The Category C examination qualifies an individual to transport LP-gas in a transport equipped with one or more containers, load and unload LP-gas, and install and repair transport systems.

(F) The Category D examination qualifies an individual to sell, service, and install containers, and to service, install, and repair piping and appliances, excluding motor fuel containers, motor fuel systems, recreational vehicle containers, or recreational vehicle systems.

(G) The Category E examination qualifies an individual to store, sell, transport and distribute LP-gas and perform all other categories of licensed activities except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers and the sale and installation of LP-gas motor or mobile fuel systems rated at more than 25 horsepower.

(H) The Category F examination qualifies an individual to operate a cylinder-filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves.

(I) The Category G examination qualifies an individual to operate an LP-gas dispensing station to fill ASME motor or mobile fuel containers.

(J) The Category H examination qualifies an individual to transport and sell LP-gas in cylinders.

(K) The Category I examination qualifies an individual to operate a service station as set out in Category F and G.

(L) The Category J examination qualifies an individual to operate a service station as set out in Category I, transport cylinders as set out in Category H and install and connect DOT cylinders.

(M) The Category K examination qualifies an individual to sell and distribute LP-gas through mains or pipes, and to install and repair LP-gas systems.
(N) The Category L examination qualifies an individual to sell and install both LP-gas motor or mobile fuel containers and fuel systems on engines.

(O) The Category M examination qualifies an individual to sell, service, and install recreational vehicle containers, and to install, repair, and service recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers.

(P) The Category N examination qualifies an individual to service and install containers that supply fuel to manufactured housing, and to install, repair, and service appliances and piping systems for manufactured housing.

(Q) The Category O examination qualifies an individual to test LP-gas containers, motor or mobile fuel systems, transfer systems, and transport systems to determine the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.

(R) The Category P examination qualifies an individual to operate a portable cylinder exchange service where LP-gas is sold in portable cylinders whose LP-gas capacity does not exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted.

(e) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination. If the examination is graded or reviewed by a testing service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing service to notify an individual of the individual’s examination results.

(f) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission at the Austin location may retake the same examination one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual’s performance on the examination.

(g) The Commission shall not issue a certificate to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(h) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.


(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, certificate holders, registered manufacturers, and other registrants to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LP-gas-related violations is consistent with the central goal of the Commission’s enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission’s enforcement program.

(b) Guidelines This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission’s authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person’s history of previous violations;

(2) the seriousness of the previous violations;

(3) any hazard to the health or safety of the public; and

(4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1. Figure: 16 TAC §9.15(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2. Figure: 16 TAC §9.15(f) (No change.)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may
assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.  

Figure 1: 16 TAC §9.15(g) (No change.)  
Figure 2: 16 TAC §9.15(g) (No change.)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations, the circumstances justifying enhancements of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction.  

Figure: 16 TAC §9.15(k)


(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

1. A licensee maintaining one or more outlets shall file LPG Form 1 with AFS listing the physical location of the first outlet and designating the company representative for the license and LPG Form 1A designating the physical location and operations supervisor for each additional outlet.

2. A licensee may have more than one company representative.

3. An individual may be operations supervisor at more than one outlet provided that:

(A) each outlet has a designated LP-gas certified employee responsible for the LP-gas activities at that outlet:

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on a sign with lettering at least 3/4-inch high, visible and legible during normal business hours; and

(C) the certified employee and/or the operations supervisor monitors the telephone number and responds to calls during normal business hours.

4. The company representative may also serve as operations supervisor for one or more of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

5. A licensee shall immediately notify AFS in writing upon conclusion of employment, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement.

6. A licensee shall cease all LP-gas activities if it no longer employs a qualified company representative who complies with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted a conditional qualification as specified in subsection (e) of this section.

7. A licensee shall cease LP-gas activities at an outlet if it no longer employs a qualified operations supervisor at that outlet who complies with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted a conditional qualification as specified in subsection (e) of this section.

(b) Company representative. A company representative shall:

1. be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

2. be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, be responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

3. have a working knowledge of the licensee's LP-gas activities to ensure compliance with the rules in this chapter and the Commission's administrative requirements;

4. pass the appropriate management-level rules examination, or, in the case of an applicant for a Category D license, obtain an exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

5. complete any required training and/or continuing education required in §9.51 and §9.52 of this title (relating to General Requirements for LP-Gas Training and Continuing Education, and Training and Continuing Education, respectively);

6. comply with the work experience or training requirements in subsection (e) of this section, if applicable;

7. be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

8. submit any additional information as deemed necessary by AFS.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall:

1. be an owner or employee of the licensee;

2. pass the applicable management-level rules examination or, in the case of a Category D license only, obtain an exemption as specified in §9.13 of this title;

3. complete any required training and/or continuing education required in §9.51 and §9.52 of this title; and

4. be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.
(d) Category P licensees.

(1) The company representative requirement for a Category P licensee may be satisfied by employing a Category E or J company representative if the Category E or J company representative is authorized by the Category P licensee to remove any employee who does not comply with the rules in this chapter or who performs unsafe LP-gas activities.

(2) In lieu of an operations supervisor requirement for a Category P licensee, the Category E or J licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(A) prepare a manual containing, at a minimum, the following:

(i) a description of the basic characteristics and properties of LP-gas;

(ii) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(iii) complete instructions on how to properly transport cylinders in vehicles;

(iv) prohibition against moving or installing cylinder cages at any store location;

(v) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(vi) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(vii) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(viii) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(ix) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(x) a requirement that any accidents be reported to the Category E or J licensee who prepares the manual, and detailed procedures for reporting any accidents;

(xi) all Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(xii) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(xiii) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(xiv) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(B) provide a manual in print or electronic format at each outlet or location of the Category P licensee; and

(C) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee and maintain records regarding the employees of the Category P licensee who have been trained.

(3) The Category P licensee shall:

(A) ensure that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(B) ensure that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon request.

(e) Work experience substitution for Category E, F, G, I, and J.

(1) The AFS director may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J management-level training course, or a subsequent Category E, F, G, I, or J management-level training course agreed on by the AFS director and the applicant.

(A) The written request shall include a description of the individual's LP-gas experience and other related information in order that the AFS director may properly evaluate the request.

(B) Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title prior to AFS issuing a certificate.

(2) If the individual fails to complete the training requirements within the time granted by the AFS director, the conditional qualification shall immediately be voided and the individual shall immediately cease all LP-gas activities granted by the conditional qualification.


(a) A licensee or registered manufacturer shall not perform any activity authorized by its license or registration under §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees) unless insurance coverage required by this section is in effect. LP-gas licensees, registered manufacturers, or applicants for license or manufacturer registration shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) of this section, if applicable. Registered manufacturers are not eligible for self-insurance. Before AFS grants or renews a manufacturer registration, an applicant for a manufacturer registration shall submit the documents required by paragraph (1) of this subsection. Before AFS grants or renews a license, an applicant for a license shall submit either:

Figure: 16 TAC §9.26(a)

(1) An insurance Acord™ form; or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information. The forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (j) of this section.

(b) Each licensee or registered manufacturer shall file LPG Form 999 or other written notice with AFS at least 30 calendar days
before the cancellation of any insurance coverage. The 30-day period
commences on the date the notice is actually received by AFS.

(c) A licensee or applicant for a license that does not employ or
contemplate employing any employee to be engaged in LP-gas related
activities in Texas may file LPG Form 996B in lieu of filing a workers’
compensation insurance form, including employer's liability insurance,
or alternative accident and health insurance coverage. The licensee or
applicant for a license shall file the required insurance form with AFS
before hiring any person as an employee engaged in LP-gas related
work.

(d) A licensee, applicant for a license, or an ultimate con-
sumer that does not operate or contemplate operating a motor vehicle
equipped with an LP-gas cargo container or does not transport or
contemplate transporting LP-gas by vehicle in any manner may file
LPG Form 997B in lieu of a motor vehicle bodily injury and property
damage insurance form, if this certificate is not otherwise required.
The licensee or applicant for a license shall file the required insurance
form with AFS before operating a motor vehicle equipped with an
LP-gas cargo container or transporting LP-gas by vehicle in any
manner.

(e) A licensee, registered manufacturer, or applicant for a li-
cense or manufacturer registration that does not engage in or contem-
plate engaging in any LP-gas activities that would be covered by com-
pleted operations or products liability insurance, or both, may file
LPG Form 998B in lieu of a completed operations and/or products liability
insurance form. The licensee, registered manufacturer, or applicant
for a license or manufacturer registration shall file the required insurance
form with AFS before engaging in any operations that require com-
pleted operations and/or products liability insurance.

(f) A licensee, registered manufacturer, or applicant for a li-
cense or manufacturer registration that does not engage in or contem-
plate engaging in any operations that would be covered by general li-
ability insurance may file LPG Form 998B in lieu of filing a general
liability insurance form. The licensee, registered manufacturer, or
applicant for a license or manufacturer registration shall file the required
insurance form with AFS before engaging in any operations that
require general liability insurance.

(g) A licensee may protect its employees by obtaining accident
and health insurance coverage from an insurance company authorized
to write such policies in this state as an alternative to workers’
compensation coverage. The alternative coverage shall be in the amounts
specified in Table 1 of this section.

(h) A state agency or institution, county, municipality, school
district, or other governmental subdivision shall meet the requirements
of this section for workers’ compensation, general liability, and/or mo-
tor vehicle liability insurance. The requirements may be met by filing
LPG Form 995 with AFS as evidence of self-insurance, if permitted by
the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources
Code, §113.097.

(i) Self-insurance requirements.

(1) This subsection applies to a licensee’s or a license appli-
cant’s motor vehicle bodily injury and property damage liability cov-
erage and general liability coverage. A licensee or license applicant shall
not elect to self-insure for more than 12 consecutive months, exclusive
of the six-month period for which a letter of credit is required to remain
in effect pursuant to paragraph (4) of this subsection.

(2) A licensee or license applicant desiring to self-insure
shall file with AFS a properly completed LPG Form 28, Notice of Elec-
tion to Self-Insure and a properly completed LPG Form 28-A, Bank
Declarations Regarding Irrevocable Letter of Credit. The licensee or
license applicant shall attach to the LPG Form 28-A any documenta-
tion necessary to show that the bank issuing the irrevocable letter of
credit meets the requirements in paragraph (5)(E) of this subsection.

(3) The irrevocable letter of credit shall be in an amount
that is no less than the total of all minimum insurance coverage amounts
required by the Commission in the Table in subsection (a)(3) of this section
for every coverage for which the licensee or license applicant seeks to
self-insure.

(4) The irrevocable letter of credit shall be valid until the
expiration date shown on LPG Form 28, which shall be no sooner than
six months after the earlier of either:

(A) the expiration date of the license; or

(B) the effective date of insurance coverage.

(5) A letter of credit commemorated by LPG Form
28-A shall:

(A) be irrevocable during its term;

(B) be payable to the Commission or Commission’s de-
signee in part or in full as directed by the Commission in compliance
with an order from state or federal court;

(C) include a guarantee from the bank that issues the
letter of credit (irrevocable confirmed credit);

(D) not apply to the licensing requirements for worker's
compensation insurance including employers liability insurance or al-
ternative accident/health insurance; and

(E) be issued by a federally insured bank authorized to
do business in the State of Texas which meets or exceeds the following
requirements:

(i) Bank management shall attest that the bank is not
subject to any outstanding written enforcement action, agreement, or
directive, or prompt corrective action directive issued by a state or federal bank regulatory agency;

(ii) The bank shall be "well capitalized" as defined in
federal bank regulatory statutes with:

(I) a total risk-based capital ratio of 10% or
greater;

(II) a Tier 1 risk-based capital ratio of 6% or
greater; and

(III) a leverage ratio of 5% or greater.

(iii) The bank shall have received a satisfactory or
better rating at its most recent Community Reinvestment Act (CRA)
exam-
ination by a federal bank regulatory agency;

(iv) The bank management shall attest that the full
amount of the letter of credit, when added to other indebtedness of
the licensee or applicant for license to the bank, is within the bank's
regulatory lending limit; and

(v) The issuing bank shall be in good standing with
the State Comptroller's Office regarding the payment of franchise taxes
and other obligations to the state.

(6) In addition to the requirements of §9.36 of this title (re-
lating to Report of LP-Gas Incident/Accident), within 30 days of the
occurrence of any incident or accident involving the business activi-
ties of a self-insured LP-gas licensee that results in property damage
or loss and/or personal injuries, the licensee shall notify AFS in writ-
ing of the incident. The licensee shall include in the notification a list
of the names and addresses of any individuals known to the licensee

ADOPTED RULES  January 3, 2020  45 TexReg 141
§9.51  General Requirements for LP-Gas Training and Continuing Education.

(a) In addition to complying with NFPA 58, §§4.4 and 11.2, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new certificates, as set forth in §9.8 of this title (relating to Requirements and Application for a New Certificate) and persons holding existing certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may retain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to AFS.

(c) The training requirements apply to:

1. applicants for Category D, E, F, G, I, J, K, or M management-level certificates; and

2. applicants for the following employee-level certifications:
   (A) bobtail driver;
   (B) DOT cylinder filler;
   (C) recreational vehicle technician;
   (D) service and installation technician;
   (E) appliance service and installation technician; and
   (F) motor/mobile fuel filler.

(d) The continuing education requirements apply to the following individuals:


2. any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail; and

3. individuals holding the following employee-level certifications:
   (A) bobtail driver;
   (B) DOT cylinder filler;
   (C) recreational vehicle technician;
   (D) service and installation technician;
   (E) appliance service and installation technician; and
   (F) motor/mobile fuel filler.

(e) The training and continuing education requirements do not apply to an individual who:

1. drives or fuels a motor vehicle powered by LP-gas as an ultimate consumer;

2. fuels motor vehicles as an employee of an ultimate consumer;

3. is employed by a state agency, county, municipality, school district, or other governmental subdivision;

4. holds a general installers and repairman exemption; or

5. holds a management or employee-level certification not specified in subsection (c) or (d) of this section.

(f) Exempted individuals who have passed an examination for an initial Category D, E, F, G, I, J, K, or M management-level certificate for which the ultimate consumer is AFS shall be exempt from the training or continuing education requirements in this chapter.

(g) Individual credit. Successful completion of any required training or continuing education course shall be credited to and accrue to the individual.

(h) No partial credit. Individuals attending courses shall receive credit only if they attend the entire course and pay any training or continuing education course fees in full. The Commission shall not award partial credit for partial attendance.

(i) Schedules. Dates and locations of available AFS LP-gas training and continuing education courses can be obtained in the Austin offices of AFS, and the Commission's web site and shall be updated at least monthly. AFS courses shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFS courses be taught in their area. AFS shall schedule its courses and locations at its discretion.

(j) Course registration and scheduling.

1. Registering for a course. To register for a scheduled training or continuing education course, an individual shall complete the online registration process at least seven days prior to the course. AFS shall accept course registrations via regular mail, electronic mail (e-mail), or facsimile transmission (fax). Such requests shall include the applicant's full name, address, phone number, level (either manager or employee) and category of certification (such as cylinder filling or service and installation), e-mail address, and the name or number, location, and date of the requested course.

2. Costs for courses.

   (A) Each registration for a training course shall require the payment of the applicable nonrefundable course fee as follows:

   (i) $75 for an eight-hour course;

   (ii) $150 for the 16-hour Category F, G, I, and J course; and

   (iii) $750 for the 80-hour Category E course.

   (B) The course fees do not include the license or rules examination fees described in §9.6 and §9.10 of this title (relating to
License Categories, Container Manufacturer Registration, and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, I or J shall not be required to pay the $75 course fee.

(D) Continuing education courses shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title.

(E) Requests for courses where no training or continuing education course credit is given shall be submitted in writing to the AFS training section. The AFS training section may conduct the requested courses at its discretion. The nonrefundable fee for a non-credit course is $250 if no overnight expenses are incurred by the AFS training section, or $500 if overnight expenses are incurred. AFS may waive the fee for a non-credit course in cases where the Commission recovers the cost of the course from another source, such as a grant.

(F) AFS may charge reasonable fees for materials for courses using third-party materials.

(3) Course scheduling. AFS shall schedule individuals to attend courses on a first-come, first-served basis, based on when the course fee is paid except as follows:

(A) Priority for attending the 16-hour Category F, G, I, and J course, and the 80-hour Category E course is based on when the course fee is paid.

(B) Priority for attending courses other than the 16-hour Category F, G, I, and J course, and the 80-hour Category E course shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.

(C) If any course has fewer than eight individuals registered within seven calendar days prior to the course, AFS may cancel the course and may reschedule the registered individuals in another course agreed upon by the individuals and the AFS training section. The AFS training section reserves the right to determine the number of course registrants.

(4) If a previously registered individual is unable to attend the course at the time and place for which the individual is registered due to illness or other unforeseen circumstances, another individual from the same company may attend that same course in his or her place.

(5) Applicants who take courses offered by an entity other than AFS shall comply with the registration, fee, and other requirements specified by that entity.

(k) An individual registered to take a course shall bring the following items to the course site:

(1) a registration confirmation email or fax;

(2) proof of payment unless exempt from the course fee; and

(3) documents required in §9.10(b) of this title if one or more examinations will be taken.

(l) Individual applicants or certificate holders shall be responsible for promptly notifying the AFS training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify AFS of any discrepancies or errors in examination records or certificates. In the event of a discrepancy, AFS' records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS


The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.


(a) In addition to NFPA 58, §§5.2.1.11, 6.8.6.1(l), 6.8.6.2(A), 6.8.6.3(F), 6.11.3.14 and 6.19.2, steel containers and steel piping systems installed underground, partially underground, or as mounted installations on or after March 1, 2014, shall include a corrosion protection system.

(b) Cathodic protection systems installed on or after March 1, 2014, shall be monitored by every licensee servicing the container in accordance with NFPA 58, §6.19.3.1 through 6.19.3.3. Such licensees shall document the test results.

(c) The licensee shall retain documentation of test results in accordance with §9.4 of this title (relating to Records).

(d) Steel containers and piping systems installed underground, partially underground, or as mounted installations on or after March 1, 2014, shall not be filled unless a cathodic protection system is installed in accordance with this section.


LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources...
SUBCHAPTER C. VEHICLES


The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

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Rules Attorney, Office of the General Counsel
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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)


The Commission adopts the amendments and new rule under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.301. Adoption by Reference of NFPA 54.

(a) Effective September 1, 2020, except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2018 edition of the National Fuel Gas Code, commonly referred to as NFPA 54 or Pamphlet 54. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective September 1, 2020, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 54 are:

(2) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2018 edition;
(6) NFPA 70, National Electrical Code, 2017 edition;
(9) NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 2018 edition;
(10) NFPA 90B, Standard for the Installation of Warm Air Heating and Air Conditioning Systems, 2018 edition;
§9.308. Installation of Piping.
(a) In addition to the requirements of NFPA 54, Chapter 7, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly certified by the Commission pursuant to §9.10 and §9.13 of this title (relating to Rules Examination, and General Installers and Repairman Exemption, respectively).

(b) Licensees and registrants shall document and retain such documentation of all pressure and leakage tests pursuant to §9.4 of this title (relating to Records).

(c) When connecting to or supplying a new piping system with corrugated stainless steel tubing (CSST), the licensee or registrant shall verify the system is bonded.

(d) In addition to NFPA 58 §5.11.5, licensees and registrants shall retain written proof regarding any current certifications required by the manufacturer for installation and repair methods for CSST, polyethylene, and polyamide pipe and tubing, including heat-fusion.

§9.313. Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted.
Table 1 of this section lists certain NFPA 54 sections which the Commission adopts with additional requirements, changes, or does not adopt in order to address the Commission's rules in this chapter.
Figure: 16 TAC §9.313

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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16 TAC §9.312

The Commission adopts the repeal under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §§113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

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16 TAC §9.401, §9.403

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

(a) Effective September 1, 2020, except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association (NFPA) in its 2017 edition of the Liquefied Petroleum Gas Code, commonly referred to as NFPA 58 or Pamphlet 58. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective September 1, 2020, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58, §2.1, which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 58 are:

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2013 edition;
For Rules 45 has Maintenance 58 of tion, §9.403. Amendment 2019. Compressed which agency found the adoption with language, orHandleing of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2016 edition; (9) NFPA 55, Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2016 edition; (10) NFPA 59, Utility LP-Gas Plant Code, 2015 edition; (11) NFPA 70, National Electrical Code, 2017 edition; (12) NFPA 99, Standard for Health Care Facilities, 2015 edition; (13) NFPA 101, Life Safety Code, 2015 edition; (14) NFPA 160, Standard for the Use of Flame Effects Before an Audience, 2016 edition; (15) NFPA 220, Standard on Types of Building Construction, 2015 edition; (16) NFPA 1192, Standard on Recreational Vehicles, 2015 edition. §9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements. (a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules. Figure: 16 TAC §9.403 (b) If a section in NFPA 58 refers to another section in NFPA 58 which the Commission has not adopted, or which the Commission has adopted with additional or alternative language, then persons shall comply with the applicable Commission rule. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 12. COAL MINING REGULATIONS

SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) adopts amendments to §12.108, relating to Permit Fees, with changes to the proposed text as published in the August 23, 2019, issue of the Texas Register (44 TexReg 4421). The rule will be republished.

The Commission received two comments on the amendments: one from North American Coal Corporation (“NACoal”) and one from the Texas Mining and Reclamation Association (“TMRA”). NACoal commented that the regulatory program designed to oversee the coal mine sector should decrease proportionately to the industry it regulates. NACoal recognizes that some previously active mines are still subject to regulatory oversight but that most are in reclamation status, which, in NACoal’s opinion, requires significantly less oversight than an active mining operation. NACoal commented that instead of increasing permit fees the Surface Mining and Reclamation Division (SMRD) should evaluate its regulatory program and decrease inefficiencies such that its budget can be decreased. Similarly, TMRA expressed concern about increased fees at a time when the coal mining industry is experiencing immense pressure. TMRA noted the importance of the Commission working together with industry to optimize the efficiency of the Commission’s resources. The Commission appreciates these comments.

The Commission agrees that efficient use of resources is a priority. The Commission also recognizes that the number of active mines is decreasing. Therefore, the Commission has determined it will maintain its current fee structure at this time. As discussed in the proposal preamble, the current fee structure, created by an agreement with industry in 2005, specifies that seven percent of annual fees are based on the number of permits, while 93 percent of annual fees are based on the number of bonded acres. Maintaining the current fee structure until a change is necessary through a future rulemaking will allow the Commission and the mining industry an opportunity to re-evaluate the fee structure to accommodate industry changes.

The Commission amends subsection (b) to remove proposed calendar years. The Commission does not adopt the proposed fee changes in paragraphs (b)(1) and (b)(2).

The Commission adopts the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, which authorizes the Commission to collect annual fees.

Statutory authority: Texas Natural Resources Code, §§134.013 and 134.055.

Cross-reference to statute: Texas Natural Resources Code, §§134.013 and 134.055.

§12.108. Permit Fees.
The Public Utility Commission of Texas (commission) adopts amendments to §22.246, relating to administrative penalties, with changes to the proposed text as published in the October 11, 2019, issue of the Texas Register (44 TexReg 5833). The rules will be republished. The amendments implement Senate Bill 1358, 86th Legislature, Regular Session, which modified requirements for notices of violation issued under Public Utility Regulatory Act (PURA) §15.024 in cases where the person to whom the notice was issued does not respond. The amendments also make stylistic updates. These amendments are adopted under Project Number 49875.

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

A public hearing on the amendments was held at commission offices on October 25, 2019 at 9:00 a.m. No persons made appearances.

The commission received no comments on the proposed amendments.

In adopting this section, the commission makes other minor modifications for stylistic purposes.

These amendments are adopted under §14.002 and §14.052 of the Public Utility Regulatory Act, Tex. Util. Code §(West 2016 and Supp. 2017) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and PURA §15.024, which grants the commission the authority to impose an administrative penalty when the commission finds that a violation has occurred.


§22.246. Administrative Penalties.

(a) Scope. This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise:

(1) Affected Wholesale Electric Market Participant -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.

(2) Excess Revenue -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) Executive director -- The executive director of the commission or the executive director's designee.

(4) Person -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) Violation -- Any activity or conduct prohibited by PURA, the TWC, commission rule, or commission order.

(6) Continuing violation -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $25,000 per day; provided that an administrative penalty in an amount that exceeds $5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.
(3) The amount of the administrative penalty must be based on:
   (A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
   (B) the economic harm to property or the environment caused by the violation;
   (C) the history of previous violations;
   (D) the amount necessary to deter future violations;
   (E) the efforts to correct the violation; and
   (F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $5,000 per day.

(3) The amount of the penalty must be based on:
   (A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;
   (B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
   (C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;
   (D) any economic benefit gained through the violations;
   (E) the amount necessary to deter future violations; and
   (F) any other matters that justice requires.

(c) Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.

(f) Report of violation or continuing violation. If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.
   (A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice may be given by regular or certified mail.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:
   (i) a brief summary of the alleged violation or continuing violation;
   (ii) a statement of the amount of the recommended administrative penalty;
   (iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;
   (iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;
   (v) a copy of the report issued to the commission under this subsection; and
   (vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(D) If the commission sends written notice to a person by mail addressed to the person’s mailing address as maintained in the commission’s records, the person is deemed to have received notice:
   (i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or
   (ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.
   (A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64, or chapter 13 of the TWC, or of a commission rule or commission order adopted or issued under those chapters.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.
(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) Payment of administrative penalty, disgorged excess revenue, or both. Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A) the occurrence of the violation or continuing violation;
(B) the amount of the administrative penalty; and
(C) the amount of disgorged excess revenue, if applicable.

(4) Failure to respond. If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.

(h) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties must file a report with the executive director setting forth the factual basis for the settlement;
(B) the executive director will issue the report of settlement to the commission; and
(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) Hearing. If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1)–(5) of this subsection.

(1) The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3) The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;
(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and
(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;
(B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or
(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.

(j) Parties to a proceeding. The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) Distribution of Disgorged Excess Revenues. Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other
wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must, by that date, notify the commission of the date by which the funds will be distributed. The independent organization must include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the commission that the entirety of the revenues was distributed to its retail electric customers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.
TRD-201904837
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 5, 2020
Proposal publication date: October 11, 2019
For further information, please call: (512) 936-7244

TITLE 19. EDUCATION
PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD
CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY
SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS

OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES.

19 TAC §§3.1 - 3.20

The Texas Higher Education Coordinating Board (THECB) adopts the repeal of Chapter 3, Subchapter A, §§3.11 - 3.15 and new rules for Chapter 3, Subchapter A, §§3.1 - 3.20, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions. New §§3.1 - 3.10 and 3.16 - 3.20 were proposed in the November 1, 2019, issue of the Texas Register (44 TexReg 6487). The repeal and replacement of §§3.11 - 3.15 were proposed in the November 8, 2019, issue of the Texas Register (44 TexReg 6660). New §3.4 and §3.11 are adopted with changes to the proposed text as published in the November 8, 2019 issue of the Texas Register (44 TexReg 6660), and will be republished. New §§3.1 - 3.3, 3.5 - 3.10, and 3.12 - 3.20, as well as the repeal of §§3.11 - 3.15, are adopted without changes and will not be republished.

The agency also adopts the new rules under a new subchapter name. Subchapter A is renamed "Requirements for Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private Institutions of Higher Education; Authorizing Administrative Penalties."

Specifically, these new and replaced sections provide: a requirement in accordance with statute that all institutions of higher education adopt policies on sexual harassment, sexual assault, dating violence, and stalking. The rules provide guidance for institutions on reporting requirements, disciplinary processes, and confidentiality.

The following comments were received regarding the amendments:

A public comment was received from Doctors Hospital at Renai-ssance, Ltd, (DHR Health) on November 25, 2019.

Comment: DHR Health recommends that §3.5(a) be altered by inserting language in the proposed rule that would require the reporting of incidents only when the employee receiving the information has reason to believe the information is reliable.

Staff response: The Negotiated Rulemaking Committee discussed at length when an employee would need to report incidents, given the potential of erroneous reporting. After much discussion, including discussion of the "reasonable person standard" expected of a hypothetical reasonable person, the committee determined that an employee should promptly report the incident to the institution’s Title IX coordinator or deputy Title IX coordinator, if the employee "reasonably believes" that the incident constitutes sexual harassment, sexual assault, dating violence, or stalking. In this regard, §3.5(a) states the following (focus highlighted):

"An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution’s Title IX coordinator or deputy Title IX coordinator."

Veracity of reports are to be determined by the Title IX Coordinator. The Title IX Coordinator is charged with determining
whether, as illustrated, "innuendo, rumors, gossip, second-hand or third-hand information," with or without substantiation, would necessitate consideration when identified as constituting sexual harassment, sexual assault, dating violence, or stalking pursuant to this new Texas mandate or constitute a matter required to be reported pursuant to other federal law or applicable institutional policy.

Thus, no change is recommended.

A public comment with five substantive comments was received from The University of Texas at Austin (UT Austin) on December 6, 2019.

Comment: UT Austin recommends that §3.3 be altered by inserting a definition of "employee" that excludes volunteers.

Staff response: The enabling statutes do not indicate that volunteers should be excluded from consideration as employees, and the Negotiated Rulemaking committee followed the statutes closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.3(c) be altered by adding a definition of "domestic violence" and indicating if that is included in the required reporting.

Staff response: The enabling statutes do not include "domestic violence" in the list of incidents that must be reported, and the Negotiated Rulemaking committee followed the statutes closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.5(c)(1)(A) be altered to clarify that staff and faculty may also speak to "confidential employees" with the same expectation of privacy as students of the institution.

Staff response: In the statute, Texas Education Code, Section 51.252 provides an exception for employee required reporting in Subsection (c) for employees who are designated as confidential resources "with whom students may speak confidentially". Therefore, the exception in the statute only covers student communications with confidential resources and does not extend the exception to faculty and staff. The Negotiated Rulemaking committee followed the statute closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.11(b) be altered by adding the word "final" to clarify that the obligation to provide information to another institution is in relation to a final determination, which ensures that the integrity of disciplinary process determinations is better protected.

Staff response: Staff concurs with this recommendation. Staff suggests modifying §3.11(b) by inserting the word "final" as shown below:

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a final determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Comment: UT Austin recommends that §3.14(b) be revised by providing clarification that some employees may be designated by institutions as "confidential employees" when they are serving in some capacities but not so designated while serving in other capacities.

Staff response: The enabling statutes do not provide a basis for designating certain employees as confidential at some times but not at others. This recommendation would also be complex and difficult to implement.

Thus, no change is recommended.

Consistent with the rules of negotiated rulemaking, the comments from Doctors Hospital at Renaissance, Ltd., (DHR Health) and The University of Texas at Austin were forwarded to the Negotiated Rulemaking Committee on December 3, 2019, and December 9, 2019, respectively, along with explanations that as committee members, they could accept, reject, or modify the staff recommendations. Committee members voted via email through December 10, 2019 at 12:00 p.m. and subsequently engaged in a pre-arranged audio conference call on December 10, 2019, from 1:00 p.m. - 2:30 p.m. for final discussions and votes. After discussions on the conference call, consensus was reached to accept staff's proposed responses to the comments, with some suggested modifications to staff's response language on two responses for clarity. The above responses reflect the committee's consensus decisions.

The new sections are adopted under the Texas Education Code, Sections 51.259 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

§3.4. Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking.

(a) Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and employee of the institution and have the policy approved by the institution's governing body. The policy must include:

1. Definitions of prohibited behavior;
2. Sanctions for violations;
3. Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirements in §3.7 of this subchapter (relating to Electronic Reporting Requirement);
4. Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; and
5. A statement regarding:
   A (A) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
   (B) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
   (C) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution...
in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

(b) Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

1. including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and

2. creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The orientation:

1. may be provided online; and

2. must include the statements described by subsection (a)(5) of this section.

(d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

1. address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction; and

2. provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:

(A) e-mailing the information to each student at the beginning of each semester or other academic term;

(B) including the information in the institution's orientation (which may be provided online); and

(C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under subsection (a) of this section, each postsecondary educational institution shall:

(i) to the greatest extent practicable based on the number of counselors employed by the institution, ensure each alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident and any other person who reports such incidents are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

(ii) notwithstanding any other law, allow an alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident to drop a course in which both parties are enrolled without any academic penalty.

(e) Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board.

§3.11. Student Withdrawal or Graduation Pending Disciplinary Charges; Request for Information from Another Postsecondary Educational Institution.

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

1. may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

2. shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a final determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2019.

TRD-201904831
William Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: January 1, 2020
Proposal publication dates: November 1, 2019/November 8, 2019
For further information, please call: (512) 427-6206

19 TAC §§3.11 - 3.15
The repeals are adopted under the Texas Education Code, Sections 51.259 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6206

TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 163. LICENSURE

22 TAC §163.13

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §163.13, concerning Expedited Licensure with non-substantive changes, described below, to the proposed text as published in the November 8, 2019, issue of the Texas Register (44 TexReg 6666). The rule will be republished.

Deletions in text of section (c) were made because the language was an unnecessary statement of intent.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to allow for qualified and experienced physicians who have practiced successfully in other states to obtain expedited licensure in Texas.

The adopted amendment to §163.13, relating to Expedited Licensure is amended to implement a legislative mandate in H.B. 1504 (86th Regular Legislative Session) requiring the Board to develop an expedited licensing process for certain applicants who also hold an out-of-state license in good standing.

No written comments were received. No one appeared in person to testify regarding the rules at the public hearing on December 6, 2019.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, 155.0561, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904834
Scott Freshour
General Counsel
Texas Medical Board
Effective date: January 5, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 305-7016

CHAPTER 182. USE OF EXPERTS

The Texas Medical Board (Board) adopts amendments to 22 TAC §182.1, concerning Purpose, §182.3, concerning Definitions, §182.5, concerning Expert Panel Qualifications, §182.8, concerning Expert Physician Reviewers and the repeal of §§182.2, 182.4, 182.6, 182.7, without changes to the proposed text as published in the November 1, 2019, issue of the Texas Register (44 TexReg 6491). The rules will not be republished.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to provide greater information and due process to regulated licensees when addressing allegations of violations related to standard of care and other statutory violations.

Amendments and repeals in Chapter 182 are adopted as follows:
Section 182.1, relating to Purpose, is amended to clarify the scope of the rule and its applicability.

Section 182.2, relating to Board's Role, is repealed.
Section 182.3, relating to Definitions, is amended to clarify definitions relating to role, purpose, and scope of various professionals utilized by the board.
Section 182.4, relating to Use of Consultants, is repealed.
Section 182.5, relating to Expert Panel, is renamed "Expert Reviewer Qualifications" and amended to delete obsolete language and to change the order of identified certifying boards.
Section 182.6, relating to Use of Expert Witnesses, is repealed.
Section 182.7, relating to Interim Appointment, is repealed.
Section 182.8, relating to Expert Physician Reviewers, is amended to delete obsolete language regarding the processes and procedures applicable to the expert physician reviewers. The amendments to §182.8 implement the legislative mandate passed in HB 1504 (86th Regular Legislative Session) relating to expert panel reports and providing each reviewer report to the affected licensee and the content of each report. This amendment also adds language requiring notice to the panel when a case involves Complementary and Alternative Medicine.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on December 6, 2019.

22 TAC §§182.1, 182.3, 182.5, 182.8

The amendments are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904835
Scott Freshour
General Counsel
Texas Medical Board
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Proposal publication date: November 1, 2019
For further information, please call: (512) 305-7016

22 TAC §§182.2, 182.4, 182.6, 182.7

The repeals are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904836
The Commissioner of Insurance adopts amendments to 28 TAC §1.414, relating to the 2020 assessment of maintenance taxes and fees imposed by the Insurance Code. The department adopts the amendments to §1.414 without changes to the proposed text published in the November 8, 2019, issue of the Texas Register (44 TexReg 6679). The rule text will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2020 on the basis of gross premium receipts for calendar year 2019.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; and workers' compensation certified self-insurers.

The department adopts an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also adopts amendments in subsections (a) - (f) and (h) to reflect the appropriate year for accurate application of the section.

The department adopts amendments in subsections (a)(1) - (9), (b), (c)(1) - (2), (d), and (e) to update rates to reflect the methodology the department developed for 2020. The adopted amendments also delete subsection (c)(3), because of the repeal of the tax by Senate Bill 1623, 86th Legislature, Regular Session (2019).

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2020:

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2021. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department added these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department included costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department included an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculated the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removed costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduced the total cost need by subtracting the estimated end-
The department determined the revenue need for each maintenance tax or fee line by dividing the total cost need for maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplied the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusted the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusted the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocated the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocated the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department used the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divided the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC):

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2020. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers’ compensation premium volume and the certified self-insurers’ liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the Workers’ Compensation Research and Evaluation Group:

To determine the revenue need, the department considered the following factors that are applicable to the Workers’ Compensation Research and Evaluation Group: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the Commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomicilitating to Texas under Insurance Code §964.071(c).

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §1.414 under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 256.001 - 256.003; 258.001 - 258.004; 259.002 - 259.004; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administers money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the
amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax re-
quired by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §257.003 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.003 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §259.004 requires a third party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.
Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers’ Compensation Act and to support the prosecution of workers’ compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers’ compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C, which was recodified as Insurance Code §2053.202 by House Bill 2017, 79th Legislature, Regular Session (2005). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers’ compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers’ compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers’ Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers’ Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers’ compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers’ compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses administering the Texas Workers’ Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups for the purpose of funding the Workers’ Compensation Research and Evaluation Group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers’ compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers’ compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers’ compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiplies the amount of the certified self-insurer’s liabilities for workers’ compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers’ compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers’ compensation self-insurance group based on gross premium for the group’s retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers’ compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group’s retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group’s retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers’ compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers’ compensation self-insurance group under the section is based on gross premium for the group’s retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.
CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Commissioner of Insurance adopts amendments to 28 TAC §7.1001, relating to 2020 assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The department adopts the amendments to §7.1001 without changes to the proposed text published in the November 8, 2019, issue of the Texas Register (44 TexReg 6695). The rule text will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2020 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2019 calendar year, and from each foreign insurer examined during the 2019 calendar year using the same methodology.

The department adopts an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also adopts amendments in subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department adopts amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2020.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2020:

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2021. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2020 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2019 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2019 to determine the proposed rate of assessment for admitted assets.

SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §7.1001 under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152;
Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers’ compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency’s legal authority.

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Texas Department of Insurance
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