PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [ ] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.727

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §355.727, concerning Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

BACKGROUND AND PURPOSE

The purpose of the new section is to describe the methodology by which HHSC will temporarily increase the direct care portion of the supervised living and residential support services rates. Such direct care staffing add-on payments are to be used only for attendant compensation.

Home and Community-based Services (HCS) providers report being unable to afford wage increases for direct care staff or to offer higher starting wages. The HCS attendant compensation rate enhancement program has a maximum of 25 levels. To enable providers to afford the wage increases at the maximum level for direct care staff, HHSC must first increase the rates beyond the historical trend as the current methodology is based on historical costs. The rate increases will be an add-on to the current base rate for the direct care portion of the rate. The proposed methodology will be in effect from January 1, 2020, through August 31, 2021. HHSC assumes the cost data for this period will support the increased wages for direct care staff.

While this temporary add-on payment methodology is in place, HHSC will implement a mandatory spending requirement add-on to ensure that providers spend these funds on direct care staff. While the spending requirement will be similar to the attendant compensation rate enhancement program, it will not supplant it. The attendant compensation rate enhancement will continue to be voluntary for supervised living and residential support services day habilitation, respite, supported employment, and employment assistance.

SECTION-BY-SECTION SUMMARY

Proposed new §355.727 adds the methodology for an add-on that will temporarily increase the direct care portion of the HCS supervised living and residential support services rates.

Proposed new §355.727(a) specifies the purpose of the direct care staffing add-on and references how the rates for supervised living and residential support services are determined in accordance with §355.723 (relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs).

Proposed new §355.727(b) describes the direct care staffing add-on methodology and specifies the add-on for each level of need.

Proposed new §355.727(c) outlines the reporting requirements for HCS providers who deliver supervised living and residential support services during the time period the add-on is in effect.

Proposed new §355.727(d) specifies which providers must comply with the direct care staffing add-on spending requirement.

Proposed new §355.727(e) describes the calculation of the direct care staffing add-on spending requirement.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each of the first five years that the rule will be in effect, there will be an estimated additional cost to state government as a result of enforcing and administering the rule as proposed. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local governments.

The effect on state government for each of the five years the proposed rule is in effect is an estimated cost of $4,347,702 in General Revenue (GR) ($11,054,416 in All Funds (AF)) in Fiscal Year (FY) 2020, $6,384,928 in GR ($16,793,603 AF) in FY 2021, $6,514,601 GR ($17,179,856 AF) in FY 2022, $6,573,233 GR ($17,334,475 AF) in FY 2023, and $6,632,392 GR ($17,490,485 AF) in FY 2024.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will create a new rule;
(6) the proposed rule will not expand, limit, or repeal an existing rule; and
(7) the proposed rule will not change the number of individuals subject to the rule.

HHSC has insufficient information to determine the proposed rule’s effect on the state’s economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule will provide a temporary rate increase in the direct care portion of the supervised living and residential support services rates.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Rate Analysis, has determined that for each year of the first five years the rule is in effect, the public benefit will be the increased ability of an HCS provider to pay higher staff wages to supervised living and residential support services attendants and attract quality direct care staff.

Mr. Wood has also determined that for the first five years the rule in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the proposed rule will temporarily increase the direct care portion of the HCS supervised living and residential support services rates. While there is a recoupment component to the rule, it is not possible to determine whether an individual provider may be subject to a recoupment.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC HEARING

HHSC will conduct a public hearing on November 4, 2019, at 10 a.m. to receive public comments on the rule. The public hearing will be held at the Robert D. Moreton Building, 1100 W. 49th Street, Austin, TX 78751. Entry is through security at the main entrance to the building facing 49th Street. Free parking is available in the adjacent parking garage. HHSC will also broadcast the public hearing; the broadcast can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The broadcast will be archived and can be accessed on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. Persons requiring further information, special assistance, or accommodations should contact the HHSC Rate Analysis Department Customer Information Center at (512) 424-6637.

PUBLIC COMMENT

Questions about this proposal may be directed to the HHSC Rate Analysis Department Customer Information Center at (512) 424-6637.

Written comments on this proposal may be submitted to the HHSC Rate Analysis Department, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to RAD-LTSS@hhsc.state.tx.us within 31 days after publication of this proposal in the Texas Register.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; or (2) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate “Comments on Proposed Rule 20R015” in the subject line.

STATUTORY AUTHORITY

The proposed new rule is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

The proposed new rule affects Texas Government Code §531.0055, Texas Government Code Chapter 531, and Texas Human Resources Code Chapter 32.

§355.727. Add-on Payment Methodology for Home and Community-Based Services Supervised Living and Residential Support Services.

(a) Purpose of methodology. Direct care staffing add-on payments for Supervised Living and Residential Support Services add funds to the direct care portion of the rates specifically for attendant compensation. The recommended rates for Supervised Living and Residential Support Services are determined in accordance with §355.723 of this subchapter (relating to Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs).

(b) Direct Care Staffing Add-on Payment Methodology. Effective January 1, 2020, through August 31, 2021, HHSC will pay an add-on to the direct care portion of the Supervised Living and Residential Support Services rates.

(1) The add-on for each level of need (LON) is as follows:
   (A) $4.06 per unit for LON 1;
   (B) $4.53 per unit for LON 5;
   (C) $5.22 per unit for LON 8;
   (D) $6.04 per unit for LON 6; and
   (E) $8.45 per unit for LON 9.

(2) The add-on is to be used only for attendant compensation as defined in §355.103(b)(1) of this chapter (relating to Specifications for Allowable and Unallowable Costs).

(c) Reporting requirements.
(1) All Home and Community-based Services (HCS) providers who deliver Supervised Living or Residential Support Services during the period the add-on is in effect must submit either a cost report or accountability report as described in §355.105(b) of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures) for each reporting period during the time period the add-on is in effect.

(2) Providers who do not participate in attendant compensation rate enhancement and deliver no Supervised Living or Residential Support Services during the period the add-on is in effect may be excused from submitting an accountability report for the years in which an HCS cost report is not required.

(d) Applicability of the Direct Care Staffing Add-on Spending Requirement.

(1) The spending requirement is applicable to all HCS providers who deliver Supervised Living or Residential Support Services during the time period the add-on is in effect regardless of their participation status in the attendant compensation rate enhancement described in §355.112 of this chapter (relating to Attendant Compensation Rate Enhancement).

(2) HCS providers who do not deliver Supervised Living or Residential Support Services during the time period the add-on is in effect are not subject to the spending requirement unless they participate in the attendant compensation rate enhancement described in §355.112 of this chapter.

(e) Calculation of the Direct Care Staffing Add-on Spending Requirement.

(1) HCS providers who deliver Supervised Living or Residential Support Services during the time period the direct care staffing add-on is in effect are required to spend at least 90 percent of the direct care staffing add-on revenues on attendant compensation as defined in §355.103(b)(1) of this chapter and §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) The direct care staffing revenues are the following.

(A) For providers who do not participate in the attendant compensation rate enhancement described in §355.112 of this chapter, the base rate revenues as determined in §355.723 of this subchapter plus the direct care staffing add-on revenues; or

(B) For providers who participate in the attendant compensation rate enhancement described in §355.112 of this chapter:

(i) the base rate revenues as determined in §355.723 of this subchapter, plus;

(ii) the attendant compensation rate enhancement revenues based on the provider's enrolled level as described in §355.112 of this chapter, plus;

(iii) the direct care staffing add-on revenues.

(3) HHSC will determine the direct care staffing add-on spending requirement per unit of service delivered using attendant compensation spending from the following sources:

(A) the applicable cost report as specified in §355.105(b)-(c) of this chapter, or;

(B) the applicable Attendant Compensation Report (accountability report) as specified in §355.112(h) of this chapter, or;

(C) other appropriate data sources prescribed by HHSC.

(4) The provider's compliance with the direct care staffing add-on spending requirement is determined based on the total attendant compensation spending for each component code and is calculated as follows.

(A) The accrued direct care staffing add-on revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service.

(B) The accrued direct care staffing add-on revenues per unit of service will be subtracted from the direct care staffing add-on spending requirement per unit of service to determine the amount to be recouped.

(i) If the accrued attendant compensation spending per unit of service is greater than or equal to the direct care staffing add-on spending requirement per unit of service, there is no recoupment.

(ii) If the accrued attendant compensation spending per unit of service is less than the direct care staffing add-on spending requirement per unit of service, the direct care staffing add-on spending revenue per unit of service that exceed the direct care staffing actual attendant compensation spending are recouped. The amount paid per unit of service after adjustments for recoupment must not be less than the base rate revenues as determined in §355.723 of this subchapter.

(C) Compliance with the spending requirement is determined separately for each component code.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903595
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 424-6637

TITLE 16. ECONOMIC REGULATION
PART 1. RAILROAD COMMISSION OF TEXAS
16 TAC §3.70
The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to Pipeline Permits Required, to clarify language related to production and flow lines, to allow each operator to renew all its permits in the same month, to clarify fee requirements for gathering pipelines, and to reduce late fees for operators with 50 miles or less of pipeline.
The amendments in subsection (a) are proposed to 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 proposed amendments remove the language related to whether a production or flow lines leaves a lease in its entirety. Instead, the Commission proposes to 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 proposes to no longer require a permit for those pipelines—even if the pipelines leave a lease. The Commission proposes a definition of production and flow lines similar to the definition used in API RP 80 to help reduce confusion.

The proposed amendments in subsection (i) clarify that the fee requirements for gathering pipelines regulated under proposed 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 proposed to subsection (i).

Amendments proposed 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 proposed 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.

Proposed new subsection (k) addresses renewal dates when permits are transferred or an operator adds a new permit. Proposed 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. Proposed 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. Proposed 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.

Proposed amendments in subsection (l) reflect changes to the renewal process proposed in subsection (j).

Proposed 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 proposed in subsection (n) such that the existing late fees only apply to operators with a total mileage of more than 50 miles of pipeline.

Kari French, Director, Oversight and Safety Division, has determined that for each year of the first five years the amendments will be in effect there will be no fiscal implications to the Commission or to the regulated industry as a result of the amendments. There will be no fiscal effect on local government.

Ms. French has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be clarity regarding pipeline permit requirements and a more efficient permit renewal process.

The Commission has determined that the proposed amendments will not have an adverse economic effect on rural communities, small businesses or micro-businesses. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

During the first five years that the rules would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule’s applicability; expand, limit, or repeal an existing regulation; or affect the state’s economy.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, November 18, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission’s website more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Kari French at (512) 463-8859. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes 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. §§601, 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, §§601, 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, §§601, 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.

§3.70. Pipeline Permits Required.

(a) Each operator of a pipeline or gathering system, other than [a production or flow line that does not leave a lease or] an operator excluded under §81.051(b)(4) of this title (relating to General Applicability and Standards relating to General Applicability and Standards, subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed annually, from the Commission as provided in this rule. Production or flow lines that are subject to §81.051(a)(1)(B) and (a)(1)(D) of this title must comply with this section. All other production or flow lines as defined in this subsection are exempt from complying with this section. A production or flow line is piping used for production operations that generally occur upstream of gathering or other pipeline facilities. For the purposes of this subsection, piping used in "production operations" means piping used for production and preparation for transportation or delivery of hydrocarbon gas and/or liquids, and includes the following processes:

(1) extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement; and

(2) associated production compression, gas lift, gas injection, or fuel gas supply.

(b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an operator shall file an application for a pipeline permit on the Commission's online permitting system. The operator shall include or attach the following documentation and information:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation or maintenance;

(2) the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line;

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline, including, if applicable, an attestation to the applicant's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of the Attorney General of Texas; and

(4) documentation to provide support for the classification and purpose being sought for the pipeline, if applicable; and

(5) any other information requested by the Commission.

(c) To renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit on the Commission's online filing system. The operator shall include or attach:

(1) the contact information for the individual who can respond to any questions concerning the pipeline's construction, operation, or maintenance; change in operator or ownership; or other change including operator cessation of pipeline operation;

(2) a statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable; and

(3) any other information requested by the Commission.

(d) Upon receipt of a complete permit application, the Commission has 30 calendar days to issue, amend, or deny the pipeline permit as filed. If the Commission determines that the application is incomplete, the Commission shall promptly notify the applicant of the deficiencies and specify the additional information necessary to complete the application. Upon receipt of a revised application, the Commission has 30 calendar days to determine if the application is complete and issue, amend, or deny the pipeline permit as filed.

(e) If the Commission is satisfied from the application and the documentation and information provided in support thereof, and its own review, that the proposed line is, or will be laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted. The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based upon the information and documentation submitted by the applicant and the Commission's review of the application.
(f) This rule applies to applications made for new pipeline permits and to amendments, renewals, and cancellations of existing pipeline permits. The classification of a pipeline under this rule applies to extensions, replacements, and relocations of that pipeline.

(g) The Commission may delegate the authority to administratively issue pipeline permits.

(h) The pipeline permit, if granted, shall be revocable at any time after a hearing, held after 10 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission including if the permit is not renewed annually as required in subsection (a) of this section.

(i) Each pipeline operator shall pay an annual fee based on the pipeline operator's permitted mileage of pipeline by August 31, 2018, for the initial year that the requirement is in effect, and by April 1 for each subsequent year.

(1) For purposes of calculating the mileage fee, the Commission will categorize pipelines into two groups.

(A) Group A includes transmission and gathering pipelines that are required by Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 CFR Parts 192 and 195, such as: Group A pipelines include natural gas transmission and storage pipelines, natural gas gathering pipelines, hazardous liquids transmission and storage pipelines, and hazardous liquids gathering pipelines.

(B) Group B includes [gathering] pipelines that are required by Commission rules to have a valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195 such as: Group B pipelines include intrastate production and gathering pipelines [leaving a lease]. Group B also includes gathering pipelines required to comply with §8.110 of this title (relating to Gathering Pipelines).

(2) An operator of a Group A pipeline shall pay an annual fee of $20 per mile of pipeline based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in effect and as of December 31 for each subsequent year.

(3) An operator of a Group B pipeline shall pay an annual fee of $10 per mile of pipeline based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the requirement is in effect and as of December 31 for each subsequent year.

(4) Any pipeline distance that is a fraction of a mile will be considered as one mile and will be assessed a $20 or $10 fee, as appropriate.

(5) Fees due to the Commission for mileage transferred from one operator to another operator pursuant to subsection (o) [mile] of this section will be captured in the next mileage fee to be calculated on the following December 31 and paid by the new operator.

(j) Beginning October 1, 2018, each pipeline operator shall pay a $500 permit processing fee for each new permit application and permit renewal.

(1) From October 1, 2018, to August 31, 2020, the [The] permit renewal date for a pipeline operator who has an existing, valid permit in the Commission's online filing system will be the date shown in the online filing system on June 29, 2018, when the pipeline mileage is calculated for purposes of paying the mileage fee. A permit renewal date will not be affected or changed by an operator requesting or receiving a permit amendment.

(2) Beginning September 1, 2020, operators shall file their annual renewals as follows:

(A) Companies with names beginning with letters A through C shall file in February;

(B) Companies with names beginning with letters D through E shall file in March;

(C) Companies with names beginning with letters F through L shall file in April;

(D) Companies with names beginning with letters M through P shall file in May;

(E) Companies with names beginning with letters Q through T shall file in June; and

(F) Companies with names beginning with letters U through Z and companies with names beginning with numerical values or other symbols shall file in July.

(k) Beginning September 1, 2020, operators shall comply with the following:

(1) If a permit is transferred, in the Commission fiscal year of the transfer the acquiring operator shall renew that permit in its designated month pursuant to subsection (j)(2) of this section. If the acquiring operator receives a transferred permit in a Commission fiscal year and its renewal month has already passed, the acquiring operator shall pay the renewal fee upon transfer.

(2) If an operator adds a new permit and pays the new permit fee, the operator is not required to pay the renewal fee for that permit in the same Commission fiscal year.

(3) 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 pursuant to subsection (j)(2) of this section.

(l) [kk] A pipeline operator who fails to renew a permit on or before the renewal deadline which is the last day of the operator's required filing month as specified in subsection (j) of this section [permit expiration date] shall pay a late-filing fee as follows:

(1) $250, if the renewal application is received within 30 calendar days after the renewal deadline [expiration] date;

(2) $500, if the renewal application is received more than 30 calendar days and no more than 60 calendar days after the renewal deadline [expiration] date; and

(3) $700, if the renewal application is received more than 60 calendar days after the renewal deadline [expiration] date.

(m) A pipeline operator with a total mileage of 50 miles or less of pipeline who fails to pay the annual mileage fee as specified in subsection (i) of this section shall pay a late-filing fee as follows:

(1) $125, if the fee is received within 30 calendar days of April 1;

(2) $250, if the fee is received more than 30 calendar days and no more than 60 calendar days after April 1; and

(3) $350, if the fee is received more than 60 calendar days after April 1.
(4) If the fee is not received within 90 calendar days of April 1, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(n) [(n)] A pipeline operator with a total mileage of more than 50 miles of pipeline who fails to pay the annual mileage fee shall pay a late-filing fee as follows:

1. $250, if the fee is received within 30 calendar days of August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year;

2. $500, if the fee is received more than 30 calendar days and no more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year; and

3. $700, if the fee is received more than 60 calendar days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent year.

(4) If the fee is not received within 90 calendar days of August 31 for the initial year that the requirement is in effect or April 1 for each subsequent year, the Commission may assess a penalty and/or revoke the operator's permit in accordance with subsection (h) of this section.

(o) [(o)] A pipeline operator who has been issued a permit and is transferring the pipeline or a portion of the pipeline included on the permit to another operator shall file a notification of transfer with the Commission within 30 days following the transfer. An operator may file a fully executed Form T-4B as a notification of transfer. The Commission may use a fully executed Form T-4B to remove the pipeline that is the subject of the transfer from the transferor operator and assign the mileage to the transferee operator for calculation of the annual mileage fee. The operator to which the pipeline has been transferred shall amend its permit to include the pipeline or portion of the pipeline within 30 days following the transfer or the operator may be subject to a penalty for operating without a permit pursuant to subsection (p) [(n)] of this section.

(p) [(p)] A pipeline operator who operates a pipeline without a permit, with an expired permit, or who otherwise fails to comply with this section, may be assessed a penalty as prescribed in §8.135 of this title[3] (relating to Penalty Guidelines for Pipeline Safety Violations) relating to Penalty Guidelines for Pipeline Safety Violations.

(q) [(q)] Interstate pipelines are exempt from the fee requirements of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 1, 2019.
TRD-201903543
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-1295

CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) proposes 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 Pipiing 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 proposes new §8.110, relating to Gathering Pipelines, in Subchapter B.

The proposed amendments include non-substantive clarifications and corrections in the following sections. Proposed amendments in §§8.1(d), 8.210, 8.235, 8.301, and 8.315 would 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, proposed amendments to the definitions of "applicant," "director," and "division" correct the name of the Commission's division; proposed amendments in §8.201 and §8.209 also correct the division name. Proposed amendments in §8.125(g) and (h) clarify references to the Hearings Division and orders. A proposed amendment in §8.230 corrects a statutory reference. Proposed amendments in §8.301 clarify accident reporting and other existing wording.

The Commission proposes 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 proposed 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 proposed 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 proposed to ensure Texas complies with those minimum standards and retains PHMSA funding.

Some proposed amendments change the term "natural gas" to "gas" to clarify that propane gas distribution systems must also comply with requirements for distribution systems. These proposed 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 proposed in §8.5 to align the definition of "private school" with the definition provided in the Texas Education Code. Proposed amendments in §8.205 also change the term "natural gas" to "gas", and the title of Subchapter C includes a corresponding change.

The proposed amendments in §8.101(b)(1)(C)(iii) would 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 proposed change to §8.101(e) removes outdated language.

Proposed new rule §8.110 would implement 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. Proposed §8.110(a) defines the scope of the proposed rule. Proposed §8.110(b) requires an operator of a gathering line in a Class 1 location or rural area as defined in proposed subsection (a) to operate its pipeline in a reasonably prudent manner to promote safe operation of the pipeline. Proposed §8.110(c) requires operators subject to the proposed rule to report incidents and accidents to the Commission pursuant to the Commission’s reporting requirements. Proposed subsection (d) requires operators to conduct an investigation after an incident or accident and cooperate with the Commission during the Commission’s investigation. Proposed subsection (e) allows the Commission to require the operator to submit a corrective action plan to remediate an accident, incident, threat to the public, or complaint. The proposed 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.

Proposed amendments in §8.115 would 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 proposes 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 proposed amendments also provide the option for providing a monthly report for the initial construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length. 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. Proposed §8.115 also requires notification of the installation of any breakout tank.

Proposed amendments to §8.115 still contain the requirement that the construction report be filed with the Commission on a Form PS-48. The proposed 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 proposed 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 is proposed to 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.

Proposed 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.

Proposed amendments in §8.135 include clarifications to the tables for penalty guidelines and penalty worksheet in order to include subparts from 49 CFR Parts 192 and 195 that are not currently addressed, as well as include penalties for violations of proposed §8.110. The proposed 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.

Proposed amendments in §8.206 remove dates that have passed and, therefore, are no longer applicable. The proposed 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.

Proposed amendments in §8.209 remove dates that have passed and, therefore, are no longer applicable. For example, the Commission proposes to delete 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 proposed amendments in §8.209(h) also implement House Bill 866 from the 86th Legislative Session, which would require 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 proposed 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.

Proposed 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 proposed to 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 proposed subsection (e) that the Commission retain pipeline incident records perpetually. The proposed 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.

A proposed 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 proposed 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.

Proposed new wording in §8.240 would add requirements for "soft close" programs to be utilized by distribution operators for certain customer accounts in certain short-term situations. Allowing soft-close procedures would allow distribution operators and customers an easy transition from one customer to another.

Proposed amendments in §8.301 clarify that the telephonic report for 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 proposed 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.

Kari French, Director, Oversight and Safety Division, has determined that for the first five years the new rule and amendments will be in effect, there will be no fiscal implications for the state government as a result of enforcing or administering the proposed new rule and amendments. The Commission can cover any costs using its existing resources and budget. There will be a fiscal impact on local governments as municipalities will be required to comply with the requirements imposed by House Bill 866. However, municipalities' pipeline systems average 55 miles in length. Thus, removing or replacing an average of 4 miles of pipeline per year (eight percent of the system average) would comply with the requirements imposed by House Bill 866.

There is anticipated cost for persons required to comply with the proposed amendments. The proposed amendments to §8.115(d) would require construction filings for breakout tanks that are currently exempt from the filing requirement. However, this cost may be offset by proposed amendments to §§8.225, 8.235, and 8.315 that eliminate periodic filings for plastic pipe inventory and school proximity reports. The amendments proposed to implement House Bill 866 require annual removal or replacement of at least eight percent of underground distribution gas pipeline facilities posing the greatest risk in the system and identified for replacement under the program. It is estimated that operators are already replacing seven percent, so the anticipated cost for compliance with the proposed amendments stems from the one percent increase. However, any such costs are likely to be less than the cost of a catastrophic pipeline failure that might otherwise occur.

Further, while there is an anticipated cost for persons required to comply with new §8.110, relating to Gathering Pipelines, the cost will be minimal. Operators will now be required to report incidents and accidents to the Commission and cooperate with the Commission’s investigation of the incident or accident. The operator must also conduct its own investigation. Cost incurrence will vary for each operator.

Ms. French has determined that for each year of the first five years that the new rule and amendments will be in effect, the primary public benefit will be consistency with federal requirements and state statues, removal of redundant requirements, and updated Commission department names, lessening the potential for confusion. Further, the changes prompted by House
Bill 866 would require operators to replace more of their aging infrastructure, helping prevent incidents that may harm the public. Similarly, implementing reporting requirements for Class 1 and rural gathering lines would help the Commission compile accurate information regarding incidents and accidents so that the Commission can adopt safety regulations pursuant to House Bill 2982 to prevent risks to the public safety.

The Commission has determined that the new rule and proposed amendments will not have an adverse economic effect on rural communities, small businesses or micro-businesses. Costs incurred to comply with new §8.110 will vary by operator; however, as noted above, any costs of compliance are likely to be less than the cost of a catastrophic pipeline failure that might otherwise occur. Further, as smaller pipeline operators are likely to have a lower number of pipelines, the overall cost to a smaller operator should be less. Any additional cost for persons required to comply with the proposed amendments to §8.115 will likely be offset by proposed amendments to §§8.225, 8.235, and 8.315. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the new rule and proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the new rule and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to that section is not required.

During the first five years that the rules would be in effect, the proposed new rule and amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease the amount of fees paid to the agency; expand, limit, or repeal an existing regulation; or affect the state’s economy. The proposed new rule would create a new regulation and increase the number of individuals subject to the rule’s applicability. As noted above, the proposed new regulation, §8.110, would apply to operators and pipelines that have not previously been regulated by the Commission. The proposed amendments also implement recent statutory requirements, ensure consistency with federal requirements, clarify existing Commission requirements, remove requirements that have been incorporated into federal programs, and update Commission department names.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.), on Monday, November 18, 2019. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission’s web site more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

Statutory Authority: The Commission proposes 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.

§8.1. General Applicability and Standards.

(a) Applicability.

(1) The rules in this chapter establish minimum standards of accepted good practice and apply to:

(A) all gas pipeline facilities and facilities used in the intrastate transportation of gas, including LPG distribution systems and master metered systems, as provided in 49 United States Code (U.S.C.) §§60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

(B) onshore pipeline and gathering and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line. The gathering and production beyond this first point of measurement shall be subject to 49 CFR §192.8 [Part 102.8] and shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as defined by 49 CFR §192.5 [Part 102.5];

(C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all intrastate pipeline facilities as provided in 49 U.S.C. §§60101, et seq.; and Texas Natural Resources Code, §§117.011 and 117.012; and

(D) all pipeline facilities originating in Texas waters (three marine leagues and all bay areas). These pipeline facilities include those production and flow lines originating at the well.

(2) The regulations do not apply to those facilities and transportation services subject to federal jurisdiction under: 15 U.S.C. §§717, et seq.; or 49 U.S.C. §§60101, et seq.;
(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective January 22, 2019 [October 30, 2012].


(3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

(4) All operators of pipelines and/or pipeline facilities regulated by this chapter, other than master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline Permits Required).

(c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing, from prescribing more stringent standards in particular situations. In special circumstances, the Commission may require the following:

(1) Any operator which cannot determine to its satisfaction the standards applicable to special circumstances may request in writing the Commission's advice and recommendations. In a special case, and for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver Procedure).

(2) If an operator transports gas and/or operates pipeline facilities which are in part subject to the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator files a written statement under oath that it will fully comply with the federal safety rules and regulations, the Commission may grant an exemption from compliance with this chapter.

(d) Retention of DOT filings [Concurrent filing]. A person filing any document or information with the Department of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall retain a copy of that document or information. Such person is not required to concurrently file that document or information with the Division unless another rule in this chapter requires the document or information to be filed with the Division or unless the Division requests a copy.

(e) Penalties. A person who submits incorrect or false information with the intent of misleading the Commission regarding any material aspect of an application or other information required to be filed at the Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice to relining an application containing incorrect or false information or reject any other filing containing incorrect or false information.

(f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall be subject to the other safety requirements of this chapter.

(g) Compliance deadlines. Operators shall comply with the applicable requirements of this section according to the following guidelines.

(1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or pipeline facility goes into service.

(2) An operator whose pipeline and/or pipeline facility was not previously regulated but has become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1) of this section shall comply with the applicable requirements of this section no later than the stated date:

(A) for cathodic protection (49 CFR Part 192), March 1, 2012;

(B) for damage prevention (49 CFR 192.614), September 1, 2010;

(C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

(D) for line markers (49 CFR 192.707), March 1, 2011;

(E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

(F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(e)), March 1, 2011.

§8.5. Definitions.

In addition to the definitions given in 49 CFR Parts 40, 191, 192, 193, 195, and 199, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected person--This definition of this term applies only to the procedures and requirements of §8.125 of this title (relating to Waiver Procedure). The term includes but is not limited to:

(A) persons owning or occupying real property within 500 feet of any property line of the site for the facility or operation for which the waiver is sought;

(B) the city council, as represented by the city attorney, the city secretary, the city manager, or the mayor, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly within any incorporated municipal boundaries, including the extraterritorial jurisdiction of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one incorporated municipality, then the city council of every incorporated municipality within which the site is located is an affected person;

(C) the county commission, as represented by the county clerk, if the property that is the site of the facility or operation for which the waiver is sought is located wholly or partly outside the boundary of any incorporated municipality. If the site of the facility or operation for which the waiver is sought is located within more than one county, then the county commission of every county within which the site is located is an affected person;
(D) any other person who would be impacted by the waiver sought.

(2) Applicant--A person who has filed with the Oversight and Safety Division [Pipeline Safety Division], Pipeline Safety Department, a complete application for a waiver to a pipeline safety rule or regulation, or a request to use [direct assessment or] other technology or assessment methodology not specifically listed in §8.101(b)(1)[i] of this title (relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines).

(3) Application for waiver--The written request, including all reasons and all appropriate documentation, for the waiver of a particular rule or regulation with respect to a specific facility or operation.

(4) Charter school--An elementary or secondary school operated by an entity created pursuant to Texas Education Code, Chapter 12.

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

(6) Direct assessment--A structured process that identifies locations where a pipeline may be physically examined to provide assessment of pipeline integrity. The process includes collection, analysis, assessment, and integration of data, including but not limited to the items listed in §8.101(b)(1) of this title [relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines]. The physical examination may include coating examination and other applicable non-destructive evaluation.

(7) Director--The director of the Oversight and [Pipeline] Safety Division or the director's delegate.

(8) Division--The Oversight and [Pipeline] Safety Division of the Commission.

(9) Farm tap odorizer--Awick-type odorizer serving a consumer or consumers off any pipeline other than that classified as distribution as defined in 49 CFR 192.3 which uses not more than 10 mcf on an average day in any month.

(10) Gas--Natural gas, flammable gas, or other gas which is toxic or corrosive.

(11) Gas company--Any person who owns or operates pipeline facilities used for the transportation or distribution of gas, including master metered systems.

(12) Hazardous liquid--Petroleum, petroleum products, anhydrous ammonia, or any substance or material which is in liquid state, excluding liquefied natural gas (LNG), when transported by pipeline facilities and which has been determined by the United States Secretary of Transportation to pose an unreasonable risk to life or property when transported by pipeline facilities.

(13) In-line inspection--An internal inspection by a tool capable of detecting anomalies in pipeline walls such as corrosion, metal loss, or deformation.

(14) Intrastate pipeline facilities--Pipeline facilities located within the State of Texas which are not used for the transportation of natural gas or hazardous liquids or carbon dioxide in interstate or foreign commerce.

(15) Lease user--A consumer who receives free gas in a contractual agreement with a pipeline operator or producer.

(16) Liquids company--Any person who owns or operates a pipeline or pipelines and/or pipeline facilities used for the transportation or distribution of any hazardous liquid, or carbon dioxide, or anhydrous ammonia.

(17) Master meter operator--The owner, operator, or manager of a master metered system.

(18) Master metered system--A pipeline system (other than one designated as a local distribution system) for distributing [natural] gas within but not limited to a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means such as rents.

(19) Natural gas or other gas supplier--The entity selling and delivering [the natural] gas to a school facility or a master metered system. If more than one entity sells and delivers [natural] gas to a school facility or master metered system, each entity is a [natural] gas supplier for purposes of this chapter.

(20) Operator--A person who operates on his or her own behalf, or as an agent designated by the owner, intrastate pipeline facilities.

(21) Person--Any individual, firm, joint venture, partnership, corporation, association, cooperative association, joint stock association, trust, or any other business entity, including any trustee, receiver, assignee, or personal representative thereof, a state agency or institution, a county, a municipality, or school district or any other governmental subdivision of this state.

(22) Person responsible for a school facility--In the case of a public school, the superintendent of the school district as defined in Texas Education Code, §11.201, or the superintendent's designee previously specified in writing to the [natural] gas supplier. In the case of charter and private schools, the principal of the school or the principal's designee previously specified in writing to the [natural] gas supplier.

(23) Pipeline facilities--New and existing pipe, right-of-way, and any equipment, facility, or building used or intended for use in the transportation of gas or hazardous liquid or their treatment during the course of transportation.

(24) Pressure test--Those techniques and methodologies prescribed for leak-test and strength-test requirements for pipelines. For natural gas pipelines, including LPG distribution systems and master metered systems, the requirements are found in 49 Code of Federal Regulations (CFR) Part 192, and specifically include 49 CFR 192.505, 192.507, 192.515, and 192.517. For hazardous liquids pipelines, the requirements are found in 49 CFR Part 195, and specifically include 49 CFR 195.305, 195.306, 195.308, and 195.310.

(25) Private school--A school that:

(A) offers a course of instruction for students in one or more grades from kindergarten through grade 12;

(B) is not operated by a governmental entity; and

(C) is not a home school. [An elementary or secondary school operated by an entity accredited by the Texas Private School Accreditation Commission.]  

(26) Public school--An elementary or secondary school operated by an entity created in accordance with the laws of the State of Texas and accredited by the Texas Education Agency pursuant to Texas Education Code, Chapter 39, Subchapter D. The term does not include programs and facilities under the jurisdiction of the Texas Juvenile Justice Department [Texas Department of Mental Health and Mental Retardation, the Texas Youth Commission], the Texas Health and Human Services Commission [Department of Human Services], the Texas Department of Criminal Justice or any probation agency, the Texas School
for the Blind and Visually Impaired, the Texas School for the Deaf and Regional Day Schools for the Deaf, the Texas Academy of Mathematics & Science, the Texas Academy of Leadership in the Humanities, and home schools or proprietary schools as defined in Texas Education Code, §132.001.

(27) School facility—All piping, buildings and structures operated by a public, charter, or private school that are downstream of a meter measuring natural gas service in which students receive instruction or participate in school sponsored extracurricular activities, excluding maintenance or bus facilities, administrative offices, and similar facilities not regularly utilized by students.

(28) Transportation of gas--The gathering, transmission, or distribution of gas by pipeline or its storage within the State of Texas. For purposes of safety regulation, the term shall include onshore pipeline and production facilities, beginning after the first point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line.

(29) Transportation of hazardous liquids or carbon dioxide--The movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that, for purposes of safety regulations, it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage in in-plant piping systems associated with any of those facilities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 1, 2019.
TRD-201903544
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-1295

 drummer SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

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

Statutory Authority: The Commission proposes 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.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) This section does not apply to plastic pipelines.

(b) By February 1, 2002, operators of intrastate transmission lines subject to the requirements of 49 CFR Part 192 or 49 CFR Part 195 shall have designated to the Commission on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) The risk-based plan shall contain at a minimum:

(A) identification of the pipelines and pipeline segments or sections in each system covered by the plan;

(B) a priority ranking for performing the integrity assessment of pipeline segments of each system based on an analysis of risks that takes into account:

(i) population density;

(ii) immediate response area designation, which, at a minimum, means the identification of significant threats to the environment (including but not limited to air, land, and water) or to the public health or safety of the immediate response area;

(iii) pipeline configuration;

(iv) prior in-line inspection data or reports;

(v) prior pressure test data or reports;

(vi) leak and incident data or reports;

(vii) operating characteristics such as established maximum allowable operating pressures (MAOP) for gas pipelines or maximum operating pressures (MOP) for liquids pipelines, leak survey results, cathodic protection surveys, and product carried;

(viii) construction records, including at a minimum but not limited to the age of the pipe and the operating history;

(ix) pipeline specifications; and

(x) any other data that may assist in the assessment of the integrity of pipeline segments.

(C) assessment of pipeline integrity using at least one of the following methods appropriate for each segment:

(i) in-line inspection;

(ii) pressure test;
(iii) direct assessment [after approval by the director]; or

(iv) other technology or assessment methodology not specifically listed in this paragraph after approval by the director.

(D) management methods for the pipeline segments which may include remedial action or increased inspections as necessary; and

(E) periodic review of the pipeline integrity assessment and management plan every 36 months, or more frequently if necessary.

(2) Operators electing not to use the risk-based plan in paragraph (1) of this subsection shall conduct a pressure test or an in-line inspection and take remedial action in accordance with the following schedule:
Figure 1: 16 TAC §8.101(b)(2) (No change.)
Figure 2: 16 TAC §8.101(b)(2) (No change.)

(c) Within 185 days after receipt of notice that an operator's plan is complete, the Commission shall either notify the operator of the acceptance of the plan or shall complete an evaluation of the plan to determine compliance with this section.

(d) After the completion of the assessment required under either plan, the operator shall promptly remove defects that are immediate hazards and, no later than the next test interval, shall mitigate any anomalies identified by the test that could reasonably be predicted to become hazardous defects.

(e) Operators of pipelines for which an integrity assessment was performed prior to April 30, 2001 (the effective date of this rule), shall not be required to implement a new plan as long as the original assessment meets the minimum requirements of this section.

(f) If a pipeline that is not subject to this section undergoes any change in circumstances that results in the pipeline becoming subject to this section, then the operator of such pipeline shall establish integrity of the pipeline pursuant to the requirements of this section prior to any further operation. Such changes include but are not limited to an addition to the pipeline, change in the operating pressure of the pipeline, change from inactive to active status, change in population in the area of the pipeline, or change of operator of the pipeline segment. If a pipeline segment is acquired by a new operator, the pipeline segment can continue to be operated without establishing pipeline integrity as long as the new operator utilizes the prior operator's operation and maintenance procedures for this pipeline segment. If the population in the area of a pipeline segment changes, the pipeline segment can continue to operate without establishing pipeline integrity until such time as the operator determines whether or not the change in population affects the criteria applicable to the integrity management program, but for no longer than the time frames established under 49 CFR Part 192 or 195.

§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 §195.1, 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 operate its pipeline in a reasonably prudent manner to promote safe operation of the pipeline.

(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) of this title (relating to Required Records and Reporting).

(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, threat, or complaint. 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 liquidified 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 paragraph (4) 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 breakout tank, an operator shall notify the Commission not later than 30 days before installation.

4. For relocated or replacement construction on liquidified 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 liquidified 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 initial construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system 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 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 [Except as set forth below, at least 30 days prior to commencement of construction of any installation totaling one mile or more of pipe, each operator shall file] with the Commission Form PS-48 [a report] 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 [on Form PS-48]. 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. [Each operator shall file a new construction report for the initial construction of a new liquefied petroleum gas distribution system. Each operator of a sour gas pipeline and/or pipeline facilities, as defined in §3.106(b) of this title (relating to Sour Gas Pipeline Facility Construction Permit), shall file a new construction report and Form PS-79, Application for a Permit to Construct a Sour Gas Pipeline Facility. New construction on natural gas distribution or master meter system of less than five miles is exempted from this reporting requirement.]


(a) Purpose and scope. The Commission considers waiver applications to be properly based on a technical inability to comply with the pipeline safety standards set forth in this chapter, related to the specific configuration, location, operating limitations, or available technology for a particular pipeline. Generally, an application for waiver of a pipeline safety rule is site-specific. Cost is generally not a proper objection to compliance by the operator with the pipeline safety standards set forth in this chapter, and a waiver filed simply to avoid the expense of safety compliance is generally not appropriate. An operator shall request a waiver prior to performing any activities that would fall under the waiver.

(b) Filing. Any person may apply for a waiver of a pipeline safety rule or regulation by filing an application for waiver with the Division. Upon the filing of an application for waiver of a pipeline safety rule, the Division shall assign a docket number to the application and shall forward it to the director, and thereafter all documents relating to that application shall include the assigned docket number. An application for a waiver is not an acceptable response to a notice of an alleged violation of a pipeline safety rule. The Division shall not assign a docket number to or consider any application filed in response to a notice of violation of a pipeline safety rule.

(c) Form. The application shall be typewritten on paper not to exceed 8 1/2 inches by 11 inches and shall have margins of at least one inch. The contents of the application shall appear on one side of the paper and shall be double or one and one-half spaced, except that footnotes and lengthy quotations may be single spaced. Exhibits attached to an application shall be the same size as the application or folded to that size.

(d) Content. The application shall contain the following:

(1) the name, business address, and telephone number, and facsimile transmission number and electronic mail address, if available, of the applicant and of the applicant's authorized representative, if any;

(2) a description of the particular operation for which the waiver is sought;

(3) a statement concerning the regulation from which the waiver is sought and the reason for the exception;

(4) a description of the facility at which the operation is conducted, including, if necessary, design and operation specifications, monitoring and control devices, maps, calculations, and test results;

(5) a description of the acreage and/or address upon which the facility and/or operation that is the subject of the waiver request is located. The description shall:

(A) include a plat drawing;

(B) identify the site sufficiently to permit determination of property boundaries;

(C) identify environmental surroundings;

(D) identify placement of buildings and areas intended for human occupancy that could be endangered by a failure or malfunction of the facility or operation;

(E) state the ownership of the real property of the site; and

(F) state under what legal authority the applicant, if not the owner of the real property, is permitted occupancy;

(6) an identification of any increased risks the particular operation would create if the waiver were granted, and the additional safety measures that are proposed to compensate for those risks;

(7) a statement of the reason the particular operation, if the waiver were granted, would not be inconsistent with pipeline safety;

(8) an original signature, in ink, by the applicant or the applicant's authorized representative, if any; and

(9) a list of the names, addresses, and telephone numbers of all affected persons, as defined in §8.5 of this title (relating to Definitions).
(e) Notice.

(1) The applicant shall send a copy of the application and a notice of protest form published by the Commission by certified mail, return receipt requested, to all affected persons on the same date of filing the application with the Division. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the docket number of the application and the mailing address of the Division. The applicant shall file all return receipts with the Division as proof of notice.

(2) The applicant shall publish notice of its application for waiver of a pipeline safety rule once a week for two consecutive weeks in the state or local news section of a newspaper of general circulation in the county or counties in which the facility or operation for which the requested waiver is located. The notice shall describe the nature of the waiver sought; shall state that affected persons have 30 calendar days from the date of the last publication to file written objections or requests for a hearing with the Division; and shall include the docket number of the application and the mailing address of the Division. Within ten calendar days of the date of last publication, the applicant shall file with the Division a publisher’s affidavit from each newspaper in which notice was published as proof of publication of notice. The affidavit shall state the dates on which the notice was published and shall have attached to it the tear sheets from each edition of the newspaper in which the notice was published.

(3) The applicant shall give any other notice of the application which the director may require.

(f) Protest or support of waiver application.

(1) Affected persons shall have standing to object to, support, or request a hearing on an application.

(2) A person who objects to, who supports, or who requests a hearing on the application shall file a written objection, statement of support, or request for a hearing with the Division no later than the 30th calendar day after the date the notice of the application was postmarked or the last date the notice was published in the newspaper in the county in which the person owns or occupies property, whichever is later.

(3) The objection, statement of support, or request for a hearing shall:

(A) state the name, address, and telephone number of the person filing the objection, statement of support, or request for a hearing and of every person on whose behalf the objection, statement of support, or request for a hearing is being filed; and

(B) include a statement of the facts on which the person filing the protest or statement of support relies to conclude that each person on whose behalf the objection, statement of support, or request for a hearing is being filed is an affected person, as defined in §8.5 of this title [relating to Definitions]; and

(C) include a statement of the nature and basis for the objection to or statement of support for the waiver request.

(g) Division review.

(1) The director shall complete the review of the application within 60 calendar days after the application is complete. If an application remains incomplete 12 months after the date the application was filed, such application shall expire and the director shall dismiss without prejudice to refiling.

(A) If the director does not receive any objections or requests for a hearing from any affected person, the director may recommend in writing that the Commission grant the waiver if granting the waiver is not inconsistent with pipeline safety. The director shall forward the file, along with the written recommendation that the waiver be granted, to the Hearings Division [Office of General Counsel] for the preparation of an order.

(B) The director shall not recommend that the Commission grant the waiver if the application was filed [either] to correct an existing violation, to [or to] avoid the expense of safety compliance, or filed after the applicant already engaged in activities covered by the proposed waiver. The director shall dismiss with prejudice to refiling an application filed in response to a notice of violation of a pipeline safety rule.

(C) If the director declines to recommend that the Commission grant the waiver, the director shall notify the applicant in writing of the recommendation and the reason for it, and shall inform the applicant of any specific deficiencies in the application.

(2) If the director declines to recommend that the Commission grant the waiver, and if the application was not filed to either correct an existing violation or solely to avoid the expense of safety compliance, the applicant may either:

(A) modify the application to correct the deficiencies and resubmit the application; or

(B) file a written request for a hearing on the matter within ten calendar days of receiving notice of the assistant director’s written decision not to recommend that the Commission grant the application.

(h) Hearings and orders.

(1) Within three days of receiving either a timely-filed objection or a request for a hearing, the director shall forward the file to the Hearings Division, which shall set and conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure) [Office of General Counsel for the setting of a hearing].

(2) Within three days of receiving the file, the Office of General Counsel shall assign a presiding examiner to conduct a hearing as soon as practicable.

(3) The presiding examiner shall mail notice of the hearing by certified mail, return receipt requested, not less than 30 calendar days prior to the date of the hearing to:

(A) the applicant;

(B) all persons who filed an objection or a request for a hearing; and

(C) all other affected persons.

(4) The presiding examiner shall conduct the hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to Practice and Procedure).

(i) [Office-Related Notice to United States Department of Transportation. Upon a Commission order granting a waiver of a pipeline safety rule, the director shall give written notice to the Secretary of Transportation pursuant to the provisions of 49 United States Code Annotated, §60118(d). The Commission’s grant of a waiver becomes effective in accordance with the provisions of 49 United States Code Annotated, §60118(d).]

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators 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 pipeline safety-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) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). 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 provisions of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, Chapter 121, Subchapter E [§121.201], or a safety standard or other rule prescribed or adopted under that [provision] subchapter.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and 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, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, Chapter 121, Subchapter E [§121.201], or a safety standard or other rule prescribed or adopted under that subchapter [provision], 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, including the number of previous violations;
(2) the seriousness of the violation and of any pollution resulting from the violation;
(3) any hazard to the health or safety of the public;
(4) the degree of culpability;
(5) the demonstrated good faith of the person charged; and
(6) any other factor the Commission considers relevant.

(e) Typical penalties. Typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or a safety standard or other rule prescribed or adopted under that provision are set forth in Table 1.

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation. Figure: 16 TAC §8.135(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 §8.135(g) (No change.)
Figure 2: 16 TAC §8.135(g) (No change.)

(h) Penalty reduction for settlement before hearing. The recommended 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 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) 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 1, 2019.
TRD-201903545
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-1295

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 proposes 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 601, 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, §§601, 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.

§8.201. Pipeline Safety and Regulatory Program Fees.

(a) Application of fees. Pursuant to Texas Utilities Code, §121.211, the Commission establishes a pipeline safety and regulatory program fee, to be assessed annually against operators of natural gas distribution pipelines and pipeline facilities and natural gas master metered pipelines and pipeline facilities subject to the Commission's jurisdiction under Texas Utilities Code, Title 3. The total amount of revenue estimated to be collected under this section does not exceed the amount the Commission estimates to be necessary to recover the costs of administering the pipeline safety and regulatory programs under Texas Utilities Code, Title 3, excluding costs that are fully funded by federal sources for any fiscal year.

(b) Natural gas distribution systems. The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety and regulatory program fee of $1.00 for each service (service line) in service at the end of each calendar year as reported by each system operator on the U.S. Department of Transportation (DOT) Gas Distribution Annual Report, Form PHMSA F7100.1-1 due on March 15 of each year.

1. Each operator of a natural gas distribution system shall calculate the annual pipeline safety and regulatory program total to be paid to the Commission by multiplying the $1.00 fee by the number of services listed in Part B, Section 3, of Form PHMSA F7100.1-1, due on March 15 of each year.

2. Each operator of a natural gas distribution system shall remit to the Commission on March 15 of each year the amount calculated under paragraph (1) of this subsection.

3. Each operator of a natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

   (A) shall be a flat rate, one-time surcharge;

   (B) shall not be billed before the operator remits the pipeline safety and regulatory program fee to the Commission; and

   (C) shall be applied in the billing cycle or cycles immediately following the date on which the operator paid the Commission;

   (D) shall not exceed $1.00 per service or service line; and

   (E) shall not be billed to a state agency, as that term is defined in Texas Utilities Code, §101.003.

4. No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each operator of a natural gas distribution system shall file with the Commission's Oversight and [Gas Services Division and the Pipeline] Safety Division a report showing:

   (A) the pipeline safety and regulatory program fee amount paid to the Commission;

   (B) the unit rate and total amount of the surcharge billed to each customer;

   (C) the date or dates on which the surcharge was billed to customers; and

   (D) the total amount collected from customers from the surcharge.

5. Each operator of a natural gas distribution system that is a utility subject to the jurisdiction of the Commission pursuant to Texas Utilities Code, Chapters 101-105, shall file a generally applicable tariff for its surcharge in conformance with the requirements of §7.315 of this title[] (relating to Filing of Tariffs) relating to Filing of Tariffs.

6. Amounts recovered from customers under this subsection by an investor-owned natural gas distribution system or a cooperatively owned natural gas distribution system shall not be included in the revenue or gross receipts of the system for the purpose of calculating municipal franchise fees or any tax imposed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122, nor shall such amounts be subject to a sales and use tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3, Tax Code.

(c) Natural gas master meter systems. The Commission hereby assesses each natural gas master meter system an annual pipeline safety and regulatory program fee of $100 per master meter system.

1. Each operator of a natural gas master meter system shall remit to the Commission the annual pipeline safety and regulatory program fee of $100 per master meter system no later than June 30 of each year.

2. The Commission shall send an invoice to each affected natural gas master meter system operator no later than April 30 of each year as a courtesy reminder. The failure of a natural gas master meter system operator to receive an invoice shall not exempt the natural gas master meter system operator from its obligation to remit to the Commission the annual pipeline safety and regulatory program fee on June 30 each year.

3. Each operator of a natural gas master meter system shall recover as a surcharge to its existing rates the amounts paid to the Commission under paragraph (1) of this subsection.

4. No later than 90 days after the last billing cycle in which the pipeline safety and regulatory program fee surcharge is billed to customers, each natural gas master meter system operator shall file with the Oversight and [Gas Services Division and the Pipeline] Safety Division a report showing:

   (A) the pipeline safety and regulatory program fee amount paid to the Commission;
(B) the unit rate and total amount of the surcharge billed to each customer;  
(C) the date or dates on which the surcharge was billed to customers; and  
(D) the total amount collected from customers from the surcharge.

(d) Late payment penalty. If the operator of a natural gas distribution system or a natural gas master meter system does not remit payment of the annual pipeline safety and regulatory program fee to the Commission within 30 days of the due date, the Commission shall assess a late payment penalty of 10 percent of the total assessment due under subsection (b) or (c) of this section, as applicable, and shall notify the operator of the total amount due to the Commission.


Each gas company shall have written procedures which shall include at a minimum the following provisions:

(1) a procedure or method for receiving leak complaints or reports, or both, on a 24-hour, seven day per week basis;
(2) a requirement to make and maintain a written record of all calls received and actions taken;
(3) a requirement that supervisory review of leak complaints must be completed and documented by 10:00 a.m. of the next business day for calls received by midnight on the previous day;
(4) standards for training and equipping personnel used in the investigation of leak complaints or reports, or both;
(5) procedures for locating the source of a leak and determining the degree of hazard involved;
(6) a chain of command for service personnel to follow if assistance is required in determining the degree of hazard;
(7) instructions to be issued by service personnel to customers or the public or both, as necessary, after a leak is located and the degree of hazard determined.

§8.206. Risk-Based Leak Survey Program.

(a) This [Effective September 1, 2008, this] section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192.

(b) Each [No later than March 1, 2009, each] operator shall have [completed and submitted to the Commission] either a prescriptive or a risk-based program for leak surveys for its pipeline systems that complies with the requirements of this section. Such program shall require a designation on a system by system basis or by segments within each system whether the operator has chosen to use the risk based leak survey program that complies with the requirements of subsections (c) through (f) of this section or the prescriptive leak survey program that complies with the requirements of subsection (g) of this section. [Within 185 days after receipt of notice that an operator’s plan is complete, the Commission shall either notify the operator of the acceptance of the plan or shall complete an evaluation of the plan to determine compliance with this section.]

(c) Each operator shall create a risk model on which to base its leak survey program to identify those systems or segments within systems that pose the greatest hazard and thus will be inspected for leaks more frequently. The risk model shall identify risk factors and determine the degree of hazard associated with those risk factors. The operator shall establish the leak survey frequency based on the degree of hazard for each system or segment within a system.

(d) Each operator shall periodically re-evaluate each pipeline system or system segment and update its leak survey inspection program to address any changes that may be identified through the monitoring of the pipeline system in accordance with the requirements imposed by 49 CFR §192.613 (relating to Continuing Surveillance). Each operator shall not less than every three years at intervals not exceeding 39 months review its leak survey inspection program. Each operator shall review its leak survey inspection program [at least every three years and] within 30 days in the following circumstances:

(1) to add a new system or segment being put into operation; or
(2) if, for any system or segment, there has been a ten percent increase in the number of leaks being upgraded or a ten percent increase in the number of unrepaired leaks.

(e) Based on the particular circumstances and conditions, an increased frequency beyond that required by 49 CFR §192.723(b)(1) and (2), may be warranted. Surveys should be conducted more frequently in those areas with the greatest potential for leakage and where leakage could be expected to create a hazard. Each operator should consider the following factors in establishing an increased frequency of leakage surveys:

(1) pipe location, which means proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;
(2) composition and nature of the piping system, which means the age of the pipe, materials, type of facilities, operating pressures, leak history records, and other studies;
(3) the corrosion history of the pipeline, which means known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;
(4) environmental factors that affect gas migration, which means conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.), particular soil conditions, unstable soil or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and
(5) any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, which could include construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(f) The assignment of inspection priorities is based on the degree of hazard associated with the risk factors assigned to the pipeline system or segments within a system. The determination of leak survey frequency is determined by classifying each pipeline segment based on its degree of hazard associated with each risk factor. Each operator shall establish its own risk ranking for pipeline segments to determine the frequency of leakage surveys. Based on a ranking from high to low, each operator shall schedule leak inspections for a given pipeline system or segment within a system on a time interval necessary to address the risks. The time interval may range from quarterly to every five years.
(g) Operators electing to use a prescriptive leak survey program shall conduct leak surveys no less frequently than:

(1) Once each calendar year at intervals not exceeding 15 months [annually] for all systems within a business district;

(2) every five calendar years at intervals not exceeding 63 months for non-business district polyethylene systems or segments within a system;

(3) every three calendar years at intervals not exceeding 39 months for all other non-business district cathodically protected steel systems or segments within a system; and

(4) every two calendar years at intervals not exceeding 27 months for all other non-business district systems or segments within a system.


(a) This section applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. This section prescribes the minimum requirements by which all operators will develop and implement a risk-based program for the removal or replacement of distribution facilities, including steel service lines, in such gas distribution systems. The risk-based program will work in conjunction with the Distribution Integrity Management Program (DIMP) using scheduled replacements to manage identified risks associated with the integrity of distribution facilities.

(b) Each operator must make joints on below-ground piping that meets the following requirements:

1. Joints on steel pipe must be welded or designed and installed to resist longitudinal pullout or thrust forces per 49 CFR §192.273.

2. Joints on plastic pipe must be fused or designed and installed to resist longitudinal pullout or thrust forces per ASTM D2513-Category 1.

(c) Each [No later than August 1, 2011, each] operator must establish [and submit to the Pipeline Safety Division for review and approval the operator’s] written procedures for implementing the requirements of this section. Each operator must develop a risk-based program to determine the relative risks and their associated consequences within each pipeline system or segment. Each operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis set forth in subsection (d) of this section and use the prescriptive model in subsection (f) of this section for the replacement of those steel service lines. [Within 90 days after receipt of an operator’s written procedures, the Pipeline Safety Division must either notify the operator of the acceptance of the plan or complete an evaluation of the plan to determine compliance with this section. If the Pipeline Safety Division determines that an operator’s procedures do not comply with the requirements of this section, the operator must modify its procedures as directed by the Pipeline Safety Division.]

(d) In developing its risk-based program, each operator must develop a risk analysis using data collected under its DIMP and the data submitted on the PS-95 to determine the risks associated with each of the operator’s distribution systems and establish its own risk ranking for pipeline segments and facilities to determine a prioritized schedule for service line or facility replacement. The operator must support the analysis with data, collected to validate system integrity, that allow for the identification of segments or facilities within the system that have the highest relative risk ranking or consequence in the event of a failure. The operator must identify in its risk-based program the distribution piping, by segment, that poses the greatest risk to the operation of the system. In addition, each operator that determines that steel service lines are the greatest risk must conduct a steel service line leak repair analysis to determine the leak repair rate for steel service lines. The leak repair rate for below-ground steel service lines is determined by dividing the annualized number of below-ground leaks repaired on steel service lines (excluding third-party leaks and leaks on steel service lines removed or replaced under this section) by the total number of steel service lines as reported on PHMSA Form F 7100.1-1, the Gas Distribution System Annual Report. Each [Until the Commission has collected three full calendar years of data submitted on the PS-95, operators may use two calendar years of data to perform the steel service line leak repair analysis. Once the Commission has collected three full calendar years of data submitted on the PS-95, each] operator that determines that steel service lines are the greatest risk must conduct the steel service line leak repair analysis using the most recent three calendar years of data reported to the Commission on Form PS-95.

(e) Each operator must create a risk model that will identify by segment those lines that pose the highest risk ranking or consequence of failure. The determination of risk is based on the degree of hazard associated with the risk factors assigned to the pipeline segments or facilities within each of the operator’s distribution systems. The priority of service line or facility replacement is determined by classifying each pipeline segment or facility based on its degree of hazard associated with each risk factor. Each operator must establish its own risk ranking for pipeline segments or facilities to determine the priority for necessary service line or facility replacements. Each operator should include the following factors in developing its risk analysis:

1. pipe location, including proximity to buildings or other structures and the type and use of the buildings and proximity to areas of concentrations of people;

2. composition and nature of the piping system, including the age of the pipe, materials, type of facilities, operating pressures, leak history records, prior leak grade repairs, and other studies;

3. corrosion history of the pipeline, including known areas of significant corrosion or areas where corrosive environments are known to exist, cased crossings of roads, highways, railroads, or other similar locations where there is susceptibility to unique corrosive conditions;

4. environmental factors that affect gas migration, including conditions that could increase the potential for leakage or cause leaking gas to migrate to an area where it could create a hazard, such as extreme weather conditions or events (significant amounts or extended periods of rainfall, extended periods of drought, unusual or prolonged freezing weather, hurricanes, etc.); particular soil conditions; unstable soil; or areas subject to earth movement, subsidence, or extensive growth of tree roots around pipeline facilities that can exert substantial longitudinal force on the pipe and nearby joints; and

5. any other condition known to the operator that has significant potential to initiate a leak or to permit leaking gas to migrate to an area where it could result in a hazard, including construction activity near the pipeline, wall-to-wall pavement, trenchless excavation activities (e.g., boring), blasting, large earth-moving equipment, heavy traffic, increase in operating pressure, and other similar activities or conditions.

(f) This subsection applies to operators that determine under subsection (c) of this section that steel service lines are the greatest risk. Based on the results of the steel service line leak repair analysis under subsection (d) of this section, each operator must categorize each segment and complete the removal and replacement of steel service lines by segment according to the risk ranking established pursuant to subsection (e) of this subsection as follows:
(1) a segment with an annualized steel service line leak rate of 7.5% or greater is a Priority 1 segment and an operator must complete the removal or replacement by June 30, 2013;

(2) a segment with an annualized steel service line leak rate of 5% or greater but less than 7.5% is a Priority 2 segment and an operator must remove or replace no less than 10% of the original inventory per year; and

(3) a segment with an annualized steel service line leak rate of less than 5% is a Priority 3 segment. An operator is not required to remove or replace any Priority 2 or Priority 3 segments; however, upon discovery of a leak on a Priority 2 or Priority 3 segment, the operator must remove or replace rather than repair those lines except as outlined in subsection (g) of this section.

(g) For those steel service lines that must remain in service because of specific operational conditions or requirements, each operator must determine if an integrity risk exists on the segment, and if so, must replace the segment with steel as part of the integrity management plan.

(h) All [Unless otherwise approved in an operator's risk-based plan, all] replacement programs require a minimum annual replacement of 8% [5%] of the pipeline segments or facilities posing [posing] the greatest risk in the system and identified for replacement pursuant to this section. Each operator with steel service lines subject to subsection (f) of this section must establish a schedule for the replacement of steel service lines or other distribution facilities according to the risk ranking established as part of the operator's risk-based program and must submit the schedule to the [Pipeline Safety] Division for review and approval or amendment under subsection (c) of this section.

(i) In conjunction with the filing of the pipeline safety and regulatory program fee pursuant to §8.201 of this title (relating to Pipeline Safety and Regulatory Program Fees) and no later than March 15 of each year, each operator must file with the [Pipeline Safety] Division:

(1) by System ID, a list of the steel service line or other distribution facilities replaced during the prior calendar year; and

(2) the operator's [proposed revisions to its risk-based program and] proposed work plan for removal or replacement for the current calendar year, the implementation of which is subject to review and amendment by the [Pipeline Safety] Division. Each operator must notify the [Pipeline Safety] Division of any revisions to the proposed work plan and, if requested, provide justification for such revisions. Within 45 days after receipt of an operator's proposed revisions to its risk-based plan and work plan, the [Pipeline Safety] Division will notify the operator either of the acceptance of the risk-based program and work plan or of the necessary modifications to the risk-based program and work plan.

(j) Each operator of a gas distribution system that is subject to the requirements of §7.310 of this title (relating to System of Accounts) may use the provisions of this subsection to account for the investment and expense incurred by the operator to comply with the requirements of this section.

(1) The operator may:

(A) establish one or more designated regulatory asset accounts in which to record any expenses incurred by the operator in connection with acquisition, installation, or operation (including related depreciation) of facilities that are subject to the requirements of this section;

(B) record in one or more designated plant accounts capital costs incurred by the operator for the installation of facilities that are subject to the requirements of this section;

(C) record interest on the balance in the designated distribution facility replacement accounts based on the pretax cost of capital last approved for the utility by the Commission. The utility's pre-tax cost of capital may be adjusted and applied prospectively if the Commission establishes a new pre-tax cost of capital for the utility in a future proceeding.

(D) reduce balances in the designated distribution facility replacement accounts by the amounts that are included in and recovered though rates established in a subsequent Statement of Intent filing or other rate adjustment mechanism; and

(E) use the presumption set forth in §7.503 of this title (relating to Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) with respect to investment and expense incurred by a gas utility for distribution facilities replacement made pursuant to this section.

(2) This subsection does not render any final determination of the reasonableness or necessity of any investment or expense.

(k) A distribution gas pipeline facility operator shall not install as a part of the operator's underground system a cast iron, wrought iron, or bare steel pipeline. A distribution gas pipeline facility operator shall replace any known cast iron pipelines installed as part of the operator's underground system not later than December 31, 2021.


(a) Incident [Accident, leak, or incident] report.

(1) Telephonic report. At the earliest practical moment but no later than one hour [or within two hours] following confirmed discovery, a gas company shall notify the Commission by telephone of any event that involves a release of gas from its pipelines defined as an incident in 49 CFR §191.3[Part 191.3].

(2) The telephonic report shall be made to the Commission's 24-hour emergency line at (512) 463-6788 and shall include the following:

(A) the operator or gas company's name;

(B) the location of the [leak or] incident;

(C) the time of the incident [or accident];

(D) the number of fatalities and/or personal injuries;

(E) the phone number of the operator;

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

(G) [(H)] any other significant facts relevant to the [accident or] incident. Ignition, explosion, rerouting of traffic, evacuation of any building, and media interest are included as significant facts.

(2) This paragraph applies to each operator of a gas distribution system that is subject to the requirements of 49 CFR Part 192. Such operator shall also provide the following information to the Division when the information is known by the operator:

(A) the cost of gas lost, to the operator, others, or both; and

(B) estimated property damage to the operator and others;

(C) any other significant facts relevant to the incident; and
(3) Written report.

(A) Following the initial telephonic report for [accidents, leaks, or] incidents 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 Department of Transportation. Operators of gas gathering pipelines regulated by §8.110 (relating to Gathering Pipelines) shall file with the Commission within 30 calendar days after the date of the telephonic report a written report on an incident described in paragraph (1) of this subsection utilizing the applicable form from the Department of Transportation. [who made the telephonic report shall submit to the Commission a written report summarizing the accident or incident. The report shall be submitted as soon as practicable within 30 calendar days after the date of the telephonic report. The written report shall be made on forms supplied by the Department of Transportation. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.]

(B) The written report is not required to be submitted for master metered systems.

(C) The Commission may require an operator to submit a written report for an [accident or] incident not otherwise required to be reported.

(b) Pipeline safety annual reports.

[(H)] Each [Except as provided in paragraph (2) of this subsection, each] gas company shall retain the [submit an] annual report for its intrastate systems in the same manner as required by 49 CFR Part 191. A gas company shall provide a copy of the annual report to the Commission upon request. [The report shall be submitted to the Division on forms supplied by the Department of Transportation not later than March 15 of the year preceding the calendar year. For reports submitted electronically to the Department of Transportation, the operator may forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.]

[(2) The annual report is not required to be submitted for:]

[(A) a petroleum gas system, as that term is defined in 49 CFR 192.11, which serves fewer than 100 customers from a single source; or]

[(B) a master metered system.]  

(c) Safety related condition reports. Each gas company shall submit to the Division in writing a safety-related condition report for any condition outlined in 49 CFR 191.23.

(d) Offshore pipeline condition report. Within 60 days of completion of underwater inspection, each operator shall file with the Division a report of the condition of all underwater pipelines subject to 49 CFR 192.612(a). The report shall include the information required in 49 CFR 191.27.

(e) Leak Reporting. For purposes of this subsection, the term "leak" includes all underground leaks, all hazardous above ground leaks, and all non-hazardous above ground leaks that cannot be eliminated by lubrication, adjustment, or tightening. Each operator of a gas distribution system [, of a regulated plastic gas gathering line, or of a plastic gas transmission line] shall submit to the Division a list of all leaks repaired on its pipeline facilities. Each such operator shall list all leaks identified on all pipeline facilities. Each such operator shall also include the number of unrepaired leaks remaining on the operator's systems by leak grade. Each such operator shall submit leak reports using the Commission's online reporting system, Form PS-95, by July 15 and January 15 of each calendar year, in accordance with the PS-95 Semi-Annual Leak Report Electronic Filing Requirements. The report submitted on July 15 shall include information from the previous January 1 through the previous June 30. The report submitted on January 15 shall include information from the previous July 1 through the previous December 31. The report includes:

1. the location of the leak,
2. facility type,
3. leak classification,
4. pipe size,
5. pipe type,
6. leak cause; and
7. leak repair method.

(f) The Commission shall retain state records regarding a pipeline incident perpituately. "State record" has the meaning assigned by Texas Government Code §441.180.


[(a)] An operator shall retain its records relating to plastic [Plastic] pipe installation in accordance with 49 CFR Part 192 and shall provide such records to the Commission upon request [and/or removal report].

[(b)] Each operator shall have reported to the Commission on March 15, 2003, and March 15, 2004, the amount in miles of plastic pipe installed and/or removed during the preceding calendar year on Form PS-82, Annual Report of Plastic Installation and/or Removal. The mileage shall have been identified by:

[(A) system;]
[(B) nominal pipe size;]
[(C) material designation code;]
[(D) pipe category; and]
[(E) pipe manufacturer.]  

[(2) For all new installations of plastic pipe, each operator shall record and maintain for the life of the pipeline the following information for each pipeline segment:

[(A) all specification information printed on the pipe;]
[(B) the total length;]
[(C) a citation to the applicable joining procedures used for the pipe and the fittings; and]

[(D) the location of the installation to distinguish the end points. A pipeline segment is defined as continuous piping where the pipe specification required by ASTM D2513 or ASTM D2517 does not change.]

[(b)] Plastic pipe inventory report. Beginning March 15, 2005, and annually thereafter, each operator shall report to the Division the amount of plastic pipe in natural gas service as of December 31 of the previous year. The amount of plastic pipe shall be determined by a
review of the records of the operator and shall be reported on Form PS-81, Plastic Pipe Inventory. The report shall include the following:

[(4)] system;
[(2)] miles of pipe;
[(3)] calendar year of installation;
[(4)] nominal pipe size;
[(5)] material designation code;
[(6)] pipe category; and
[(7)] pipe manufacturer.

[(c)] Electronic format required. Operators of systems with more than 1,000 customers shall file the reports required by this section electronically in a format specified by the Commission.

[(d)] Report forms; signature required. Operators shall complete all forms required to be filed in accord with this section, including signatures of company officials. The Commission may consider the failure of an operator to complete all forms as required to be a violation under Texas Utilities Code, Chapter 121, and may seek penalties as permitted by that chapter.


(a) Purpose. The purpose of this section is to implement the requirements of Texas Utilities Code, §§121.5005 - 121.507, relating to the testing of natural gas piping systems in school facilities.

(b) Procedures. Natural gas suppliers shall develop procedures for:

(1) receiving written notice from a person responsible for a school facility specifying the date and result of each test as provided by subsection (c) of this section.

(2) terminating natural gas service to a school facility in the event that:

(A) the natural gas supplier receives notification of a hazardous natural gas leak in the school facility piping system pursuant to this rule; or

(B) the natural gas supplier does not receive written notification specifying the date that testing has been completed on a school facility as provided by subsection (c) of this section, and the results of such testing.

(3) A natural gas supplier may rely on a written notification complying with this rule as proof that a school facility is in compliance with Texas Utilities Code, §§121.5005 - 121.507, and this rule.

(4) A natural gas supplier shall have no duty to inspect a school facility for compliance with Texas Utilities Code, §§121.5005 - 121.507.

(c) Testing.

(1) A natural gas piping pressure test performed under a municipal code in compliance with paragraphs (4) and (5) of this subsection shall satisfy the testing requirements.

(2) A pressure test to determine if the natural gas piping in each school facility will hold at least normal operating pressure shall be performed as follows:

(A) School facility pipe testing includes all gas piping from the outlet of the purchase meter to each inlet valve of each appliance.

(B) For systems on which the normal operating pressure is less than 0.5 psig, the test pressure shall be 5 psig and the time interval shall be 30 minutes.

(C) For systems on which the normal operating pressure is 0.5 psig or more, the test pressure shall be 1.5 times the normal operating pressure or 5 psig, whichever is greater, and the time interval shall be 30 minutes.

(D) A pressure test using normal operating pressure shall be utilized only on systems operating at 5 psig or greater, and the time interval shall be one hour.

(3) The testing shall be conducted by:

(A) a licensed plumber;

(B) a qualified employee or agent of the school who is regularly employed as or acting as a maintenance person or maintenance engineer; or

(C) a person exempt from the plumbing license law as provided in Texas Occupations Code, Chapter 1301 [Civil Statutes, Article 6243-101, §3].

(4) The testing of public school facilities shall occur as follows:

(A) for school facilities tested prior to the beginning of the 1997-1998 school year, at least once every two years thereafter before the beginning of the school year;

(B) for school facilities not tested prior to the beginning of the 1997-1998 school year, as soon as practicable thereafter but prior to the beginning of the 1998-1999 school year and at least once every two years thereafter before the beginning of the school year;

(C) for school facilities operated on a year-round calendar and tested prior to July 1, 1997, at least once every two years thereafter; and

(D) for school facilities operated on a year-round calendar and not tested prior to July 1, 1997, once prior to July 1, 1998, and at least once every two years thereafter.

(5) The testing of charter and private school facilities shall occur at least once every two years and shall be performed before the beginning of the school year, except for school facilities operated on a year-round calendar, which shall be tested not later than July 1 of the year in which the test is performed. The initial test of charter and private school facilities shall occur prior to the beginning of the 2003-2004 school year or by August 31, 2003, whichever is earlier.

(6) The firm or individual conducting the test shall immediately report any hazardous natural gas leak as follows:

(A) in a public school facility, to the board of trustees of the school district and the natural gas supplier; and

(B) in a charter or private school facility, to the person responsible for such school facility and the natural gas supplier.

(7) The school pipe testing shall be recorded on Railroad Commission Form PS-86.

(d) Records. Natural gas suppliers shall maintain for at least two years a listing of the school facilities to which it sells and delivers natural gas as well as copies of the written notification regarding testing, Form PS-86, and hazardous leaks received pursuant to Texas Utilities Code, §§121.5005 - 121.507, and this rule.

Liaison activities required. Each operator of a natural gas pipeline or natural gas pipeline facilities or the operator’s designated representative shall communicate and conduct liaison activities at intervals not exceeding 15 months, but at least once each calendar year with fire, police, and other appropriate public emergency response officials. The liaison activities are those required by 49 CFR Part 192.615(c)(1) - (4). These liaison activities shall be conducted in person, except as provided by this section.

Meetings in person. The operator or the operator’s representative may conduct the required community liaison activities as provided by subsection (c) of this section only if the operator or the operator’s representative has made an effort to conduct a community liaison meeting in person with the officials by one of the following methods:

1. mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;
2. sending a request for a meeting in person to the appropriate officials by facsimile transmission; or
3. making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

If a scheduled meeting does not take place, the operator or operator’s representative shall make an effort to re-schedule the community liaison meeting in person with the officials using one of the methods in paragraphs (1) - (3) of this subsection before proceeding to arrange a conference call pursuant to subsection (c) of this section.

Alternative methods. If the operator or operator’s representative cannot arrange a meeting in person after complying with subsection (b) of this section, the operator or the operator’s representative shall conduct community liaison activities by one of the following methods:

1. holding a telephone conference with the appropriate officials; or
2. delivering the community liaison information requested to be conveyed by certified mail, return receipt requested.

Proximity to public school. Each owner or operator of a natural gas pipeline or natural gas pipeline facility any part of which is located within 1,000 feet of a public school building or public school recreational area shall maintain and upon request file [notify the Commission by filing] with the Division [no later than January 15 of every even-numbered year] the following information:

1. the name of the school;
2. the street address of the school; and
3. the identification (system name) of the pipeline.

Records. The operator shall maintain records documenting compliance with the liaison activities required by this section. Records of attendance and acknowledgment of receipt by the emergency response officials shall be retained for five years from the date of the event that is commemorated by the record. Records of certified mail and/or telephone transmissions undertaken in compliance with subsections (b) and (c) of this section satisfy the record-keeping requirements of this subsection.

§8.240. Discontinuance of Service.

(a) Within 30 calendar days following notification from a customer to discontinue [natural] gas service at that customer’s service location, each operator shall take one of the three steps specified in 49 CFR §192.727(d) unless the operator receives notice within such 30 calendar day time period that service is to be continued at that service location to another customer or an owner or manager of the service location.

(b) An extension is granted if the customer account is placed in a soft-close program, which means the operator will close a customer’s gas service account, provide the customer with an accurate closing bill, but leave the gas on for the next tenant. A soft-close program may be applied to accounts serving single family residential or individually metered apartment buildings.

(2) Accounts that are in a soft-close status shall have an automatic gas turn-off order executed if:

(A) the meter registers 50 CCF (5 MCF) or more from the documented soft-close reading; or

(B) after 90 days from the customer’s notification to discontinue gas service.

(c) Each operator shall have a written procedure in its operations and maintenance manual for service discontinuance that includes the requirements of this rule.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on October 1, 2019.

TRD-201903546
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-1295

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

16 TAC §§8.301, 8.315

Statutory Authority: The Commission proposes 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.
§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 and 195.52 [Part 195], 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 [incident] and include the following information:

(i) company/operator name;
(ii) location of accident [leak or incident];
(iii) time and date of accident [incident];
(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 [or incident, Ignition], explosion, rerouting of traffic, evacuation of any building, and media interest; and [are included as significant facts.]

(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 telephonic report. [within 30 days of discovery of the incident, submit a completed Form 118 to the Oil and Gas Division of the Commission. In situations specified in the 49 CFR Part 195, the operator shall also file a copy of the required Department of Transportation form with the Division. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.]

(2) Accidents involving hazardous [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 [incident] by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following confirmed discovery (within one hour [two hours]) and include the information listed in paragraph (1)(A)(ii) - (viii) of this subsection; and

(B) within 30 days of discovery of the accident [incident], complete and retain the [file with the Division a] written report as required by 49 CFR Part 195. [using the appropriate Department of Transportation form (as required by 49 CFR Part 195) or a facsimile. For reports submitted electronically to the Department of Transportation, the operator shall forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov. If an operator does not submit reports electronically to the Department of Transportation, the operator shall send the report to the Division on an original signed report form.] 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 telephonic report.

(b) Annual report. Each operator shall retain the [file with the Commission an] annual report required by 49 CFR Part 195 for its intrastate systems [located in Texas in the same manner as required by 49 CFR Part 195]. An operator shall provide a copy of the annual report to the Commission upon request. [The report shall be filed with the Commission on forms supplied by the Department of Transportation on or before June 15 of a year for the preceding calendar year reported. For reports submitted electronically to the Department of Transportation, the operator may forward a copy of the report and confirmation to the Division or electronically to safety@rrc.texas.gov. For reports not submitted electronically to the Department of Transportation, the operator shall send to the Division an original signed report form.]

(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 [Simultaneously with filing other] 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 [United States] 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 [; each operator shall submit to the Division a copy of the initial or 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].

§8.315. Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility.

(a) In addition to the requirements of §8.310 of this title (relating to Hazardous Liquids and Carbon Dioxide Pipelines Public Education and Liaison), each owner or operator of each intrastate hazardous liquids pipeline or pipeline facility and each intrastate carbon dioxide pipeline or pipeline facility shall comply with this section.

(b) This section applies to each owner or operator of a hazardous liquid or carbon dioxide pipeline or pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of any other public school facility where students congregate.

(c) Each pipeline owner and operator to which this section applies shall, for each pipeline or pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of any other public school facility where students congregate, maintain and upon request file with the Division,
For [no later than January 15 of every odd numbered year,] the following information:

(1) the name of the school;
(2) the street address of the public school building or other public school facility; and
(3) the identification (system name) of the pipeline.

(d) Each pipeline owner and operator to which this section applies shall:

(1) upon written request from a school district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:
   (A) a description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;
   (B) a list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;
   (C) the designated emergency number for the pipeline facility operator;
   (D) information on the state’s excavation one-call system; and
   (E) information on how to recognize, report, and respond to a product release; and

(2) mail a copy of the requested items by certified mail, return receipt requested, to the superintendent of the school district in which the school building or facility is located.

(e) A pipeline operator or the operator’s representative shall appear at a regularly scheduled meeting of the school board to explain the items listed in subsection (c) of this section if requested by the school board or school district.

(f) Records. Each owner or operator shall maintain records documenting compliance with the requirements of this section. Records of attendance and acknowledgment of receipt by the school board or school district superintendent shall be retained for five years from the date of the event that is commemorated by the record. Records of certified mail transmissions undertaken in compliance with this section satisfy the record-keeping requirements of this subsection.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on October 1, 2019.
TRD-201903547

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas

Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-1295

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. ELECTRONIC REPORTING AND AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS
19 TAC §3.16

The Texas Higher Education Coordinating Board proposes new §3.16, Required Transcript Notation When a Student is Ineligible to Reenroll due to Non-academic or Non-financial Reason, in Chapter 3, Subchapter A, concerning Electronic Reporting and Amnesty for Students Reporting Certain Incidents. The new section requires transcript notation when a student is ineligible to reenroll due to non-academic or non-financial reasons. The intent of the amendments is to update existing rules to align with new and current statute and rule references regarding notations on transcripts. The amended rules will affect students ineligible to reenroll in a Public and Private or Independent Institutions of Higher Education in Texas.

The Texas Higher Education Coordinating Board also proposes to amend existing rules to include reference to the new transcript notation requirements. Chapter 4, Subchapter A, §4.2 would be amended to reference authority provided by TEC §51.9364. Chapter 4, Subchapter A, §4.7 will be amended to reference Chapter 3, Subchapter A, §3.16 requirements.

Specifically, these revisions provide instruction to institutions of higher education and private or independent institutions of higher education regarding transcript notations for students ineligible to reenroll for a reason other than academic or financial. The revision also adds guidelines for transcript notation removal.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Silverman also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be tougher public security and higher awareness of potential personal risks at institutions of higher education. There is no additional effect on small businesses that grant postsecondary degrees. There is no impact on other small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

(1) the proposed rule will not create or eliminate a government program;
(2) implementation of the rule will not require the creation or elimination of employee positions;
(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
(4) the proposed rule will not require an increase or decrease in fees paid to the agency;
(5) the rule proposal will create a new rule;
(6) the proposed rule will not limit an existing rule
(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state’s economy.

Comments may be submitted via mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new rule is proposed under the Texas Education Code Section 51.9364, which provides for certain notations required on student transcripts.

The amendment and new section support Texas Education Code, Chapter 51 Provisions Generally Applicable to Higher Education.

§3.16. Required Transcript Notation When a Student is Ineligible to Reenroll due to Non-academic or Non-financial Reason.

(a) Each postsecondary educational institution as defined by Texas Education Code 51.9364 will publish its process for transcript notations. "Ineligible to reenroll" will be defined by the notating postsecondary educational institution.

(b) For students ineligible to reenroll in a postsecondary educational institution for a reason other than academic or financial, including, but not limited to disciplinary actions, each postsecondary educational institution must include on the student’s transcript a notation stating the student is ineligible to reenroll in the postsecondary educational institution for a reason other than academic or financial. The postsecondary educational institution must use language to indicate the student is ineligible to reenroll in the institution, regardless of instructional modality. The postsecondary educational institution is neither required nor prohibited from stating the specific reason for ineligibility.

(c) If a student withdraws from the postsecondary educational institution prior to final resolution of the postsecondary educational institution’s published disciplinary process that may result in the student becoming ineligible to reenroll for a reason other than an academic or financial reason, the postsecondary educational institution:

(1) may not end the disciplinary process until the postsecondary educational institution makes a final determination of responsibility, including, if applicable, a determination of whether the student will be ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason; and

(2) shall include on the student’s transcript the notation required under subsection (b) of this section if, as a result of the disciplinary process, the student is ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason.

(d) Upon request by a student, a postsecondary educational institution may remove from a student’s transcript a notation required under subsection (b) of this section if:

(1) the student becomes eligible to reenroll in the postsecondary educational institution; or

(2) the postsecondary educational institution determines that good cause exists to remove the notation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903599
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 427-6206

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.2

The Texas Higher Education Coordinating Board proposes to amend Chapter 4, Subchapter A, §4.2 to include reference authority provided by Texas Education Code (TEC) §51.9364. This revision provides instruction to institutions of higher education, and private or independent institutions of higher education regarding transcript notations for students ineligible to reenroll for a reason other than academic or financial. The revision also adds guidelines for transcript notation removal.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Silverman also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be tougher public security and higher awareness of potential personal risks at institutions of higher education. There is no additional effect on small businesses that grant postsecondary degrees. There is no impact on other small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

(1) the proposed amendment will not create or eliminate a government program;

(2) implementation of the proposed amendment will not require the creation or elimination of employee positions;

(3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendment will not require an increase or decrease in fees paid to the agency;

(5) the proposed amendment will not create a new rule;

(6) the proposed amendment will not limit an existing rule;

(7) the proposed amendment will not change the number of individuals subject to the rule; and

(8) the proposed amendment will not affect the state’s economy.

Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.
The amendment is proposed under the Texas Education Code Section 51.9364, which provides for certain notations required on student transcripts.

The amendment supports Texas Education Code, Chapter 51 Provisions Generally Applicable to Higher Education.

§4.2. Authority.

Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code, §51.9364 and §61.051 which describes the Board's role in the Texas system of higher education.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903600
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 427-6206

19 TAC §4.7

The Texas Higher Education Coordinating Board proposes to amend existing rules to include reference to new transcript notation requirements. Chapter 4, Subchapter A, §4.7, concerning Student Transcripts, would be amended to add new subsection (e) to reference requirements in Chapter 3, Subchapter A, §3.16.

The Texas Higher Education Coordinating Board also proposes to amend existing rules to include reference to the new transcript notation requirements. Chapter 4, Subchapter A, Section §4.2 will be amended to reference authority provided by TEC §51.9364. Chapter 4, Subchapter A, §4.7 will be amended to reference Chapter 3, Subchapter A, §3.16 requirements.

Specifically, these revisions provide instruction to institutions of higher education and private or independent institutions of higher education regarding transcript notations for students ineligible to reenroll for a reason other than academic or financial. The revision also adds guidelines for transcript notation removal.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Silverman also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be tougher public security and higher awareness of potential personal risks at institutions of higher education. There is no additional effect on small businesses that grant postsecondary degrees. There is no impact on other small businesses, micro businesses, or rural communities.

Government Growth Impact Statement
(1) the rule will not create or eliminate a government program;
(2) implementation of the rule will not require the creation or elimination of employee positions;
(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rule will not require an increase or decrease in fees paid to the agency;
(5) the rule will not create a new rule;
(6) the rule will not limit an existing rule;
(7) the rule will not change the number of individuals subject to the rule; and
(8) the rule will not affect the state's economy.

Comments may be submitted via mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amended rule is proposed under the Texas Education Code Section 51.9364, which provides for certain notations required on student transcripts.

The amendment supports Texas Education Code, Chapter 51 Provisions Generally Applicable to Higher Education.

§4.7. Student Transcripts.

(a) Student transcripts shall contain a record of each state funded course attempted by a student at the transcripting institution after January 1, 1998. This includes all courses for which the student was enrolled as of the official census date each term, including developmental education courses, courses that were not completed, courses that were dropped, and courses that were repeated.

(b) The student transcript or an addendum to the transcript certified by the appropriate institutional official shall contain a record of the student's status in regard to the Texas Success Initiative (TSI). The document should include the status for each section of a test taken for TSI purposes (reading, mathematics, writing) with information as to how the student met the TSI requirement. The information provided should enable receiving institutions to use the transcript or the addendum as a single source of information to determine the student's TSI status.

(c) Student transcripts created after September 1, 2000 should be maintained by the institutions in a format suitable for electronic interchange. The format of transcripts shall be the format that is used to store the most transcripts by Texas institutions of higher education as of September 1, 1998 or another format adopted by a majority of the members of the Texas Association of Collegiate Registrars and Admissions Officers.

(d) Student transcripts or an addendum to the transcript certified by the appropriate institutional official shall identify all courses completed in satisfaction of the core curriculum as specified in §4.28(h) of this title (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula).

(e) Transcript notations are required for students ineligible to reenroll for a reason other than academic or financial as specified in Chapter 3, Subchapter B, Rule §3.16.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903601
SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Coordinating Board proposes to amend existing rules to include reference to the degree plan requirements of proposed new subchapter T, Chapter 4, Subchapter D, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges, §4.85. Dual Credit Requirements, sub-section (g) would be amended by adding a reference to degree plan requirements of the proposed new subchapter T.

Dr. Stacey Silverman, Interim Assistant commissioner for Academic Quality and Workforce, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the amendment will be the efficient progress and graduation of students at public institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

(1) the proposed amendment will not create or eliminate a government program;

(2) implementation of the proposed amendment will not require the creation or elimination of employee positions;

(3) implementation of the proposed amendment will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed amendment will not require an increase or decrease in fees paid to the agency;

(5) the proposed amendment will not create a new rule;

(6) the proposed amendment will not limit an existing rule;

(7) the proposed amendment will not change the number of individuals subject to the rule; and

(8) the proposed amendment will positively affect the state’s economy.

Comments on the proposal may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amendment to §4.85 is proposed under the Texas Education Code (TEC), Section 51.9685, which provides the Coordinating Board with the authority to adopt rules through the negotiated rulemaking process necessary for administration and to ensure compliance of required filing of degree plans by students.


§4.85. Dual Credit Requirements.

(a) - (e) (No change.)

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at the college’s main campus must also apply to dual credit courses. These policies could include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc.

(2) Students in dual credit courses must be eligible to utilize the same or comparable support services that are afforded college students on the main campus. The college is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(3) A student enrolled in dual credit courses at an institution of higher education shall file a degree plan with the institution as prescribed by §4.344 of this chapter (relating to Degree Plans for a Student Enrolled in Dual Credit Courses).

(h) (No change.)

(i) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903604
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 427-6206

SUBCHAPTER T. REQUIRED DEGREE PLANNING

19 TAC §§4.340 - 4.347

The Texas Higher Education Coordinating Board proposes new rules for inclusion in the Texas Administrative Code (TAC), Title 19, Part 1, Chapter 4, as new Subchapter T, §§4.340 - 4.347, concerning required degree plans for students at public institutions of higher education in Texas.

The Texas Higher Coordinating Board also proposes to amend existing rules to include reference to the degree plan requirements of the proposed new Subchapter T. Chapter 4, Subchapter D, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges, would be amended by adding reference to degree plan requirements of the proposed new Subchapter T in 4.85(g), concerning Dual Credit Requirements. Chapter 9, concerning Program Development in Public Two-Year Colleges, Subchapter L, concerning
Multidisciplinary Studies Associate Degrees, §9.555, concerning Student Advising, would also be amended to reference the proposed new Subchapter T.

Specifically, this new subchapter will require degree plans to be filed for students early in their enrollment at public institutions of higher education and includes provision for degree plans for students enrolled in dual credit courses.

Dr. Stacey Silverman, Interim Assistant commissioner for Academic Quality and Workforce, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stacey Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the new subchapter will be the efficient progress and graduation of students at public institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;
(2) implementation of the rules will not require the creation or elimination of employee positions;
(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
(4) the rules will not require an increase or decrease in fees paid to the agency;
(5) the rules will create new rules;
(6) the rules will not limit existing rules;
(7) the rules will not change the number of individuals subject to the rules; and
(8) the rules will positively affect the state’s economy.

Comments on the proposal may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The new subchapter in the TAC is proposed under the Texas Education Code (TEC), §51.9685, which provides the Coordinating Board with the authority to adopt rules through the negotiated rulemaking process necessary for administration and to ensure compliance of required filing of degree plans by students.


The purpose of this subchapter is to ensure students file degree plans adhering to institutional process early in their enrollment at public institutions of higher education and graduate from their degree programs without excess hours.

§4.341. Authority.
Texas Education Code (TEC), Section 51.9685, Required Filing of Degree Plan, authorizes the Board to adopt rules necessary for the administration of the section and to ensure compliance.

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

(1) Degree plan - defined in TEC Section 51.9685 (a) (1)
A statement of the course requirements that an undergraduate student at an institution of higher education must complete in order to be awarded an associate or bachelor's degree from the institution.

(2) Institution of higher education - has the meaning assigned by TEC Section 61.003 (8).

(3) Board or Coordinating Board - The Texas Higher Education Coordinating Board

(4) Dual credit courses - College courses in which an eligible high school student enrolls and receives credit for the course(s) from both the college and the high school.

(5) Associate degree program - A grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to an associate degree from an institution of higher education.

(6) Bachelor's degree program - Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a baccalaureate degree from an institution of higher education.

§4.343. Degree Plans for a Student Enrolled in an Associate or Bachelor’s Degree Program.

(a) A student enrolled in an associate or bachelor's degree program at an institution of higher education must file a degree plan with the institution after the 12th class day but before the end of the semester or term immediately following the semester or term in which the student earned a cumulative total of 30 or more semester credit hours for coursework successfully completed by the student, including transfer courses, international baccalaureate courses, dual credit courses, and any other course for which the institution the student attends has awarded the student college course credit, including course credit awarded by examination.

(b) A student who enrolls in an associate or bachelor's degree program at an institution of higher education for the first time with a cumulative total of 30 or more semester credit hours, shall file a degree plan with the institution after the 12th class day but before the end of the semester of first enrollment.

§4.344. Degree Plans for a Student Enrolled in Dual Credit Courses.
A student enrolled in dual credit courses at an institution of higher education shall file a degree plan with the institution not later than:

(1) the end of the second regular semester or term immediately following the semester or term in which the student earned a cumulative total of 15 or more semester credit hours of course credit for dual credit courses successfully completed by the student at that institution; or

(2) if the student begins the student's first semester or term at the institution with 15 or more semester credit hours of course credit for dual credit courses successfully completed by the student, the end of the student's second regular semester or term at the institution.

In accordance with TEC 51.9685(d) and (f), institutions shall:

(1) Provide students information about the degree plan filing requirement and options for academic advising, including electronic communication; and
(2) Notify students failing to file a degree plan and shall not provide official transcripts to the students until a degree plan is filed.

§4.346. Responsibilities of Students.
In accordance with TEC 51.9685(e) (1) and (2), students shall:

(1) File a degree plan with the institution as specified in this subchapter;

(2) Notify appropriate offices at the institution of higher education of changes in their choice of degree programs; and

(3) Enroll in courses consistent with the filed degree plan.

The Board reserves the right to audit institutional student records at any time to ensure compliance with any of the conditions of this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903602
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 427-6206

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES
SUBCHAPTER L. MULTIDISCIPLINARY STUDIES ASSOCIATE DEGREES

19 TAC §9.555

The Texas Higher Coordinating Board proposes to amend existing rules to include reference to the degree plan requirements of the proposed new subchapter T. Chapter 9 Program Development in Public Two-Year Colleges, Subchapter L Multidisciplinary Studies Associate Degrees §9.555 would be amended to reference the proposed new subchapter T.

Dr. Stacey Silverman, Interim Assistant commissioner for Academic Quality and Workforce, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Silverman has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the efficient progress and graduation of students at public institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on small businesses, micro businesses, and rural communities.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule; and

(7) the rule will not change the number of individuals subject to the rule.

(8) the rule will positively affect the state's economy

Comments on the proposal may be submitted by mail to Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at AQWComments@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The amended rule is proposed under the Texas Education Code (TEC), Section 51.9685, which provides the Coordinating Board with the authority to adopt rules through the negotiated rulemaking process necessary for administration and to ensure compliance of required filing of degree plans by students.


§9.555. Student Advising

A student enrolled in a multidisciplinary studies associate degree program shall file a degree plan as prescribed by TAC Chapter 4, Subchapter T. The [Notwithstanding Texas Education Code §51.9685, before the beginning of the regular semester or term immediately following the semester or term in which a student successfully completes a cumulative total of 30 or more semester credit hours for coursework in a multidisciplinary studies associate degree program established under this section, the] student must meet with an academic advisor to complete a degree plan, as defined by §9.553 of this title (relating to Multidisciplinary Studies Associate Degree Program) [(relating to Multidisciplinary Studies Associate Degree Program)], that:

(1) Accounts for all remaining credit hours required for the completion of the degree program; and

(2) Emphasizes the student's transition to a particular four-year college or university that the student chooses; and

(3) Preparations for the student's intended field of study or major at the four-year college or university.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903603
William Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 427-6206

TITLE 25. HEALTH SERVICES
PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG
SUBCHAPTER EE. COTTAGE FOOD PRODUCTION OPERATION

25 TAC §229.661

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §229.661, concerning Cottage Food Production Operations.

BACKGROUND AND PURPOSE

The proposed amendment to §229.661 complies with Senate Bill (S.B.) 572, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 437, relating to Cottage Food Production Operations. The legislation expands and clarifies the list of foods allowable as cottage food products to include frozen raw and uncut fruit or vegetables, pickled fruit or vegetables, fermented vegetable products, plant-based acidified canned foods, and any other food that is not a time and temperature control for safety food. The legislation sets forth specific requirements for cottage foods production of fermented and acidified canned foods and requirements for DSHS to implement procedures for recipe source approval and to maintain lists of laboratories and process authorities on DSHS' website. The legislation expands the methods by which cottage food products may be marketed and sold through the internet and by mail-order.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §229.661(b) updates and adds definitions as a result of S.B. 572. New definitions include "acidified canned goods," "fermented vegetable product," and "process authority." The definition for "cottage food production operation" expands the list of foods that can be produced by adding pickled fruit or vegetables, plant-based acidified canned goods, fermented vegetable products, frozen raw and uncut fruit or vegetables, and any other food that is not a time and temperature control for safety food. The amendment replaces "potentially hazardous food" with "time and temperature control for safety food (TCS food)" throughout the section, updates the definition for "farmers’ market" and removes language limiting the places where the exchange between the cottage food production operation (operator) and consumer occurs. The subsection is renumbered to account for the addition of definitions.

The proposed amendment to §229.661(d), concerning packaging and labeling requirements for Cottage food production operations, adds fish or shellfish to be included on the label as a disclosure of major food allergens, adds language regarding the sale of frozen raw and uncut fruit or vegetables and advertising media for cottage food products.

The proposed amendment to §229.661(e), concerning certain prohibited or restricted sales by cottage food production operations, removes the previous restriction on the sale of cottage food products through the internet or by mail-order and adds the requirements for selling cottage food products by these methods.

The proposed amendment §229.661(f), concerning requirements for the sale of certain cottage food products, outlines the requirements for the production, labeling, recordkeeping, and sale of pickled fruit or vegetables, fermented vegetable products, and plant-based acidified canned foods in a cottage food production operation. The proposed amendment adds procedures for recipe source approval and requires DSHS to maintain a list of web-based resources for operators who want to produce fermented and acidified canned foods on DSHS' website.

The proposed amendment to §229.661(g), concerning requirements for the sale of frozen fruit or vegetables, describes the storage, delivery, and labeling of the frozen fruit or vegetables. The proposed amendments to §299.661(f) through (h) are renumbered as subsections (h) though (j) due to the new subsections.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

1. the proposed rule will not create or eliminate a government program;
2. implementation of the proposed rule will not affect the number of DSHS employee positions;
3. implementation of the proposed rule will result in no assumed change in future legislative appropriations;
4. the proposed rule will not affect fees paid to DSHS;
5. the proposed rule will not create a new rule;
6. the proposed rule will expand the existing rule;
7. the proposed rule will not change the number of individuals subject to the rule; and
8. the proposed rule will positively affect the local economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that it cannot be determined if there is an adverse economic effect on small businesses, micro-businesses, or rural communities, because there is no license or permit required for cottage food production operations. DSHS does not have a mechanism to count how many cottage food production operations are active in the state. The amended rule represents a significant expansion of foods that may be produced by cottage food production operations to include both fermented and acidified canned foods; and the means by which those foods may be marketed to include internet and mail-order sales. The rule expands economic opportunity for businesses in the state of Texas.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and
welfare of the residents of Texas; and the rule is necessary to implement legislation that does not specially state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, Consumer Protection Division, has determined that for each year of the first five years the rule is in effect, the public benefit will be the increased opportunity for business owners who are cottage food production operations. Businesses will benefit due to the expanded list of foods that can be produced to include frozen raw and uncut fruit or vegetables, pickled fruit or vegetables, and fermented and acidified canned foods, and the permission for mail-order and internet sales. DSHS will maintain a list of web-based resources on DSHS’ website for operators who want to produce fermented and acidified canned foods.

Donna Shepperd has also determined that for the first five years the rule is in effect, persons who are required to comply with the proposed rule may incur economic costs because of requirements in the rule for operators of fermented and acidified foods. The amended rule will require operators to follow one of the following three options: to utilize approved source recipes for processing their food products; to have the products evaluated by an approved process authority; or to have the products tested at a certified commercial laboratory. If an operator produces fermented or acidified foods chooses not to use pre-approved recipes, there will be “up-front” costs in evaluation of recipes by process authorities or determination of end-product equilibrium pH by certified laboratories. Costs will depend on the number of recipes tested or the amount of experimentation required to achieve a recipe that produces a safe product. Evaluation of an acidified product by a process authority can cost $75.00 per product. Testing for equilibrium pH can cost $100.00 per product. These alternate steps (product evaluation or product testing) are considered necessary to ensure the safety of consumers, due to the risk of botulism toxin forming in the anaerobic environment of shelf-stable canned foods. It is assumed that these production costs will be recouped in the retail cost paid by consumers. The amended rule will require DSHS to maintain current lists of approved sources of recipes, qualified process authorities, and certified laboratories on DSHS’ website.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner’s right to his or her property that otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Joe Williams, R.S. at (512) 231-5653 in DSHS Public Sanitation and Retail Food Safety Unit.

Written comments on the proposal may be submitted to Joe Williams, R.S., Manager, DSHS Public Sanitation and Retail Food Safety Unit, at Public Sanitation and Retail Food Safety Unit MC 1987, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, or by email to foodestablishments@dshs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered at 8407 Wall Street, Austin, Texas 78754 before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate “Comments on Proposed Rule 19R077” in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Health and Safety Code, §437.0056, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 437; and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.


§229.661. Cottage Food Production Operations.

(a) Purpose. The purpose of this section is to implement Health and Safety Code, Chapter 437, related to cottage food production operations, which requires the department to adopt rules for labeling and production of foods [produced] by cottage food production operations.

(b) Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Acidified canned goods—Food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

(2) [¶] Baked good—A food item prepared by baking the item in an oven, which includes cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking.

(3) [¶] Cottage food production operation (operator)—An individual, operating out of the individual’s home, who:

(A) produces at the individual’s home:

(i) a baked good that is not a time and temperature control for safety food (TCS food) [potentially hazardous food], as defined in paragraph (14) [(11)] of this subsection:

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an
equilibrium pH value of 4.6 or less; [pickles, as defined in paragraph (10) of this subsection;]

(xiv) mustard;
(xv) roasted coffee or dry tea; [ae]
(xvi) a dried herb or dried-herb mix;
(xvii) plant-based acidified canned goods;
(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;
(xix) frozen raw and uncut fruit or vegetables; or
(xx) any other food that is not a TCS food, as defined in paragraph (14) of this subsection.

(B) has an annual gross income of $50,000 or less from the sale of food described by subparagraph (A) of this paragraph;

(C) sells foods produced under subparagraph (A) of this paragraph only directly to consumers [at the individual’s home; a farmers’ market; a farm stand; a municipal, fair, festival, or event; a county fair, festival, or event; or a nonprofit fair, festival, or event]; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(4) [42] Department—The Department of State Health Services.

(5) [44] Executive Commissioner—The Executive Commissioner of the Health and Human Services Commission. 

(6) [45] Farm stand--A premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described in paragraph (3)(2) of this subsection.

(7) [46] Farmers’ market--A designated location typically used [primarily] for the [distribution and] sale [directly to consumers] of food by farmers or other vendors [producers].

(8) Fermented vegetable product--A low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(9) [47] Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not TCS [potentially hazardous (time/temperature control for safety)] foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only food that is not TCS [potentially hazardous (time/temperature control for safety)] food is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vii) a Bed and Breakfast Limited establishment as defined in §228.2 of this title (relating to Definitions) concerning food establishments;

(viii) a private home that receives catered or home-delivered food; or

(x) a cottage food production operation.

(10) [48] Herbs--The [Herbs are from the] leafy green parts of a plant (either fresh or dried) used for culinary purposes and not for medicinal uses.

(11) [49] Home--A primary residence that contains a kitchen and appliances designed for common residential usage.

(12) Process authority--A person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

(13) [444] Time and temperature control for safety food (TCS food) [Potentially hazardous food (PHF)]--A food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS [potentially hazardous] food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses TCS [potentially hazardous] food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

(c) Complaints. The department shall maintain a record of a complaint made by a person against an operator [a cottage food production operation].

(d) Packaging and labeling requirements for cottage food production operations. All foods prepared by an operator [a cottage food
production operation] shall be packaged and labeled in a manner that prevents product contamination.

(1) The label information shall include:
    (A) the name and physical address of the cottage food production operation;
    (B) the common or usual name of the product;
    (C) disclosure of any [if a food is made with a] major food allergens [allergen], such as eggs, nuts, soy, peanuts, milk, [or] wheat, fish, or shellfish used in the product [that ingredient must be listed on the label]; and
    (D) the following statement: "This food is made in a home kitchen and is not inspected by the Department of State Health Services or a local health department."

(2) Labels must be legible.

(3) A food item is not required to be packaged if it is too large or bulky for conventional packaging. For these food items, the information required under paragraph (1) of this subsection shall be provided to the consumer on an invoice or receipt.

(4) A label for frozen raw and uncut fruit or vegetables must include the following statement in at least 12-point font when sold: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption" on the label or on an invoice or receipt provided with the frozen fruit or vegetables.

(5) Advertising media of cottage food products for health, disease, or other claims must be consistent with those claims allowed by the Code of Federal Regulations Title 21, Part 101, Subparts D and E.

(e) Certain sales by cottage food production operations prohibited or restricted. [A cottage food production operation may not sell any of the foods described in this section through the Internet, by mail order, or at wholesale. No health claims may be made on any of the advertising media of the finished products because they are conventional foods.]

(1) An operator may not sell any of the foods described in this section at wholesale.

(2) An operator may sell a food described in this section in this state through the internet or by mail-order only if:

   (A) the consumer purchases the food through the internet or by mail-order from the operator and the operator delivers the food to the consumer person-to-person; and

   (B) subject to paragraph (3) of this subsection, before the operator accepts payment for the food, the operator provides all labeling information required by subsection (d) of this section to the consumer by:

       (i) posting a legible statement on the cottage food production operation's internet website;

       (ii) publishing the information in a catalog; or

       (iii) otherwise communicating the information to the consumer.

(3) The operator that sells a food described by subsection (b)(3)(A) of this section in this state in the manner described by paragraph (2) of this subsection:

   (A) is not required to include the address of the cottage food production operation in the labeling information required under subsection (d)(1)(A) of this section before the operator accepts payment for the food; and

   (B) shall provide the address of the cottage food production operation on the label of the food in the manner required by subsection (d)(1)(A) of this section after the operator accepts payment for the food.

(f) Requirements for sale of certain cottage food products.

(1) An operator that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:

   (A) use a recipe that:

       (i) is from a source approved by the department under paragraph (4) of this subsection;

       (ii) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable product, or plant-based acidified canned good has an equilibrium pH value of 4.6 or less; or

       (iii) is approved by a qualified process authority; or

   (B) if the operation does not use a recipe described by subparagraph (A) of this paragraph, test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or plant-based acidified canned good has an equilibrium pH value of 4.6 or less.

(2) An operator may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with paragraph (1) of this subsection.

(3) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, an operator must:

   (A) label the batch with a unique number; and

   (B) for a period of at least 12 months, keep a record that includes:

       (i) the batch number;

       (ii) the recipe used by the producer;

       (iii) the source of the recipe or testing results as applicable; and

       (iv) the date the batch was prepared.

(4) The department shall:

   (A) approve sources for recipes that an operator may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and

   (B) semiannually post on the department's internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.

(g) Requirements for the sale of frozen raw and uncut fruit or vegetables. An operator that sells to consumers frozen raw and uncut fruit or vegetables shall:

   (1) store and deliver the frozen raw and uncut fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and
(2) label the frozen raw and uncut fruit or vegetables in accordance with subsection (d)(4) of this section.

(h) [DG] A cottage food production operation is not exempt from meeting the application of Health and Safety Code, §431.045, Emergency Order; §431.0495, Recall Orders; and §431.247, Delegation of Powers or Duties. The department or local health authority may act to prevent an immediate and serious threat to human life or health.

(i) [HI] Prohibition for Cottage Food Production Operations. A cottage food production operation may not sell TCS [potentially hazardous] foods to customers.

(j) [HI] Production of Cottage Food Products - Basic Food Safety Education or Training Requirements.

(1) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Health and Safety Code, Chapter 438, Subchapter D.

(2) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(A) meets the requirements of paragraph (1) of this subsection;

(B) is directly supervised by an individual described by paragraph (1) of this subsection; or

(C) is a member of the household in which the cottage food products are produced.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2019.
TRD-201903579
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 231-5653

CHAPTER 451. PEER ASSISTANCE

25 TAC §§451.101 - 451.112


BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal 40 TAC Chapter 451, Peer Assistance, in its entirety. New rules in 26 TAC Chapter 8, Peer Assistance for Impaired Professionals, are published elsewhere in this issue of the Texas Register and are substantially similar as the rules proposed for repeal.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §451.101, Authority, allows the rule to be proposed as new 26 TAC §8.101.

The proposed repeal of §451.102, Program Purpose, allows this chapter to be proposed as new 26 TAC Chapter 8. The content of this rule is included in proposed new §8.105(8), the definition of "peer assistance program."

The proposed repeal of §451.103, Applicability, allows the rule to be proposed as new 26 TAC §8.103.

The proposed repeal of §451.104, Relationship to Licensing/Disciplinary Authority, allows the content of the rule to be proposed within new 26 TAC §8.115 and §8.121.

The proposed repeal of §451.105, Program Requirements, allows the content of the rule to be proposed within new 26 TAC §8.115 and §8.121.

The proposed repeal of §451.106, Definitions, allows the rule to be proposed as new 26 TAC §8.105.

The proposed repeal of §451.107, Organization, allows the rule to be proposed as new 26 TAC §8.109.

The proposed repeal of §451.108, Staffing, allows the rule to be proposed as new 26 TAC §8.111.

The proposed repeal of §451.109, Program Description, allows the rule to be proposed as new 26 TAC §8.113.

The proposed repeal of §451.110, Policies and Procedures, allows the rule to be proposed as new 26 TAC §8.115.

The proposed repeal of §451.111, Referrals to Assessment/Treatment Resources, allows the rule to be proposed as new 26 TAC §8.119.

The proposed repeal of §451.112, Certification, allows the rule to be proposed as new 26 TAC §8.107(b).

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be repealed, there are no foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be repealed:

(1) the repealed rules will not create or eliminate a government program;

(2) the repealed rules will not affect the number of HHSC/DSHS employee positions;

(3) the repealed rules will result in no assumed change in future legislative appropriations;

(4) the repealed rules will not affect fees paid to HHSC;

(5) the repealed rules will not create a new rule;

(6) the proposed rulemaking will repeal existing rules;

(7) the repealed rules will not change the number of individuals subject to the rules; and

(8) the repealed rules will not affect the state's economy.
SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The repealed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, has determined that for each year of the first five years the rules are repealed, the public benefit will be better information on peer assistance program requirements, as the rules will be updated and located under the correct state agency in the Texas Administrative Code.

Trey Wood has also determined that for the first five years the rules are repealed, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Amy Chandler at (512) 487-3419.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R046" in the subject line.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.


§451.102. Program Purpose.

§451.103. Applicability.
§451.104. Relationship to Licensing/Disciplinary Authority.
§451.105. Program Requirements.
§451.108. Staffing.
§451.111. Referrals to Assessment/Treatment Resources.
§451.112. Certification.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2019.

TRD-201903577
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 487-3419

TITLE 26. HEALTH AND HUMAN SERVICES
PART 1. HEALTH AND HUMAN SERVICES COMMISSION
CHAPTER 8. PEER ASSISTANCE PROGRAMS FOR IMPAIRED PROFESSIONALS

26 TAC §§8.101, 8.103, 8.105, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, 8.125


BACKGROUND AND PURPOSE

The purpose of the proposal is to move the Department of State Health Services (DSHS) rules in 25 TAC Chapter 451 to 26 TAC Chapter 8 as part of consolidating all HHSC rules in TAC Title 26. The proposed new rules are reorganized and updated, but do not make changes from the language currently in 25 TAC Chapter 451 that would result in new or increased requirements for a peer assistance program for impaired professionals or for any associated state licensing authority. The proposed repeal of 25 TAC Chapter 451, Peer Assistance, appears elsewhere in this issue of the Texas Register.

SECTION-BY-SECTION SUMMARY

Proposed new §8.101, Authority, references the enabling statute, Texas Health and Safety Code §467.001, as the authority for these rules.
Proposed new §8.103, Applicability, indicates that this chapter of rules applies to any peer assistance program organized and operated under authority of Texas Health and Safety Code, Chapter 467.

Proposed new §8.105, Definitions, defines certain words and terms used in the chapter.

Proposed new §8.107, Peer Assistance Program Certification and Approval, outlines the certification and approval requirements for a peer assistance program.

Proposed new §8.109, Organization, contains administrative requirements for a peer assistance program.

Proposed new §8.111, Staffing, outlines the staffing requirements for a peer assistance program.

Proposed new §8.113, Program Description, requires each peer assistance program to operate according to a written program description, including a list of minimum content for the program description.

Proposed new §8.115, Policies and Procedures, contains requirements for the policies and procedures of a peer assistance program, including how the policies and procedures are developed.

Proposed new §8.117, Reports, discusses making a report about a person who is or may be an impaired professional.

Proposed new §8.119, Referrals to Assessment and Treatment Resources, prohibits compensation for referrals and seeks to ensure an objective process for selecting assessment and treatment providers for impaired professionals.

Proposed new §8.121, Program Completion, discusses notifications regarding whether or not an impaired professional successfully completed a peer assistance program.

Proposed new §8.123, Confidentiality, discusses the confidential nature of information relating to participation in peer assistance programs and lists situations in which confidential information may be disclosed.

Proposed new §8.125, Provision of Services to Students, gives peer assistance programs the option to extend services to impaired students.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new rules in Texas Administrative Code, Title 26, which will replace rules being repealed contemporaneously from Title 25;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Sonja Gaines, Deputy Executive Commissioner, has determined that for each year of the first five years the rules are in effect, the public benefit will be better information on peer assistance program requirements, as the rules will be updated and located under the correct state agency in the Texas Administrative Code.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed new rules move, update, and reorganize existing program requirements being repealed in 25 TAC Chapter 451, and do not require providers to alter their current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Amy Chandler at (512) 487-3419.

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following
business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R046" in the subject line.

STATUTORY AUTHORITY

The new sections are authorized by Texas Health and Safety Code Chapter 467, which requires HHSC to adopt minimum criteria for peer assistance programs for impaired professionals.

The new sections implement Texas Health and Safety Code Chapter 467.

§8.101. Authority.
Authority is granted to the Texas Health and Human Services Commission (HHSC) under Texas Health and Safety Code §467.001 to establish minimum criteria for peer assistance programs.

§8.103. Applicability.
This chapter applies to any peer assistance program organized and operated under authority of Texas Health and Safety Code, Chapter 467. This chapter does not apply to peer assistance programs established for licensed physicians or pharmacists or for any other profession that is authorized by other law to establish a peer assistance program. The peer assistance program for pharmacists is required to establish and comply with rules that are at least as strict as those contained in this chapter.

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

(1) Approved peer assistance program--A program designed to help an impaired professional which is:
   (A) established or approved by a licensing or disciplinary authority;
   (B) meets the criteria established by HHSC in this chapter; and
   (C) meets any additional criteria established by the licensing or disciplinary authority.

(2) HHSC--The Texas Health and Human Services Commission.

(3) Impaired professional--An individual whose ability to perform professional services is impaired by a mental health or substance use condition.

(4) Impaired student--A student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by a mental health or substance use condition.

(5) Licensing or disciplinary authority--A state agency or board that licenses or has disciplinary authority over professionals.

(6) Mental health condition--A condition (excluding intellectual or developmental disability or a substance use condition) that substantially impairs an individual's:
   (A) thought, perception of reality, emotional process, or judgment;
   (B) behavior; or
   (C) ability to participate in daily routines.

(7) Mental health professional--An individual licensed by the state as a:
   (A) licensed chemical dependency counselor;
   (B) licensed clinical social worker;
   (C) licensed marriage and family therapist;
   (D) licensed professional counselor;
   (E) psychologist; or
   (F) nurse with a master's degree and national certification in substance use or psychiatric nursing.

(8) Peer assistance program--Identifies, assists, and monitors individuals experiencing mental health or substance use conditions that are, or are likely to be, job-impairing, so that the individuals may return to safe practice. Peer assistance programs offer support and assistance and have a rehabilitative emphasis rather than a disciplinary emphasis.

(9) Professional--An individual who may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code, or who is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(10) Professional association--A national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(11) Staff--All persons responsible for implementing a peer assistance program, whether employed, under contract, paid, or volunteer.

(12) Student--An individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(13) Substance use condition--A recurrent use of alcohol or drugs that causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

(a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by HHSC in this chapter and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) Peer assistance programs must be certified by HHSC under this chapter.

(1) A peer assistance program must submit all documentation required by HHSC to verify that the program meets the minimum standards described in this chapter.

(2) Once HHSC is satisfied that a peer assistance program meets minimum standards, the program receives a document confirming certification.

(3) A peer assistance program is recertified periodically as determined by HHSC.

(4) A peer assistance program must notify HHSC within 30 days of any change in status, including change of address or telephone number.

(c) A peer assistance program established by a professional association must submit evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the
minimum criteria established by HHSC in this chapter and any additional criteria established by that authority.

(1) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by HHSC in this chapter and any additional criteria established by that authority, the authority must approve the program.

(2) A licensing or disciplinary authority may revoke its approval of a program established by a professional association if the authority determines that:

(A) the program does not comply with the criteria established by HHSC or by that authority; and

(B) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.


(a) A peer assistance program's governing body is legally responsible for the management, services, and operations of the program. No member of the governing body may have the potential for direct financial gain from these activities.

(b) A peer assistance program's governing body must designate or employ an administrator for the peer assistance program. The administrator is responsible for the day-to-day operations of the program.

(c) A peer assistance program must maintain adequate financial records according to generally accepted accounting principles. Financial records must include an annual budget and records of income and expenditures.

§8.111 Staffing.

(a) A peer assistance program must maintain an adequate number of staff to effectively administer the program and provide the services identified in the program description.

(b) Each staff position must have a written job description that specifies:

(1) duties and responsibilities; and

(2) minimum qualifications, including the level of education, training, and related work experience required.

(c) An application or resume for each staff member must document education, training, and related work experience that meets or exceeds the minimum qualifications in that person's job description.

(d) The organization must provide adequate supervision for staff.

(e) All staff must receive training regarding program and participant confidentiality requirements. Staff who will coordinate intervention or participation or will consult with or monitor a participant must complete eight hours of training before working with program participants. At least five hours of the training must be conducted by a mental health professional and include:

(1) mental health and substance use conditions;

(2) appropriate treatment for mental health and substance use conditions; and

(3) intervention and advocacy skills, as applicable.

(f) The program must maintain documentation of required training.

(g) Each personnel file must be kept for at least two years after the individual stops working with the program.

§8.113. Program Description.

(a) A peer assistance program must have a written description of the program that includes:

(1) target population;

(2) the plan for ensuring services are available throughout the state;

(3) how the following areas are to be addressed:

(A) identification of and intervention with impaired professionals and, if served, impaired students;

(B) assistance with accessing treatment;

(C) monitoring and support of participants;

(D) intervention in crises, including relapses; and

(E) support during the reentry by participants to professional practice or academic role;

(4) the plan for program evaluation; and

(5) the methods used to promote and encourage use of the program.

(b) A peer assistance program must operate according to the program description required by subsection (a) of this section.


(a) A peer assistance program must operate according to written policies and procedures designed to support the implementation of the program description.

(b) The policies and procedures for a peer assistance program must comply with:

(1) this chapter;

(2) any requirements of the licensing or disciplinary authority that established or approved the program; and

(3) all applicable state or federal laws or rules.

(c) There must be at least one professional in recovery from a substance use condition and one professional in recovery from a mental health condition involved in program and policy development. These individuals may be members of the governing board, staff, or members of an advisory committee for the program.

(d) The written policies and procedures must state philosophy and methods for program operation, including:

(1) the licensing or disciplinary authority's role in the process and the program's relationship to the authority;

(2) procedures for maintaining confidentiality;

(3) compliance with applicable state and federal legal authority and regulations;

(4) eligibility criteria for participants;

(5) the circumstances under which an individual will be accepted as a participant in the program;

(6) all formal agreements (including consents for disclosure) required of participants;

(7) a description of the following processes, including, where applicable, how they apply to self-referrals and participants:

(A) referral;
(B) assessment;
(C) intervention;
(D) drug testing;
(E) treatment;
(F) return to work;
(G) crisis and relapse;
(H) participant noncompliance with intervention, drug testing, or treatment;
(I) participant dismissal from the program;
(J) participant who moves out of state; and
(K) participant program completion;
(8) the program's role in the accessing of treatment by the participant;
(9) participant records and related documentation;
(10) program's relationship to reporting third parties; and
(11) the criteria to be used for selection of assessment and treatment referral resources.
(e) The policies and procedures must be current, and staff must have access to applicable information.

§8.117. Reports.
(a) A person who knows or suspects that a professional is impaired by a substance use or mental health condition may report the professional's name and any relevant information to an approved peer assistance program.
(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program.
(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

§8.119. Referrals to Assessment and Treatment Resources.
(a) Neither the peer assistance program nor any individual associated with it may accept compensation for referrals. Compensation includes:

(1) pay;
(2) anything of value; and
(3) any other form of benefit or consideration.

(b) If the peer assistance program has a relationship with a licensed treatment facility that involves ownership, operation, management, or control, then the program must comply with the requirements of Texas Health and Safety Code §§164.007 and §164.008 regarding referrals for treatment.

(c) If the peer assistance program is not subject to Texas Health and Safety Code §§164.007 and §164.008, the program must:

(1) implement an objective process for selecting assessment and treatment resources to be provided as referrals to participants; and
(2) maintain documentation including:

(A) the method for establishing selection criteria;
(B) the relevance of the criteria to the services to be provided;
(C) the process used to apply the criteria to potential resources; and
(D) the justification for the selection of those assessment and treatment resources chosen.

§8.121. Program Completion.
(a) An impaired professional who is referred to a peer assistance program must, as a condition of participation in the program, give consent to the program that authorizes the program to disclose the impaired professional's success or failure to complete the program to the appropriate licensing or disciplinary authority.
(b) A peer assistance program must notify the appropriate licensing or disciplinary authority if a person succeeds or fails to complete the program, as required by the appropriate licensing or disciplinary authority.
(c) A peer assistance program must notify a person who made a report under §8.117 of this chapter (relating to Reports) if the professional who was reported fails to participate in the program as required by the appropriate licensing or disciplinary authority.

§8.123. Confidentiality.
(a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under Chapter 467 of the Texas Health and Safety Code is confidential. Except as prescribed in Chapter 467 of the Texas Health and Safety Code, a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public.
(b) Information that is confidential under subsection (a) of this section may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Texas Health and Safety Code §467.006(a) or (b);
(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;
(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;
(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred an impaired professional; or
(5) to other health care personnel to the extent necessary to meet a health care emergency.

§8.125. Provision of Services to Students.
(a) A peer assistance program may provide services to impaired students.
(b) A peer assistance program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.
A peer assistance program that provides services to students must comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on October 2, 2019.
TRD-201903578
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 487-3419

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.16, §354.17

The Texas Water Development Board (TWDB) proposes new 31 TAC §354.16 and 31 TAC §354.17 to incorporate into rule two Memoranda of Understanding (MOUs) between the Texas Division of Emergency Management (TDEM) and the TWDB.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE.

§354.16. Memorandum of Understanding Between the Texas Division of Emergency Management (TDEM) and the TWDB related to the Federal Public Assistance Grant Program.

Senate Bill 7 of the 86th Legislature, R.S., established the Hurricane Harvey Account as part of the Texas Infrastructure Resiliency Fund under Texas Water Code §16.454. Texas Water Code §16.454 requires the TWDB to provide funding to TDEM to provide financial assistance for projects related to Hurricane Harvey in accordance with the Federal Hazard Mitigation Grant Program and the Federal Public Assistance Grant Program.

The MOU implements the statutory requirements of Texas Water Code §16.454, related to the Federal Public Assistance Grant Program, and requires that TDEM administer the funds in accordance with all applicable federal programs and regulations.

The MOU also requires TDEM to provide regular reports that will enable the TWDB to meet the transparency requirements of Texas Water Code §16.459.

§354.17. Memorandum of Understanding Between the Texas Division of Emergency Management (TDEM) and the TWDB related to the Federal Hazard Mitigation Grant Program.

Senate Bill 7 of the 86th Legislature, R.S., established the Hurricane Harvey Account as part of the Texas Infrastructure Resiliency Fund under Texas Water Code §16.454. Texas Water Code §16.454 requires the TWDB to provide funding to TDEM to provide financial assistance for projects related to Hurricane Harvey in accordance with the Federal Hazard Mitigation Grant Program and the Federal Public Assistance Grant Program.

The MOU implements the statutory requirements of Texas Water Code §16.454, related to the Federal Hazard Mitigation Grant Program, and requires that TDEM administer the funds in accordance with all applicable federal programs and regulations.

The MOU also requires TDEM to provide regular reports that will enable the TWDB to meet the transparency requirements of Texas Water Code §16.459.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be positive fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are expected to result in reductions in costs to either state or local governments, as they will provide funds to local governments. There is no increase in costs because there are no direct costs associated with the proposed rules. These rules are expected to have a positive impact on state or local revenues as funds will be made available as a local match to federal programs. The rules will not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are foreseeable implications relating to state or local governments’ increase in funding resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it will provide funding for local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject
to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by rule the MOUs as required by Texas Water Code §6.104.

Even if the proposed rules were major environmental rules, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather but rather is also proposed under authority of Texas Water Code §6.101 and §6.104. Therefore, these proposed rules do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these rules is to adopt by rule the MOUs between the Texas Water Development Board and the Texas Division of Emergency Management.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4).

Nevertheless, the board further evaluated these proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT

The board reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rules would be in effect, the proposed rules will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; or (7) increase or decrease the number of individuals subject to the rule's applicability. However, the proposed rules will positively affect the state's economy. These rules are expected to have a positive impact on state or local revenues as funds will be made available as a local match to federal programs. The funds will enable local governments to access federal funds and make improvements in their jurisdictions in accordance with the federal programs.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. COMMENTS MUST INCLUDE REFERENCE TO CHAPTER 364 IN THE SUBJECT LINE. Comments will be accepted until 5:00 p.m. on the 31st day following publication in the Texas Register.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of the Texas Water Code §6.104, §16.454, which require the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency.


§334.16. Memorandum of Understanding Between the Texas Division of Emergency Management (TDEM) and the TWDB related to the Federal Public Assistance Grant Program

(a) This Memorandum of Understanding ("Agreement") is between the Texas Division of Emergency Management ("TDEM") and the Texas Water Development Board ("TWDB"), each an agency of the State of Texas.

(b) Whereas, the 86th Legislature, R.S. passed Senate Bill 7 relevant portions of which were effective immediately;

(c) Whereas, the governor signed Senate Bill 7 on June 13, 2019;

(d) Whereas, Senate Bill 7 establishes the Hurricane Harvey Account ("Account") as a part of the Texas Infrastructure Resiliency Fund ("Fund") under Texas Water Code §16.454;

(e) Whereas, pursuant to Texas Water Code §16.454, the Texas Water Development Board (TWDB) may only use the Account to provide money to the Texas Division of Emergency Management (TDEM) to provide financing for projects related to Hurricane Harvey;
(f) Whereas, the TDEM manages the Federal Hazard Mitigation Grant Program and the Federal Public Assistance Grant Program;

(g) Whereas, the TWDB is a State agency with a mission to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas;

(h) Whereas, the TDEM is charged with carrying out a comprehensive all-hazard emergency management program for the state and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs;

(i) Now Therefore, in consideration of the benefits to the State of Texas, the parties hereby agree as follows:

(1) Services to be Performed:

(A) TDEM responsibilities:

(i) It shall be the sole responsibility of TDEM to administer funds received from the TWDB from the Account in accordance with Texas Water Code §16.454, and any federal program, including applicable federal regulations, as permitted by Texas Water Code §16.454(b), under which the funds will be spent.

(ii) In accordance with Texas Water Code §16.454(f), TDEM will periodically provide an Application to the Executive Administrator of the TWDB ("EA") for project funding requests that both TDEM and the EA find meet the requirements of Texas Water Code §§16.454(c), 16.454(f)(1) through (3), and 16.454(g). The TDEM Application will include supporting documentation that demonstrates how the project for each entity that will receive funding meets any applicable criteria in Texas Water Code §16.454.

(iii) TDEM will provide the TWDB regular quarterly reports that include all information necessary for the TWDB to meet the transparency requirements of Texas Water Code §16.459. The report must include, but not be limited to, the following for each project:

(I) the expected completion date;

(II) the current status of the project;

(III) proposed benefit of the project;

(IV) initial cost estimate and variances to the initial cost estimate, if the variances are over 5%;

(V) a list of the eligible political subdivisions receiving money from the Fund;

(VI) a list of each political subdivision served by each project; and

(VII) an estimate of matching funds for the project; and

(VIII) status of repayment, if there was a loan made for the project.

(iv) TDEM will provide any additional supporting information as may be requested by the TWDB.

(v) TDEM will maintain sufficient records and receipts as may be required by the Texas Comptroller of Public Accounts to ensure the funds are distributed in accordance with Texas Water Code §16.454 and to satisfy the State Auditor’s Office review.

(vi) On or before August 1, 2031, TDEM will return any remaining funds to the TWDB.

(B) TWDB responsibilities:

(i) After receipt of each TDEM Application (and supporting documentation), TWDB will promptly transfer funds in an amount equal to the requested funding amount that meets the statutory criteria of Texas Water Code §§16.454(c), 16.454(f)(1) through (3), and 16.454(g).

(ii) The EA of the TWDB will have the right to request additional supporting information as necessary to comply with the requirements of Texas Water Code §16.459.

(2) Basis for Calculating Reimbursable Costs: Not applicable as services and resources under this Agreement are provided for disaster relief.

(3) Agreement Amount: The total amount of this Agreement may not exceed $0.00.

(4) Term: This Agreement is effective upon signature of both parties. This Agreement may be terminated at the request of either party. The Agreement will otherwise terminate at the earlier of either when the account is exhausted, or September 1, 2031. If the Account contains funding on September 1, 2031, the remaining balance shall be transferred to the TWDB Flood Plan Implementation Account.

(5) Certifications:

(A) Each party certifies that:

(i) The services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the parties; and

(ii) The services, materials, or equipment contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

(B) TWDB certifies that it has the authority to agree to the above services.

(C) TDEM certifies that it has the authority to agree to the above services.

§354.17. Memorandum of Understanding Between the Texas Division of Emergency Management (TDEM) and the TWDB related to the Federal Hazard Mitigation Grant Program.

(a) This Memorandum of Understanding ("Agreement") is between the Texas Division of Emergency Management ("TDEM") and the Texas Water Development Board ("TWDB"), each an agency of the State of Texas.

(b) Whereas, the 86th Legislature, R.S. passed Senate Bill 7 relevant portions of which were effective immediately;

(c) Whereas, the governor signed Senate Bill 7 on June 13, 2019;

(d) Whereas, Senate Bill 7 establishes the Hurricane Harvey Account ("Account") as a part of the Texas Infrastructure Resiliency Fund ("Fund") under Texas Water Code §16.454;

(e) Whereas, pursuant to Texas Water Code §16.454, the Texas Water Development Board ("TWDB") may only use the Account to provide money to the Texas Division of Emergency Management ("TDEM") to provide financing for projects related to Hurricane Harvey;

(f) Whereas, the TDEM manages the Federal Hazard Mitigation Grant Program and the Federal Public Assistance Grant Program;

(g) Whereas, the TDEM has previously reviewed hazard mitigation project funding requests;
(h) Whereas, the TWDB is a State agency with a mission to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas;

(i) Whereas, the TDEM is charged with carrying out a comprehensive all-hazard emergency management program for the state and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs;

(j) Now Therefore, in consideration of the benefits to the State of Texas, the parties hereby agree as follows:

(1) Services to be Performed:

   (A) TDEM responsibilities:

      (i) It shall be the sole responsibility of TDEM to administer funds received from the TWDB from the Hurricane Harvey Account in accordance with Texas Water Code §16.454, and any federal program, including applicable federal regulations, as permitted by Texas Water Code §16.454(b), under which the funds will be spent.

      (ii) In accordance with Texas Water Code §16.454(f), TDEM will periodically provide an Application to the Executive Administrator of the TWDB (“EA”) for the project funding requests that both TDEM and the EA find meet the requirements of Texas Water Code §§16.454(c), 16.454(f)(1) through (3), and 16.454(g). The TDEM Application will include supporting documentation that demonstrates how the application for each entity that will receive funding meets any applicable prioritization and the criteria in Texas Water Code §16.454.

      (iii) TDEM will accept and prioritize eligible flood project, other than public assistance grants, requests for funding from the Hurricane Harvey Account.

      (iv) In prioritizing the projects for the Hazard Mitigation Program, TDEM used a prioritization system, which the TWDB has reviewed and is acceptable to the TWDB.

   (B) TDEM will provide the TWDB regular quarterly reports that include all information necessary for the TWDB to meet the transparency requirements of Texas Water Code §16.459.

   (II) The report must include the following for each project:

      (a-) the expected completion date;

      (b-) the current status of the project;

      (c-) proposed benefit of the project;

      (d-) initial cost estimate and variances to the initial cost estimate, if the variances are over 3%;

      (e-) a list of the eligible political subdivisions receiving money from the Fund;

      (f-) a list of each political subdivision served by each project;

      (g-) an estimate of matching funds for the project; and

      (h-) status of repayment, if there was a loan made for the project.

   (vii) TDEM will provide any additional supporting information as may be requested by the TWDB.

   (viii) TDEM will maintain sufficient records and receipts as may be required by the Texas Comptroller of Public Accounts to ensure the funds are distributed in accordance with Texas Water Code §16.454 and to satisfy the State Auditor’s Office review.

   (vi) On or before August 1, 2031, TDEM will return any remaining funds to the TWDB.

   (B) TDEM responsibilities:

      (i) After receipt of each TDEM Application (and supporting documentation), TWDB will promptly transfer funds in an amount equal to the requested funding amount that meets the prioritization criteria and the statutory criteria of Texas Water Code §§16.454(c), 16.454(f)(1) through (3), and 16.454(g).

      (ii) The EA of the TWDB will have the right to request additional supporting information as necessary to comply with the requirements of Texas Water Code §16.459.

(2) Basis for Calculating Reimbursable Costs: Not applicable as services and resources under this Agreement are provided for disaster relief.

(3) Agreement Amount: The total amount of this Agreement may not exceed $0.00.

(4) Term: This Agreement is effective upon signature of both parties. This Agreement may be terminated at the request of either party. The Agreement will otherwise terminate at the earlier of either when the account is exhausted, or September 1, 2031. If the Account contains funding on September 1, 2031, the remaining balance shall be transferred to the TWDB Flood Plan Implementation Account.

(5) Certifications:

   (A) Each party certifies that:

      (i) The services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the parties; and

      (ii) The services, materials, or equipment contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

   (B) TWDB certifies that it has the authority to agree to the above services.

   (C) TDEM certifies that it has the authority to agree to the above services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903588
Todd Chenoweth
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 463-7686

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 5. FUNDS MANAGEMENT  
(FISCAL AFFAIRS)  
SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS  

34 TAC §5.160, §5.161  

The Comptroller of Public Accounts proposes amendments to §5.160, concerning incorporation by reference: accounting policy statements 2015 - 2016, and proposes new §5.161, concerning general revenue fund reimbursement for statewide support services. Additionally, the title to Subchapter N, Funds Accounting--Accounting Policy Statements, is being changed to Accounting Policies.

Two statutes require the comptroller to adopt rules relating to specific accounting policies: Government Code, §403.248 (Travel Advances), and Government Code, §2106.006(e) (General Revenue Fund Reimbursement). Currently, accounting policies are adopted by reference in §5.160. The comptroller proposes to amend §5.160 and add new §5.161 to adopt these two accounting policies, and to eliminate the unnecessary inclusion of other accounting policies.

The amendments to §5.160 replace the current, unnecessary language relating to the incorporation by reference of certain accounting policy statements with language relating to petty cash accounts for travel advances. The amendments include requirements governing the use of petty cash accounts established under Government Code, Chapter 403, Subchapter K, for the purpose of advancing travel expense money to state officers and employees, including prohibited uses of this type of petty cash account, the requirement to complete a final accounting, and the maximum balance of this type of petty cash account. The amendments also change the title of the rule to Petty Cash Accounts for Travel Advances.

New §5.161 governs the reimbursement of the general revenue fund (GR) by a state agency for the cost of statewide support services allocated to the state agency under the Statewide Cost Allocation Plan. The rule requires a state agency to: submit a completed Statewide Cost Allocation Worksheet to the comptroller at the email address and by the date prescribed by the comptroller (failure to do so will result in the comptroller distributing the cost of statewide support services owed by the state agency based on the state agency's method of finance for the current fiscal year); make transfers to GR in one payment or in quarterly payments; and make transfers to GR in accordance with the payment schedule established by the comptroller.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposals are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that the proposed amendment and new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by clearly defining policy, definitions, calculations, and citations. There would be no significant anticipated economic cost to the public. The proposed amendment and new rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the Texas Register.

The amendments to §5.160 are proposed under Government Code, §403.248, which requires the comptroller to adopt rules governing the use of petty cash accounts established under Government Code, Chapter 403, Subchapter K, for advancing travel expense money to state officers and employees. New §5.161 is proposed under Government Code, §2106.006(e), which requires the comptroller to adopt rules necessary to prescribe the timing and method of certain state agency transfers to GR for the cost of statewide support services allocated to the state agency under the Statewide Cost Allocation Plan and the manner in which a state agency shall send to the comptroller information the comptroller requires to transfer these amounts to GR.


(a) Applicability. This section governs the use of petty cash accounts established under Government Code, Chapter 403, Subchapter K, for the purpose of advancing travel expense money to state officers and employees.

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

(1) Final accounting--A reimbursement from or additional payment to a state officer or employee so that the net amount received by the officer or employee equals the actual travel expenses incurred by the officer or employee.

(2) May not--A prohibition. The term does not mean "might not" or its equivalents.

(3) Petty cash account--A set amount of money held outside of the state treasury to be used for the purpose of advancing travel expense money to state officers and employees.

(4) State agency--Includes:

(A) a department, commission, board, office, or other state governmental entity in the executive or legislative branch of state government;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, the Texas Judicial Council, the Office of Court Administration of the Texas Judicial System, the State Bar of Texas, or any other state governmental entity in the judicial branch of state government;

(C) a university system or an institution of higher education as defined by Education Code, §61.003; and

(D) any other state governmental entity that the comptroller determines to be a component unit of state government for the purpose of financial reporting under Government Code, §403.013.

(5) State officer or employee--An elected or appointed official, or a person employed by a state agency.
(c) Prohibited uses. A state agency may not use a petty cash account:

1. to advance more than projected travel expenses to a state officer or employee;
2. to advance travel expense money to a prospective state officer or employee; or
3. for any purpose other than advancing travel expense money to a state officer or employee.

(d) Final accounting. A state agency must complete a final accounting of travel expenses after a state officer or employee has incurred travel expenses.

(e) Account balance. A petty cash account may not exceed one-twelfth of a state agency’s expenditures for travel in the immediately preceding fiscal year, unless approved by the comptroller.

[The "Accounting Policy Statements," issued by the Fiscal Management Division of the Comptroller of Public Accounts as of August 31, 2015, are incorporated by reference and filed with the secretary of state. All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request. All statements are also available on the comptroller’s website at: https://fmx.epa.texas.gov/fm/pubs/aps/index.php.]


(a) Applicability. This section governs the reimbursement of the general revenue fund by a state agency for the cost of statewide support services allocated to the state agency under the Statewide Cost Allocation Plan.

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

1. SCAW—The Statewide Cost Allocation Worksheet prescribed by the comptroller.

2. State agency—A department, board, commission, or other entity in the executive branch of state government that has statewide jurisdiction and administers a program to provide a service to the public or to regulate persons engaged in an occupation or activity.

3. Statewide Cost Allocation Plan—A plan prepared annually by the office of the governor that identifies the costs of providing statewide support services and allocates those costs to the appropriate state agency.

4. Support services—Include accounting, auditing, budgeting, centralized purchasing, and legal services.

(c) Each state agency shall complete a SCAW and email the completed SCAW to the comptroller at the email address and by the date prescribed by the comptroller. If a state agency fails to email the completed SCAW to the email address and by the date prescribed by the comptroller, the comptroller shall distribute the cost of statewide support services owed by the state agency based on the state agency’s method of finance for the current fiscal year.

(d) A state agency must transfer to the general revenue fund the cost of statewide support services owed by the state agency by transferring the entire amount in one payment or in quarterly payments.

(e) The comptroller shall establish a schedule under which the state agency must transfer to the general revenue fund the cost of statewide support services owed by the state agency.

(f) After receiving from the comptroller the payment schedule described in subsection (e) of this section, the state agency must transfer to the general revenue fund the cost of statewide support services owed by the state agency in accordance with the payment schedule.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 4, 2019.
TRD-201903586
Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.4

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 TAC §651.4 to recognize the merging of two crime laboratory accreditation organizations, the ANSI-ASQ National Accreditation Board ("ANAB") and American Board of Forensic Toxicology ("ABFT"). The amendments are necessary to reflect adoptions made by the Commission at its August 16, 2019, quarterly meeting. The amendments are made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01 §4-d.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment combines two already-recognized crime laboratory accrediting bodies into one accrediting body pursuant to a recent merger of the two organizations.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be proper notification of the national accreditation programs recognized by the Commission.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government
Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendment combines two already-recognized crime laboratory accrediting bodies into one accrediting body pursuant to a recent merger of the two organizations.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §111.1. The amendment combines two already-recognized crime laboratory accrediting bodies into one accrediting body pursuant to a recent merger of the two organizations and therefore does not expand the Commission oversight authority.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsa.texas.gov. Comments must be received by November 18, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-d.

Cross reference to statute. The proposal affects 37 TAC §651.4.

§651.4. List of Recognized Accrediting Bodies.

(a) The Commission recognizes the accrediting bodies in this subsection, subject to the stated discipline or category of analysis limitations:

1. ANSI-ASQ National Accreditation Board (ANAB)/American Board of Forensic Toxicology (ABFT)--recognized for accreditation of toxicology discipline only.

2. ANSI-ASQ National Accreditation Board (ANAB)--recognized for accreditation of all disciplines which are eligible for accreditation under this subchapter.

3. Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (HHS/SAMSHA), formerly known as the National Institute on Drug Abuse of the Department of Health and Human Services (HHS/NIDA)--recognized for accreditation of toxicology discipline in the category of analysis for Urine Drug Testing for all classes of drugs approved by the accrediting body.


5. American Association for Laboratory Accreditation (A2LA)--recognized for accreditation of all disciplines which are eligible for accreditation under this chapter.

(b) If an accrediting body is recognized under subsection (a) of this section and the recognized body approves a new discipline, category of analysis or procedure, the Commission may temporarily recognize the new discipline, category of analysis or procedure. A temporary approval shall be effective for 120 days.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903598
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 936-0661

SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207, §651.220

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.207 and §651.220 in an effort to achieve greater consistency with respect to the criteria for forensic analyst license requirements for out-of-state forensic analysts licensed under the blanket provision and requirements for licensure of in-state forensic analysts. The proposal also harmonizes the cost of provisional forensic analyst licensure with the cost of regular forensic analyst licensure. The rules are necessary to reflect adoptions made by the Commission at its August 16, 2019, quarterly meeting. The rules are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed rules will be in effect, there will be minimal to neutral fiscal impact to state or local governments as a result of the enforcement or administration of the proposed. The proposed rules do not impose any direct costs on state or local entities. The proposed rules elevate the requirements for out-of-state forensic analysts that are employees of crime laboratories offering forensic services in Texas criminal cases. Changes include an increase in the cost of the forensic analyst license from $10/year per forensic analyst to $50/year per forensic analyst for out-of-state crime laboratory employees seeking licensure under the blanket license option. In 2019, Texas granted blanket licenses to 435 out-of-state forensic analysts at a total cost of only $4,350 to out-of-state laboratories. The total cost in licensing fees for these same analysts under this proposal is $21,750.00--for a total fee increase of $17,400. Thus, any fiscal impact on those private laboratories is expected to be minimal to neutral at best. While it is possible the out-of-state laboratories will pass the increase in fees on to submitting agencies through price increases, this possible impact is too speculative and attenuated to predict with any reliability. Further, even if the out-of-state laboratories were to increase prices, there is no requirement that state and local governments utilize those laboratories, thereby allowing the market to determine the
fair price for testing. State and local law enforcement agencies are not required by law to outsource any forensic casework.

With regard to the changes to the provisional license fee, there is no anticipated fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposed change. The proposal harmonizes the cost of provisional licenses with the cost of regular forensic analyst licenses by lowering the provisional license fee from $220 to $110 and by requiring provisional licensees to pay $220 at the time the licensee applies for and is granted a regular forensic analyst license—a provision that was unclear as the rules are currently written.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities, as the proposed rules do not impose any direct costs or fees on municipalities in rural communities.

With regard to the changes to the provisional license fee, the Commission expects no adverse economic effect on rural communities, as the proposed rules do not impose any new direct costs on municipalities in rural communities. The proposed rules harmonize the cost of provisional licensure with regular licensure.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit will be greater consistency with respect to requirements for all forensic analysts subject to the State's licensing rules.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed rule will have a minimal to neutral economic impact on any small or micro business. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. All of the crime laboratories or forensic analysts subject to the increased requirements in the proposal are located outside of Texas. Therefore, the Commission expects no adverse economic impact on any small or micro businesses. In fact, Texas small privately-owned laboratories subject to these rules take the position that achieving greater consistency in fee structure between in-state and out-of-state private laboratories would be beneficial to Texas.

With regard to the changes to the provisional license fee, the Commission expects no adverse economic effect on any small or micro businesses as the proposed rules do not impose any new direct costs on these businesses. The proposed rules harmonize the cost of provisional licensure with regular licensure.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposal does not (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) create a new regulation; or (5) increase or decrease the number of individuals subject to the rule's applicability. However, the proposal does (1) increase in fees paid to the Commission by out-of-state crime laboratories performing forensic services in Texas criminal cases; and (2) expands the requirements of an existing blanket-license regulation for out-of-state crime laboratories performing forensic services in Texas criminal cases. The rules are necessary to ensure the integrity and reliability of forensic science in Texas criminal cases and to reach greater consistency between what is required of in-state forensic analysts and out-of-state forensic analysts.

With regard to the changes to the provisional license fee, Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposal amends existing fees for licensure of forensic analysts to harmonize the cost of obtaining a regular forensic analyst license with the cost of obtaining a provisional forensic analyst license.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposal increases costs to regulated persons as the proposal increases the fee for a forensic analyst license for out-of-state crime laboratory analysts subject to Texas licensing requirements. Current requirements for out-of-state blanket-licensed forensic analysts, including licensing fees, were initially imposed to meet the statutory deadline for implementation of the 84th Texas Legislature's mandate to create a forensic analyst licensing program in Texas and to avoid any disruption in outsourced forensic services to our criminal justice system. After implementation of the initial rules of the licensing program, the Commission assessed the appropriate level of oversight for out-of-state crime laboratory analysts subject to Texas licensing rules in an effort to balance the economic viability of these services being offered in Texas with more consistent licensing requirements for these forensic analysts. Licensing fees, coursework requirements and exam requirements were always contemplated to increase gradually over time with a goal of equating the requirements for out-of-state forensic analysts with the requirements for in-state forensic analysts. Moreover, the Commission is tasked with improving the integrity and reliability of forensic science in the Texas criminal justice system, a task vital to protecting the health, safety, and welfare of the residents of this state. As part of that initiative, the Commission is committed to ensuring the integrity of the forensic analysts that enter our courtrooms, whether the forensic analysts are from in-state or out-of-state.

With regard to the changes to the provisional license fee, Leigh M. Savage, Associate General Counsel of the Texas
Forensic Science Commission, has determined that there are no increased costs to regulated persons. The proposal amends existing fees for licensure of forensic analysts to equate the cost of obtaining a regular forensic analyst license with the cost of obtaining a provisional forensic analyst license. Moreover, the rules are adopted to implement legislation or rules necessary to protect the health, safety, and welfare of the residents of this State. The rules proposed here are necessary to implement the 84th Texas Legislature’s mandate that the Texas Forensic Science Commission create a Forensic Analyst Licensing program. See Tex. S.B. 1287, 84th Leg., R.S. (2015). The Commission’s licensing program took effect in January 2019, and the proposed changes are necessary to equate the cost of licensure across all licensees. The proposed rules relate to the public safety of Texas citizens as they require forensic analysts testifying in criminal cases in Texas to meet certain minimum requirements, including payment of a fee for administration of the program, which is in furtherance of ensuring the integrity and reliability of forensic analysis used in criminal cases.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by November 18, 2019, to be considered by the Commission.

Statutory Authority. The rule is proposed under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.207 and §651.220.

§651.207. Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration.

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and $150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analysts and $130 for Technicians/Screeners;

(C) Temporary License fee of $100;

(D) Provisional License fee of $110 for Analysts and $75 for Technicians/Screeners ($220);

(E) License Reinstatement fee of $220;

(F) Blanket License fee of $1000 per ten (10) licenses

[($100)]; and/or

(G) Special Exam Fee of $50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts; and

(4) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(9) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(10) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(11) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant must also have a three-semester credit hour (or equivalent) college-level statistics
course from an accredited university or a program approved by the Commission.

(2) Toxicology. An applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(4) Firearm/Toolmark Analyst. An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement.

(6) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

(A) The American Board of Forensic Toxicology;

(B) The American Board of Clinical Chemistry;

(C) The American Board of Criminalistics;

(D) The International Association for Identification; or

(E) The Association of Firearm and Toolmark Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.
(4) An applicant must request a waiver of specific course-
work requirements and/or minimum education requirements at the time
the application is filed.

(5) An applicant requesting a waiver from specific course-
work requirements and/or minimum education requirements shall file
any additional information needed to substantiate the eligibility for
the waiver with the application. The Commission Director or De-
signee shall review all elements of the application to evaluate waiver
request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Ana-
lyst License must pass the General Forensic Analyst Licensing Exam
administered by the Commission.

(A) An applicant is required to take and pass the Gen-
eral Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Ana-
lyst Licensing Exam no more than three times. If an applicant fails
the General Forensic Analyst Licensing Exam or the Modified Gen-
eral Forensic Analyst Licensing Exam three times, the applicant has
thirty (30) days from the date the applicant receives notice of the fail-
ure to request special dispensation from the Commission as described
in subparagraph (C) of this paragraph. Where special dispensation is
granted, the applicant has 90 days from the date he or she receives not-
tice the request for exam is granted to successfully complete the exam
requirement. However, for good cause shown, the Commission or its
Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General
Forensic Analyst Licensing Exam or the Modified General Forensic Ana-
lyst Licensing Exam three times, the applicant must request in writing
special dispensation from the Commission to take the exam more than
three times. Applicants may submit a letter of support from their lab-
oratory director or licensing representative and any other supporting
documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst
Licensing Exam or the Modified General Forensic Analyst Licensing
Exam more than three times, the applicant must pay a $50 exam fee
each additional time the applicant sits for the exam beyond the three
initial attempts.

(E) Expiration of Provisional License if Special Dis-
penstation Exam Unsuccessful. If the 90-day period during which spe-
cial dispensation is granted expires before the applicant successfully
completes the exam requirement, the applicant's provisional license ex-
pires.

(2) Modified General Forensic Analyst Licensing Exam.
Technicians in any discipline set forth in this subchapter may fulfill
the General Forensic Analyst Licensing Exam requirement by taking a
modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians.
If a technician passes the modified General Forensic Analyst Licensing
Exam and later seeks a full Forensic Analyst License, the applicant
must complete the portions of the General Forensic Analyst Exam that
were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot
General Forensic Analyst Licensing Exam, regardless of his or her el-
igibility status for a Forensic Analyst License at the time the exam is
taken, the candidate has fulfilled the General Forensic Analyst Licens-
ing Exam Requirement of this section should he or she later become
subject to the licensing requirements and eligible for a Forensic Ana-
lyst License.

(5) Eligibility for General Forensic Analyst Licensing
Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst
Licensing Exam and Modified General Forensic Analyst Licensing
Exam must be employees of a crime laboratory accredited under Texas
law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible
for the General Forensic Analyst Licensing Exam one time if the stu-
dent:

(i) is currently enrolled in an accredited university
as defined in §651.202 of this subchapter;

(ii) has completed sufficient coursework to be
within 24 semester hours of completing the requirements for gradu-
atation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative
who will proctor and administer the exam at the university for the stu-
dent.

(h) Proficiency Testing Requirement.

(1) An applicant must be routinely proficiency-tested in ac-
cordance with and on the timeline set forth by the laboratory's accred-
iting body proficiency testing requirements.

(2) A signed certification by the laboratory's authorized
representative that the applicant has satisfied the applicable proficiency
testing requirements of the laboratory's accrediting body as of the date
of the analyst's application must be provided on the Proficiency Testing
Certification form provided by the Commission. For applicants not yet
required to be proficiency tested pursuant to the timeline set forth by
the accrediting body, the laboratory's authorized representative shall
so certify on the form provided by the Commission.

(i) License Term and Fee.

(1) A Forensic Analyst License shall expire two years
from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the
following fee(s) as applicable:

(A) Initial Application fee of $220 for Analysts and
$150 for Technicians/Screeners;

(B) Biennial renewal fee of $200 for Analysts and $130
for Technicians/Screeners;

(C) Temporary License fee of $100;

(D) Provisional License fee of $110 for Analysts and
$75 for Technicians/Screeners [§220];

(E) License Reinstatement fee of $220; or

(F) Blanket License fee of $1000 [§1000].

(3) An applicant who is granted a provisional license and
has paid the required fee will not be required to pay an additional initial
application fee if the provisional status is removed within one year of
the date the provisional license is granted.

(j) Procedure for Denial of Application and Reconsideration.

(1) Application Review. The Commission Director or De-
signee must review each completed application and determine whether
the applicant meets the qualifications and requirements set forth in this
subchapter.

(2) Denial of Application. The Commission, through its
Director or Designee, may deny an application if the applicant fails to
meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

§651.220. Blanket License for Out-of-State Laboratories for Purpose of Ensuring the Availability of Uncommon Forensic Analyses, Timeliness of Forensic Analyses, and/or Service to Counties with Limited Access to Forensic Analysis.

(a) A laboratory located outside the State of Texas may apply to the Commission for a blanket license on behalf of its laboratory personnel who perform forensic analyses primarily outside of Texas but whose Texas cases fall within one of the following categories:

(1) The Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or

(2) The request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited; and

(3) The laboratory's workflow process is organized in such a manner that the temporary license criteria are impractical or inapplicable to the forensic analysts performing the analyses in question; and

(4) Obtaining a forensic analyst license for the individuals engaged in the testing in question would be so burdensome as to restrict the out-of-state laboratory's ability to offer forensic analyses in Texas.

(b) A blanket license granted under this section shall apply to all forensic analyses performed by up to 10 (ten) forensic analysts in the laboratory per year.

(c) Application and Fee. The laboratory shall submit an application for a blanket license to the Commission[,] and pay the requisite blanket license fee as set forth in this subchapter[,] and submit a certification on a form provided by the Commission, stating laboratory employees performing forensic analyses for Texas cases have:]

[4] reviewed the Code of Professional Responsibility in this subchapter; and]

[(4) completed all training materials related to Brady v. Maryland discovery obligations and the Michael Morton Act (Tex. Code Crim. Proc. art. 39.14) as provided by the Commission.]

(d) License Term. A blanket license granted under this section shall expire two (2) years [one (1) year] from the date of issuance.

(e) Minimum Education Requirements. An applicant applying for licensure under a blanket forensic analyst or forensic technician license must satisfy the minimum education requirements for the forensic discipline in which the candidate is seeking licensure as described in §651.207 of this subchapter, relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration.

(f) Specific Coursework Requirements. An applicant applying for licensure under a blanket forensic analyst or forensic technician license must satisfy the specific coursework requirements for the discipline in which the candidate is seeking licensure as described in §651.207 of this subchapter.

(g) General Forensic Analyst Licensing Exam Requirement for Blanket Licensees. An applicant applying for licensure under a blanket forensic analyst or forensic technician license must satisfy and comply with the General Forensic Analyst Licensing Exam rules and requirements as described in §651.207(g) of this subchapter. Blanket licensees in any forensic discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified three-module exam covering the subject areas of Evidence Handling, Brady v. Maryland/Michael Morton Act, and Professional Responsibility as administered by the Commission.

(h) Proficiency Testing Requirement. An applicant applying for licensure under a blanket forensic analyst or forensic technician license must be routinely proficiency-tested in accordance with and on the timeline set forth by the laboratory's accrediting body proficiency testing requirements.

(i) [(e)] The Licensing Advisory Committee and/or the Commission Director or Designee shall review each laboratory blanket license application and make a determination regarding whether to grant a blanket license under this section based on the criteria set forth in subsection (a)(1) - (4) of this section. Any laboratory that is denied a request for blanket license may appeal the decision to the full Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903594
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission

Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 936-0661

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 TAC §651.208 to specify Forensic Technicians must complete a Commission-sponsored Manda-
tory Legal and Professional Responsibility update each license cycle. The amendments are necessary to reflect adoptions made by the Commission at its August 16, 2019, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments
will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Analysts are already required to remain current in their respective disciplines and the proposed educational requirements regarding professional responsibility will be made available via online training at no cost. As such, there is no anticipated effect on local employment or the local economy as a result of the proposal.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be notification to practicing forensic technicians of the Commission’s expectations with regard to continuing education in the maintenance of a forensic technician’s license. Continuing education requirements help the Commission ensure the integrity and reliability of qualified forensic technicians in our criminal justice system.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rules do not impose any economic costs to these businesses.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that there is no anticipated government growth impact as the proposal provides specification to continuing education requirements previously adopted by the Commission. The proposed rules do not create a new regulation. The proposed rules do not increase the number of individuals subject to the licensing requirements already established by the Commission.

Requirement for Rule Increasing Costs to Regulated Persons. Chapter 2001, Government Code, Section 2001.0045 states that “a state agency may not adopt a proposed rule for which the fiscal note for the notice... states that the rule imposes a cost on regulated persons... unless... the state agency (1) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (2) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the proposed rule.” The section does not apply, however, to rules adopted to implement legislation or to rules necessary to protect the health, safety, and welfare of the residents of this State. The rules proposed here are necessary to implement the 84th Texas Legislature’s mandate that the Texas Forensic Science Commission create a Forensic Analyst Licensing program by January 1, 2019. See Tex. S.B. 1287, 84th Leg., R.S. (2015). The Commission’s licensing program is new and continuing education requirements did not exist prior to the Commission’s recent adoption of the forensic analyst licensing program rules. Moreover, the proposed rules relate to the public safety of Texas citizens as they require forensic analysts testifying in criminal cases in Texas to meet certain minimum education requirements, which are in furtherance of ensuring the integrity and reliability of forensic analysis used in criminal cases.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by November 18, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The proposal affects 37 TAC §651.208.

§651.208. Forensic Analyst and Forensic Technician License Renewal.

(a) Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 90 days before to the expiration of the individual's two-year license term.

(b) Expiration. A Forensic Analyst or Forensic Technician License or renewed Forensic Analyst or Forensic Technician License expires two years from the date the initial application was granted.

(c) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application [found] provided by [on] the Commission’s website, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education requirements set forth in this section, provide an updated copy of the Commission’s Proficiency Testing Certification form signed by the licensee’s authorized laboratory representative, and complete the mandatory online legal and professional responsibility update described in this section.

(e) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility Update:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements:
Completion of twenty-four (24) continuing forensic education hours per 2-year license cycle.

Eight (8) hours of the twenty-four (24) may be peer-reviewed journal articles - one peer-reviewed journal article equals one hour.

Sixteen (16) hours of the twenty-four (24) must be discipline-specific training and/or conference education hours; if a licensee is licensed in multiple forensic disciplines, at least 8 hours of discipline-specific training in each forensic discipline are required.

The remaining eight (8) hours may be general forensic training and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may appeal to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.
TRD-201903596
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 936-0661

37 TAC §651.210
The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.210 to restrict applicants who are not currently employed at an accredited crime laboratory from eligibility for a provisional forensic analyst license and to clarify forensic technicians may be licensed provisionally. The amendments are necessary to reflect adoptions made by the Commission at its August 16, 2019, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01 §4-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be proper notification of eligibility requirements for provisional licensure by the Commission.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the rules do not impose any economic costs to these businesses.

Taking Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that there is no anticipated government growth impact as the proposal limits the eligibility for licensure pursuant to the Commission's authority to grant a forensic analyst license. The Commission may only grant a forensic analyst license to candidates employed at Commission-accredited crime laboratories pursuant to Tex. Code Crim. Proc. art. 38.01 §4-a (2). Further, the rule proposal clarifies technicians are eligible for provisional licenses.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that there are no increased costs to regulated persons pursuant to the rule proposal. The proposal limits the eligibility for licensure pursuant to the Commission's authority to grant a forensic analyst license and clarifies that technicians may be granted a provisional license.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or Leigh@fsc.texas.gov. Comments must be received by November 18, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art. 38.01 §4-a.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.208.

§651.210. Provisional Forensic Analyst or Forensic Technician License.
(a) Issuance. The Commission may issue a provisional Forensic Analyst or Forensic Technician License.
(b) Eligibility. An individual may apply to the Commission for a provisional Forensic Analyst or Forensic Technician License if the individual meets the following qualifications:
or

(1) applicant is currently employed in an accredited laboratory for which the licensing requirements of this subchapter apply; and [æ]

(2) [æ] applicant was previously employed in an accredited laboratory for which the licensing requirements of this subchapter did not apply and the applicant was approved for independent casework by the laboratory.

[2] [æ] applicant cannot meet one or more of the forensic analyst license requirements set forth in this subchapter at the time of application but plans to meet all the requirements within the one-year provisional license period and meets all other requirements described in §651.207 of this subchapter, relating to Forensic Analyst Licensing Requirements Including License Term, Fee and Procedure for Denial of Application and Reconsideration.

(c) Application. An applicant for a provisional Forensic Analyst or Forensic Technician License shall complete and submit to the Commission a current Provisional Forensic Analyst License Application form, pay the required fee and submit a signed statement on a form to be provided by the Commission stating he or she has fulfilled the eligibility requirements of this section.

(d) Provisional License Term. A provisional Forensic Analyst or Forensic Technician License is granted for a period of one year from the date of issuance.

(e) Scope of Provisional License. A provisionally licensed Forensic Analyst or Forensic Technician may technically review or perform forensic analysis or draw conclusions from or interpret a forensic analysis for a court or crime laboratory to the extent a fully licensed forensic analyst or forensic technician may perform these duties.

(f) Effective Date of Provisional License for Provisionally Licensed Analysts. A provisionally licensed forensic analyst or forensic technician shall be subject to the forensic analyst or forensic technician licensing requirements in effect on the date the forensic analyst or forensic technician is granted the provisional [forensic analyst] license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903597
Leigh Savage
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 936-0661

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §§217.76 - 217.78

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new sections to 43 TAC Subchapter C, Registration and Title Systems, §§217.76 - 217.78, concerning access to the department's automated registration and titling system (RTS), including suspension and denial. The new sections are necessary to implement Transportation Code, §520.021 and §520.022, as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the RTS and Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS.

Section 217.76 is also necessary to implement SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors, and in accordance with Subchapter C, Chapter 520, Transportation Code, as added, to develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to RTS if a county tax assessor-collector suspects fraud, waste, or abuse relating to RTS by a county tax assessor-collector employee or a person deputized under Transportation Code, §520.0071. As part of the coordination process with county tax assessor-collectors, on August 20, 2019, the department provided draft language for proposed §217.76 to the Tax Assessor-Collectors Association of Texas (TACA) and the TxDMV county tax assessor-collector Liaison. The proposed rule incorporates comments received.

The department has also proposed new 43 TAC §§223.1 - 223.3 concerning the department's "red flag" fraud reporting system in this issue of the Texas Register.

EXPLANATION.

Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS. The department interprets SB 604, Section 4.07, as requiring the department to identify the types of suspected activity that will result in suspension or denial. These are stated in proposed §217.76. Suspension and denial are addressed in proposed §217.77. Reinstatement is addressed in §217.78.

Proposed §217.76(a) establishes that §§217.76 - 217.78 apply to individuals, other than department employees, and entities, with RTS access. The sections do not apply to department employees because their access, and denial of access, is at the will of the department. Stating that the sections do not apply to them clarifies that the sections do not create procedures or requirements related to RTS access, suspension, or denial, for a department employee. The reference to entities includes only entities with RTS access.

Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS. After reviewing comments received from county tax assessor-collectors in the SB 604, Section 4.07, coordination process, the department modified the draft text to require a reasonable suspicion and added the sources of information that could validate that suspicion. A reasonable suspicion standard is consistent with the "suspects" language in SB 604, Section 4.07. Requiring a final determination or knowing conduct would not be consistent with the legislative instruction.

As with the draft language provided for review, the criteria of suspected fraud, waste, or abuse is further defined to include reasonable suspicion of misappropriation of money, falsification of government records, or a crime involving fraud, theft, deceit,
dishonesty, misrepresentation, or that otherwise reflects poorly on the person's honesty or trustworthiness. The listed types of criminal activity were in the coordination process criteria document as defining "a crime of moral turpitude." Based on feedback received from the commenters, the department removed the reference to "a crime of moral turpitude" and kept the listed types of criminal activity.

Proposed §217.76(b)(2) also provides that the department may suspend or deny access to RTS based on a demonstration of non-compliance with applicable statutes and rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section 217.76(c) lists the types of acceptable forms of information that can be used to support a reasonable suspicion.

Proposed §217.77(a) clarifies that the executive director or the executive director's designee has sole authority to determine access to RTS, determine if information exists to support a reasonable suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on Transportation Code, §520.022. Proposed §217.77(b) provides that a county tax assessor-collector may request the executive director or the executive director's designee immediately suspend a county employee or full service deputy's access to RTS based on the same criteria. Although not a criterion, commenters in the SB 604, Section 4.07, coordination process suggested including a notice, such as the notice set forth in the current §217.163 addendum. Proposed §217.77(c) incorporates the existing notice provision from the addendum into the rule, with modifications to refer to an exception for federal law enforcement, a request for immediate termination by the county tax assessor-collector, and for differences in style between the proposal and the addendum.

Commenters in the coordination process also suggested the need for a reinstatement process. Proposed §217.78(a) incorporates the addendum reinstatement process which was agreed upon after negotiations between the county tax assessor-collectors and the department. The process has been modified to reflect that it applies to individuals in addition to entities, and to correct differences in style between the proposal and the addendum. Proposed §217.78(b) provides that access to RTS may be reinstated if the person whose access has been suspended is not the subject of a pending criminal investigation by a law enforcement entity. Access may be reinstated if the department determines no fraud, waste, or abuse was committed; the matter has been remedied to the satisfaction of the department; or the person is in compliance with applicable statutes or rules.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the new sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Kuntz has also determined that, for each year of the first five years the new sections are in effect, the public benefits include increased clarity and consistency for reporting by county tax assessor-collectors of suspected fraud, waste, or abuse, leading to an improved ability for the department and law enforcement authorities to coordi-

nate, investigate, and ultimately prevent and deter fraud, waste, and abuse of RTS.

Mr. Kuntz anticipates that there will be no additional costs on regulated persons to comply with these rules. Currently, the department is authorized to suspend and deny access to the RTS system, including full service deputies, based on the required addendum in §217.163. Transportation Code, §520.022, clarifies the department's sole authority to control access to the system. Access, suspension, and denial will now be addressed in §§217.76 - 217.78.

Access to the system is allowed unless reasonable suspicion exists that the RTS user has committed fraud, waste, or abuse, or has failed to comply with applicable statutes as required by SB 604, Section 4.07. The criteria for suspension or denial is stated in §217.76. No additional costs arise from the criteria, because not committing fraud, waste, abuse, or noncompliance are functions of the individual's employment or entity's contract. The processes of notice and reinstatement in §217.77 and §217.78 are taken from the current addendum and impose no new requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the new sections will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the proposal creates no new costs. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the new sections are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulations in §§217.76 - 217.78 to implement Transportation Code, §520.021 and §520.022, enacted in SB 604;
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on November 18, 2019. A request for
a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§217.76 - 217.78 under SB 604, Section 4.06, and Transportation Code, §520.021 and §1002.001.

Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to the department's automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse relating to the system by an employee of the tax assessor-collector's or a person deputized under Transportation Code, §520.0071.

Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, §520.021.

§217.76. Criteria for Suspension or Denial of Access to RTS.

(a) Sections 217.77, 217.78, and this section apply to individuals, other than department employees, and entities, with RTS access.

(b) The department may suspend or deny any individual user's or entity's access to RTS if:

1. information exists to support a reasonable suspicion that the individual or entity is committing fraud, waste, or abuse related to RTS, including:
   - (A) misappropriation of money;
   - (B) falsification of government records; or
   - (C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that otherwise reflects poorly on the individual's honesty or trustworthiness; or

2. the individual or entity demonstrates non-compliance with applicable statutes and rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520.

(c) Acceptable forms of information that can support a reasonable suspicion include:

1. information gathered in an audit under Transportation Code, §520.010 or §520.011;

2. a request to suspend or deny the individual or entity access from a county tax assessor-collector;

3. review of transactions processed by the individual or entity; and

4. oral or written information or complaints from:
   - (A) a law enforcement agency;
   - (B) another government agency;
   - (C) an association or trade group;
   - (D) an entity; or
   - (E) an identifiable individual.

§217.77. Process for Suspension or Denial of Access to RTS.

(a) The executive director or the executive director's designee has sole authority to:

1. determine access to RTS;

2. determine that information exists to support a reasonable suspicion that the individual or entity is committing fraud, waste, or abuse related to RTS; and

3. suspend or deny the individual's or entity's access to RTS, based on the criteria in §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

(b) A county tax assessor-collector may request the executive director or the executive director's designee immediately suspend a county employee or full service deputy's access to RTS based on the criteria in §217.76 of this title.

(c) The department shall inform the county tax assessor-collector before taking action to suspend or deny the individual's or entity's access to RTS under subsection (a) of this section, unless:

1. the action is as a result of a court order;

2. time is of the essence;

3. revealing this action would detrimentally interfere with or compromise an active investigation by the department or an enforcement agency of this state or the federal government; or

4. the action is based on the county tax collector-assessor's request in subsection (b) of this section.

§217.78. Reinstatement of Access to RTS.

(a) A county tax assessor-collector may request a review of a decision to suspend or terminate RTS access by submitting a request for reinstatement in writing to the department.

1. The request for reinstatement should include all supporting information that is relevant to support reinstatement.

2. A county tax assessor-collector may submit information in support of or relevant to a request for reinstatement to the department.

3. The executive director shall make a final determination on reinstatement within 21 calendar days from the date the department receives the request for reinstatement. If the department requests additional information from the individual, entity, or county tax assessor-collector, the deadline for determination of the request for reinstatement is tolled until the additional information is received.

(b) Unless an individual or entity is the subject of a pending criminal investigation by a law enforcement entity, the individual or entity's access to RTS will be reinstated if the department determines that:

1. no fraud, waste, or abuse was committed;

2. the matter has been remedied to the satisfaction of the department; or

3. the individual or entity is in compliance with applicable statutes and rules.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903591
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 465-5665

CHAPTER 223. COMPLIANCE AND INVESTIGATIONS DIVISION

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1 - 223.3

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new Chapter 223, Compliance and Investigations Division, Subchapter A, Fraud, Waste, or Abuse, 43 TAC §§223.1 - 223.3, concerning the department's "red flag" fraud reporting system. The new sections are necessary to formalize the department's current "red flag" fraud reporting system and implement a management action within the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The department also proposes new 43 TAC §§217.76 - 217.78, concerning access to the department's automated registration and title system (RTS) in this issue of the Texas Register.

EXPLANATION.

The department originally proposed new Chapter 223 in the March 1, 2019, issue of the Texas Register (44 TexReg 1114) and received comments from the Tax Assessor-Collector Association of Texas (TACA). The department did not adopt the proposal and it was withdrawn in the September 20, 2019, issue of the Texas Register (44 TexReg 5387). The department is re-proposing the "red flag" rules with changes from the previously proposed version.

The Tax Assessor-Collectors Association commented that the proposed rules stating that the department's Compliance and Investigations Division (CID) would create a policy for county tax assessor-collectors to submit requests for investigations was inconsistent with the Sunset recommendation. TACA also suggested that the department's CID investigation and notification process mirror the dealer enforcement complaint process, because that process works well with cross communication and access to investigations. Some changes were made based on the comments received and to further improve the rules.

However, the proposed rules do not mirror the department's dealer enforcement complaint process. Throughout the dealer investigation and enforcement process, investigators and enforcement attorneys communicate with the complainant and respondent as necessary to work through allegations to either resolve the issues or assess civil penalties. The CID, on the other hand, is a unique division with no authority or duty to determine administrative violations or assess civil penalties.

The CID serves as a liaison with law enforcement entities on potential criminal law violations and has no authority to independently enforce or prosecute criminal law violations. However, the CID attorney may be sworn in as a special prosecutor by a District or County Attorney. If the CID were to share information regarding ongoing criminal investigations, the division could jeopardize the investigations and damage its working relationship with law enforcement. The CID may be under strict orders to keep information confidential until a case is fully adjudicated.

Every person processing registration and title transactions in RTS has a duty to stop or prevent fraud. One way to stop or prevent fraud is to refuse to process a transaction involving known or obvious fraud. The proposed "red flag" rules provide a means to flag and report suspected fraud to the CID. The proposed rules do not limit or expand the exercise of statutory authority of a county tax assessor-collector or the department.

Proposed §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the policies and procedures for county tax assessor-collectors, including county tax assessor-collector employees and deputies, to report suspected fraud, waste, or abuse related to motor vehicle title or registration to the CID for investigation.

Proposed §223.2 establishes that the words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise. The proposed section also defines terms specific to this subchapter.

Proposed §223.3 establishes the process for reporting suspected fraud to the CID. The process requires the county tax assessor-collector to submit a request for rejection of the suspected fraudulent transaction through a department Regional Service Center and mail, or e-mail, certain information to the CID, including the original transaction, a detailed narrative, and any supporting documentation or evidence. Proposed §223.3 requires a full service deputy to report suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit the request to the CID for review and possible investigation. The proposed section also establishes that the CID will provide a notification to the county tax assessor-collector if it determines it will not conduct an investigation.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda M. Flores, Chief Financial Officer, has determined that for each year of the first five years the proposed new sections will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Tim Menke, Director of the Compliance and Investigations Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Menke has also determined that, for each year of the first five years the proposed new sections are in effect, the public benefits include increased clarity and consistency for reporting by county tax assessor-collectors of suspected fraud, waste, or abuse to the department, leading to an improved ability for the department and law enforcement authorities to coordinate, investigate, and ultimately prevent and deter fraud, waste, or abuse of RTS.

Mr. Menke anticipates that there will be no additional costs for regulated persons to comply with these rules. County tax assessor-collectors have reported suspected fraudulent transactions
to the department for review since the department’s inception. The proposed rules formalize the existing process. The requirement for deputies to report suspected fraudulent transactions to the county tax assessor-collector clarifies that they will report to the county tax assessor-collector and not the department. This maintains the county tax assessor-collector’s role in the process.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new sections will not have an adverse economic effect on small businesses, micro-businesses, or rural communities because the rules create no additional costs. Additionally, county tax assessor-collectors and their employees are not for-profit businesses. Reporting suspected fraudulent transactions will not have an adverse economic effect on rural communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner’s right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new sections are in effect, the proposed rules:
- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the department;
- will not require an increase or decrease in fees paid to the department;
- will create new regulations in §§223.1 - 223.3 to implement Transportation Code, Chapters 501, 502, and 520; and more specifically, to inform the authority established in Transportation Code, §520.022, enacted in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019);
- will not expand existing regulations;
- will not repeal existing regulations;
- will not increase or decrease the number of individuals subject to the rules’ applicability; and
- will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on November 18, 2019. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes new §§223.1 - 223.3 under Transportation Code, §§501.0041, 502.0021, 520.021, and 1002.001.

Transportation Code, §501.0041, authorizes the department to adopt rules to administer Chapter 501.

Transportation Code, §502.0021, authorizes the department to adopt rules to administer Chapter 502.

Transportation Code, §520.021, authorizes department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 501, 502, and 520; and more specifically, Transportation Code, §§501.003 and §520.022.

§223.1. Purpose and Scope. (a) The purpose of this subchapter is to establish procedures for county tax assessor-collectors to report suspected fraud, waste, or abuse to the department.

(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas Department of Motor Vehicles.

§223.2. Definitions. (a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in this chapter, except as otherwise provided by this chapter, unless the context clearly indicates otherwise.

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

(1) CID--the Compliance and Investigations Division of the Texas Department of Motor Vehicles.

(2) County tax assessor-collector--includes an employee of a county tax assessor-collector.

(3) Deputy--a full service deputy under Chapter 217, Subchapter H.

(4) Director--the director of the Compliance and Investigations Division.

(5) RTS--the Texas Department of Motor Vehicle's registration and title system.

§223.3. Submission of Request. (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or with the county may submit a request to the CID for review and possible investigation. The CID may forward a submission to an appropriate law enforcement entity.

(b) To submit a request to the CID for review and possible investigation, the county tax assessor-collector must:

(1) request a rejection of the suspected transaction through a department regional service center; and

(2) mail or e-mail the following documents and information, as applicable, to the CID in an envelope or e-mail message marked "Red Flag":

(A) the original transaction;
(B) a detailed narrative, including:

(i) a contact with the tax assessor-collector, including email address and phone number;

(ii) the name of the employee submitting the transaction to the CID;

(iii) a statement as to why the transaction was flagged;

(iv) information about the employee or deputy if the employee or deputy is suspected of committing fraud, waste, or abuse;

(v) any statements made by the customer submitting the transaction;

(C) any available video surveillance footage; and

(D) any other relevant evidence or information pertaining to the transaction.

(c) If a deputy suspects fraud, waste, or abuse, by an employee, motor vehicle dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit a request to the CID for review and possible investigation in accordance with subsection (b) of this section.

(d) If the CID determines it will not conduct an investigation after reviewing a request submitted by a county tax assessor-collector, the CID will provide a notification to the county tax assessor-collector.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 7, 2019.

TRD-201903590
Tracey Beaver
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: November 17, 2019
For further information, please call: (512) 465-5665

♦  ♦  ♦