

**MOTOR FUEL METERING AND QUALITY**  
*Administrative Rules of the Texas Department of Licensing and Regulation*  
*16 Texas Administrative Code, Chapter 97*  
*(Effective September 1, 2020)*

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## SUBCHAPTER A. GENERAL PROVISIONS.

**97.1. Authority.** *(New section effective September 1, 2020, 45 TexReg 6082)*

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 2310.

**97.2. Definitions.** *(New section effective September 1, 2020, 45 TexReg 6082)*

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

- (1) ASTM--ASTM International; the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems and services and the promotion of related knowledge.
- (2) Code--The Texas Occupations Code, Chapter 2310, "Motor Fuel Metering and Quality."
- (3) Commission--Texas Commission of Licensing and Regulation.
- (4) Controlling person--an individual who:
  - (A) is a sole proprietor;
  - (B) is a general partner of a partnership;
  - (C) is a controlling person of a business entity that is a general partner of a partnership;
  - (D) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;
  - (E) is the president, the secretary, or a director of a corporation; or
  - (F) possesses the authority to set policy or direct the management of a business entity.
- (5) Department--Texas Department of Licensing and Regulation.
- (6) Device--A commercial weighing or measuring device used for motor fuel sales, also defined as a motor fuel metering device by §2310.001(7) of the Code.
- (7) Device performance review (DPR)--The comprehensive inspection and testing of a motor fuel metering device to ensure it is calibrated and operating according to NIST and Manufacturer specifications.
- (8) Gasoline--A liquid or combination of liquids blended together, offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine. The term includes gasohol, aviation gasoline, and blending agents, but does not include compressed natural gas, liquefied natural gas, racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas, as defined in §162.001(29) of the Texas Tax Code.
- (9) GPM--Gallons per minute.
- (10) ISO--International Organization for Standardization; an independent, non-governmental organization that develops voluntary international standards to facilitate world trade by providing common standards among nations.
- (11) LPG--Liquid petroleum gas.

- (12) LPG meter--A meter used to deliver LPG for use as a motor fuel.
- (13) Motor fuel--Gasoline, diesel fuel, gasoline blended fuel, compressed natural gas, liquefied natural gas, and other products that are offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine or a diesel-powered engine, as defined in §162.001(42) of the Texas Tax Code.
- (14) NIST--The National Institute of Standards and Technology; a non-regulatory federal agency under the United States Department of Commerce, which certifies and provides standard reference materials used to perform instrument calibrations, verifies the accuracy of specific measurements and supports the development of new measurement methods.
- (15) Operator--A person in possession or control of a weighing or measuring device, as defined in §2310.001(8) of the Code.
- (16) Test standard--A certified weight or measure used to test a device for accuracy.

**97.3. Adoption by Reference.** *(New section effective September 1, 2020, 45 TexReg 6082)*

In accordance with Chapter 2310 of the Code, the department adopts the currently published edition of each of the following nationally recognized minimum standards for the purpose of administering and enforcing this chapter:

- (1) Legal standards for weights and measures. NIST Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.”
- (2) Motor fuel quality testing standards.
  - (A) NIST Handbook 130, “Uniform Laws and Regulations in the Areas of Legal Metrology and Fuel Quality,” specifically Section 2.20. Gasoline-Oxygenate Blends, Section 2.21. Liquefied Petroleum Gas, Section 2.27. Retail Sales of Natural Gas Sold as a Vehicle Fuel, Section 2.30. Ethanol Flex Fuel, and Section 2.31. Biodiesel and Biodiesel Blends, as standard specifications for alcohol blends with the following modifications:
    - (i) vapor pressure tolerance not exceeding one pound per square inch for motor fuels blended with ethanol, excluding the time period from May 1 through October 1 for counties required to have low emissions fuels; and
    - (ii) vapor pressure seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;
  - (B) ASTM D4814, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” as the standard specifications for gasoline with the following modification:
    - (i) vapor pressure and vapor/liquid ratio seasonal specifications may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification; and
    - (ii) the vapor/liquid ratio specification shall be waived for motor fuels blended with ethanol;
  - (C) ASTM D975, “Standard Specification for Diesel Fuel,” as the standard specifications for diesel motor fuels and renewable diesel fuels;

- (D) ASTM D5798, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines,” as the standard specifications for 51 volume percent to 83 volume percent ethanol fuel;
  - (E) ASTM D6751, “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels;”
  - (F) ASTM D7467, “Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20);” and
  - (G) ASTM D7794, “Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible Fuel Vehicles with Automotive Spark-Ignition Engines,” as the standard specification for gasoline ethanol blends containing 16 to 50 volume percent ethanol.
- (3) Automotive Fuel Rating. The testing methods, standards and specifications used to determine the automotive fuel rating shall be those prescribed by the most current editions of:
- (A) ASTM D2699, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel;”
  - (B) ASTM D2700, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel;”
  - (C) ASTM D2885 “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique;” and
  - (D) ASTM D5599, “Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.”

#### **SUBCHAPTER B--MOTOR FUEL METERING DEVICES.**

**97.20. Registration Required--Devices.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) Prior to operation, a device must be registered. To register a device, an owner or operator must submit:
  - (1) a completed application in a manner prescribed by the department;
  - (2) documentation of a device performance review in a manner acceptable to the department; and
  - (3) the fee required under §97.70.
- (b) Device registrations cannot be transferred. A new owner or operator must submit a completed registration application under this section.
- (c) A change in the owner or operator’s federal employer identification number or social security number (for sole proprietors) constitutes a change of business identity and requires a new registration application to be submitted under this section.
- (d) A change in the name or contact information for an owner or operator must be submitted to the department within 30 calendar days.
- (e) Device registrations are valid for two years from issuance of the certificate of registration and must be renewed every two years.
- (f) A supplier is exempt from this section.

**97.21. Registration Renewal--Devices.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To renew a device registration, an owner or operator must submit:
  - (1) a completed renewal application in a manner prescribed by the department;
  - (2) documentation of a device performance review in a manner prescribed by the department; and
  - (3) the fee required under §97.70.
- (b) An owner or operator is responsible for renewing a device registration before the expiration date. Lack of receipt of a renewal notice from the department shall not excuse failure to file for renewal or late renewal.

**97.22. Registration Changes--Devices.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) If the number of registered devices increases, prior to operation of the new devices the owner or operator must submit:
  - (1) a change notice in a manner prescribed by the department;
  - (2) documentation of a device performance review for all new devices in a manner acceptable to the department; and
  - (3) the fee required under §97.70.
- (b) If the number of registered devices decreases, the owner or operator must submit notice in a manner approved by the department or omit the devices when submitting a renewal application.

**97.23. Device Performance Review Requirements.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) At least once every two years a DPR must be completed on each registered device.
- (b) To be valid, a service company must complete a DPR of a device on a single day. A DPR must include:
  - (1) performance testing;
  - (2) calibration, if necessary; and
  - (3) inspection of the device:
    - (A) to ensure operation within NIST Handbook 44 specifications, tolerances and other technical requirements along with specified manufacturer guidelines; and
    - (B) to detect the presence of skimmers.
- (c) A DPR report must be submitted by a service company within 10 business days of the DPR in a manner prescribed by the department.
- (d) Effective date.
  - (1) Beginning September 1, 2020, devices with a maximum flow rate of 20 GPM or less are subject to this section.
  - (2) Beginning September 1, 2021, the following devices will also be subject to this section.
    - (A) Devices with a maximum flow rate of greater than 20 GPM to 100 GPM;

- (B) Devices with a maximum flow rate of greater than 100 GPM; and
- (C) LPG meters.

(e) A supplier is exempt from this section.

**97.24. Certificate of Registration.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A current certificate of registration must be visibly displayed in an area that is accessible to the public.
- (b) If an original or copy certificate is not legible or available to a consumer, it must be replaced within 30 days of the date the owner or operator discovers the condition.

**97.25. Consumer Information Sticker.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) By December 1, 2020, a consumer information sticker with the department's contact information and current motor fuel tax rates, must be placed on each face of all motor fuel dispensers.
- (b) If any part of the information on the sticker is no longer fully legible and in plain sight of the consumer, it must be replaced within 30 days of the date the owner or operator discovers the condition.
- (c) A consumer information sticker must not be placed in a manner that affects the accuracy, readability, or lawful operation of a device.
- (d) This section does not apply to a device on a transport vehicle.

**97.26. Device Out of Order.** *(New section effective September 1, 2020, 45 TexReg 6082)*

An incorrect device shall be placed out of order by the department and may not be used until repairs are made by a licensed service company. Once the device has been brought into compliance with this chapter, the licensed service company may remove the "Out of Order" tag and release it for use.

**97.27. Condemned Devices.** *(New section effective September 1, 2020, 45 TexReg 6082)*

Devices that are declared to be incorrect and are condemned by the department pursuant to §2310.105 of the Code, must be maintained by the owner, operator, or user until the department has granted authorization to dispose, replace, or destroy the device.

**97.28. Device Records.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A device performance review report shall be maintained for a period of two years.
- (b) All records required to be maintained shall be made available upon request by the department.

**SUBCHAPTER C--SALE, DELIVERY, AND QUALITY OF MOTOR FUEL.**

**97.40. Distributor, Jobber, Supplier, Wholesaler--Certificate of Compliance.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To be eligible for a certificate of compliance, a distributor, jobber, supplier, or wholesaler must:
  - (1) submit complete business, facility, and contact information in a manner prescribed by the department; and
  - (2) pay the fee required under §97.71.

- (b) A change in the name or contact information of the owner or operator must be submitted to the department within 30 calendar days.
- (c) A certificate of compliance is valid for two years from the date of issuance by the department.

**97.41. Automotive Fuel Rating.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A dealer must:
  - (1) post the automotive fuel rating (AFR) for each grade of motor fuel offered for sale as provided in 16 CFR Part 306.10; and
  - (2) not sell or offer to sell fuel that is less than the AFR posted on the dispenser.
- (b) Motor fuel that has an AFR lower than the certification of the rating required under federal law may not be delivered or transferred.

**97.42. Stop-Sale Order.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) The executive director of the department may issue an order to stop sale of:
  - (1) motor fuel sold or offered for sale in violation of this chapter; or
  - (2) motor fuel sold or offered for sale by or through a device that is in violation of this chapter.
- (b) Motor fuel subject to a stop-sale order may not be sold until the order has been discharged by a court pursuant to §2310.060 of the Code, or the executive director receives notice acceptable to the department that the motor fuel or device is in compliance with this chapter.

**97.43. Fuel Delivery Records.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) Dealers, distributors, jobbers, suppliers, and wholesalers must keep the following records for four years:
  - (1) all invoices, receipts, or other transmittal records of the purchase, sale, delivery, or distribution of motor fuel; and
  - (2) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed.
- (b) All delivery tickets and letters of certification related to automotive fuel rating must be maintained by dealers, distributors, jobbers, suppliers, and wholesalers for one year.
- (c) All records required to be maintained shall be made available upon request by the department or an authorized representative of the department.

**SUBCHAPTER D--SERVICE COMPANIES AND SERVICE TECHNICIANS.**

**97.50. Criminal History Check Required.** *(New section effective September 1, 2020, 45 TexReg 6082)*

A criminal history check shall be conducted on an applicant for:

- (1) a service company license, including all controlling persons of the applicant; and
- (2) a service technician license.

**97.51. Device Maintenance Activities.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A service company or service technician may perform device maintenance activities on one or more of the following device categories:
  - (1) Low flow-- devices with a maximum flow rate of 20 GPM or less;
  - (2) High flow-- devices with a maximum flow rate of greater than 20 GPM; or
  - (3) LPG--LPG meters.
- (b) Device maintenance activities include:
  - (1) placing a device in service;
  - (2) installing, calibrating, inspecting, testing, or repairing a device;
  - (3) removing an out-of-order tag, lock, condemnation notice, or other form of use prohibition placed on a device by the department.
- (c) An applicant may be licensed in more than one device category.

**97.52. Service Company License Requirements--General.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To obtain a service company license, an applicant must submit:
  - (1) a completed application in a manner prescribed by the department;
  - (2) proof of insurance acceptable to the department, as required under §97.53;
  - (3) proof of calibration of test standards in a manner prescribed by the department, as required in §97.58; and
  - (4) the fee required under §97.72.
- (b) A sole proprietor may not perform or offer to perform device maintenance activities unless the sole proprietor:
  - (1) is exempt from holding a license under this section pursuant to §2310.154 of the Code; or
  - (2) holds:
    - (A) a service technician license issued by the department, or a service technician license issued under Subchapter I, Chapter 13, Texas Agriculture Code; and
    - (B) a service company license issued by the department, or a service company license issued under Subchapter I, Chapter 13, Texas Agriculture Code.
- (c) A person licensed under this section or Subchapter I, Chapter 13, Texas Agriculture Code must comply with this chapter.
- (d) A change in the name or contact information for the business or a controlling person of the business must be submitted to the department within 30 calendar days.
- (e) A license issued under this section is valid for two years from the date of issuance and must be renewed every two years.

**97.53. Service Company License Requirements--Insurance.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A service company must maintain at least the following minimum general liability insurance coverages at all times:
  - (1) \$25,000 per occurrence; or
  - (2) \$50,000 aggregate.
- (b) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Chapter 981, or other insurance companies that are rated by A.M. Best Company as B+ or higher.
- (c) A change in insurance carrier or minimum general liability insurance coverages must be submitted to the department within 30 calendar days.

**97.54. Service Company License Requirements--Renewal.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To renew a service company license, an applicant must submit:
  - (1) a completed renewal application in a manner prescribed by the department;
  - (2) proof of insurance in a manner acceptable to the department, as required under §97.53;
  - (3) proof of calibration of test standards in a manner acceptable to the department, as required in §97.58; and
  - (4) the fee required under §97.72.
- (b) A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any device maintenance activities under this chapter.
- (c) A licensee is responsible for renewing their license before the expiration date. Lack of receipt of a license renewal notice from the department shall not excuse failure to file for renewal or late renewal.

**97.55. Service Technician License Requirements--General.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To obtain a service technician license, an applicant must:
  - (1) submit a completed application in a manner prescribed by the department;
  - (2) pass a written examination for each device category with a score of at least 70%, in accordance with §97.57; and
  - (3) pay the fee required under §97.72.
- (b) An individual may not perform or offer to perform device maintenance activities unless the individual:
  - (1) is exempt from holding a license under this section pursuant to §2310.154 of the Code; or
  - (2) holds a service technician license issued by the department, or a service technician license issued under Subchapter I, Chapter 13, Texas Agriculture Code, and:

- (A) is employed by a service company; or
  - (B) holds a service company license issued by the department, or a service company license issued under Subchapter I, Chapter 13, Texas Agriculture Code.
- (c) An individual licensed under this section or Subchapter I, Chapter 13, Texas Agriculture Code must comply with this chapter.
  - (d) A change in name or contact information must be submitted to the department within 30 calendar days.
  - (e) A license issued under this section is valid for two years from the date of issuance and must be renewed every two years.

**97.56. Service Technician License Requirements--Renewal.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) To renew a service technician license, an applicant must submit:
  - (1) a completed renewal application in a manner prescribed by the department; and
  - (2) the fee required under §97.72.
- (b) A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any device maintenance activities under this chapter.
- (c) A licensee is responsible for renewing their license before the expiration date. Lack of receipt of a license renewal notice from the department shall not excuse failure to file for renewal or late renewal.

**97.57. Service Technician License Requirements--Examinations.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) The department shall review a completed application to determine an applicant's eligibility to take a service technician examination.
- (b) A person taking an examination must comply with the department's examination requirements under Chapter 60, Subchapter E, of this title (relating to Examinations).
- (c) Unauthorized assistance on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

**97.58. Test Standards.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) Test standards must be certified annually by a recognized or accredited laboratory that adheres to ISO 17025 standards. A service company must maintain at least one test standard per licensed device category as follows:
  - (1) Low flow: five-gallon or greater test measure or prover;
  - (2) High flow: prover with a capacity that exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate;
  - (3) LPG: LPG prover.
- (b) A test standard that becomes damaged must be taken out of operation immediately and recalibrated prior to use. A test standard that is beyond repair must be taken out of service permanently.

- (c) A service company must maintain the minimum test standards per licensed device category at all times.

**97.59. Inspection for Payment Card Skimmers.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) In this section, “skimmer,” “merchant,” and “motor fuel dispenser” have the meanings assigned by §607.001 of the Texas Business and Commerce Code.
- (b) A service technician must inspect for the presence of a skimmer:
  - (1) during a device performance review; and
  - (2) each time a motor fuel dispenser is opened to perform device maintenance activities.
- (c) A service technician must report the finding of a skimmer:
  - (1) immediately to the merchant, as required by §607.053 of the Texas Business and Commerce Code; and
  - (2) within 24 hours to the department on a form prescribed by the department.

**97.60. Service Company Records.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) A service company must maintain device performance review reports for a period of two years from the date the DPR was performed.
- (b) All records required to be maintained shall be made available upon request by the department or an authorized representative of the department.

**SUBCHAPTER E--FEES.**

**97.70. Device Fees.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) Registration Fees (initial and renewal):
  - (1) A device with a maximum flow rate of 20 GPM or less, delivering fuel from a single nozzle:
    - (A) multiple products (includes a fuel quality fee of \$21)--\$93;
    - (B) a single gasoline product (includes a fuel quality fee of \$7)--\$31; or
    - (C) a single diesel product, or a single product other than gasoline (includes a fuel quality fee of \$7)--\$31;
  - (2) A device with a maximum flow rate of greater than 20 GPM but not greater than 100 GPM (includes a fuel quality fee of \$7)--\$127;
  - (3) A device with a maximum flow rate greater than 100 GPM--\$450; and
  - (4) An LPG meter--\$130.
- (b) Consumer information sticker--\$1 per sticker.

**97.71. Distributor, Jobber, Wholesaler, and Supplier Fees.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) Fees:

- (1) Distributor--\$80.
- (2) Jobber--\$80.
- (3) Wholesaler--\$80.
- (4) Supplier--\$2600.

(b) Late fees do not apply to this section.

**97.72. Service Company Fees.** *(New section effective September 1, 2020, 45 TexReg 6082)*

Service company license fees (initial and renewal):

- (1) first device category--\$300; and
- (2) each additional device category--\$200.

**97.73. Service Technician Fees.** *(New section effective September 1, 2020, 45 TexReg 6082)*

Service technician license fees (initial and renewal): \$30.

**97.74. Fee Policy.** *(New section effective September 1, 2020, 45 TexReg 6082)*

- (a) All fees paid to the department are non-refundable.
- (b) Late renewal fees for registrations and licenses issued under this chapter are provided under §60.83 of this title (Relating to Late Renewal Fees).

**SUBCHAPTER F. ENFORCEMENT.**

**97.80. Administrative Penalties and Sanctions.** *(New section effective September 1, 2020, 45 TexReg 6082)*

If a person violates any provision of Texas Occupations Code, Chapters 51, or 2310, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51, and 2310 and applicable agency rules.