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

IT IS THEREFORE ORDERED by the commission that the amendments to §§21.31-21.40, and new §§21.961-21.972 are proposed for adoption and are authorized for publication in the Texas Register for the purpose of receiving public comments.

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

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS
The Texas Department of Transportation proposes new sections concerning the implementation of Senate Bill 514, 83rd Legislature, Regular Session, 2013, which adds Subchapter T of the Natural Resources Code §§91.901-91.905, and authorizes a saltwater pipeline operator to install, maintain, and operate a pipeline through, under, along, across, or over a public road, by lease agreement and other conditions set forth by the Texas Transportation Commission. The goal of the bill is to encourage the use of state right of way and the construction of saltwater pipelines as a mechanism of transport for this wastewater from drill sites to disposal injection wells. New Subchapter R is added to 43 TAC Chapter 21 ( §§21.961-21.972) setting forth the leasing requirements. Additionally, the new sections make minor and non-substantive changes to §§21.31-21.40 in Chapter 21, Subchapter C, Utility Accommodations, to modify definitions and terms of relocation for saltwater pipeline facilities in conformance with Senate Bill 514.
Amendments to §21.31, Definitions, add definitions for “saltwater”, “saltwater pipeline”, and “saltwater pipeline operator.” This section also broadens other definitions to include saltwater and saltwater pipelines. This section expands the definition of a private utility to include saltwater pipeline facilities while specifically excluding saltwater pipeline facilities from the definition of a public utility.

Amendments to §21.32, Purpose, clarify that the subchapter applies to utility facilities within the state highway system’s right of way.

Amendments to §21.33, Applicability, specify the facilities to which the subchapter applies.

Amendments to §21.34, Scope, clarify that the subchapter governs matters concerning accommodation, location, and methods for the installation, adjustment, relocation, and maintenance of “utility facilities on state highway rights of way” rather than “utilities on state highway rights of way.” The term “utility” is defined as an entity that owns a utility facility, which is also a defined term.

Amendments to §21.35, Exceptions, correct the usage of the terms “utility” and “utility facility” within that section.
Amendments to §21.36, Rights of Utilities, provides that, in accordance with Transportation Code, §91.902, a saltwater pipeline operator may place a saltwater pipeline facility over, under, or across a highway, subject to highway purposes and may be allowed to place such a facility longitudinally within a highway right of way, but only by lease.

Amendments to §21.37, Design, provide consistency in the usage of the term “utility facility.” The amendments also clarify that permission from the department is required to attach any utility facility to the structure of a bridge that is on the state highway system.

Amendments to §21.38, Construction and Maintenance, provide consistency in the usage of the terms “utility facility” and “high-pressure pipeline.”

Amendments to §21.39, Ownership, Function, Abandonment, and Idling of Facilities, require the operator of a saltwater pipeline facility located by lease within the state’s right of way to obtain the department’s written approval before transferring ownership of the facility. The amendments also provide consistency in the usage of the term “utility facility.”
Amendments to §21.40, Underground Utilities, provide consistency in the usage of the terms “utility,” “utility facility,” and the various pipeline terms.


New §21.961, Purpose, provides that highway right-of-way not being used for highway purposes may be leased to saltwater pipeline operators. This section also sets forth that new Subchapter R only applies to valid saltwater pipeline operators and not to other permissive uses of the right-of-way.

New §21.962, Definitions, provides the definitions to key terms as used in the subchapter.

New §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, authorizes the director of the right of way division or the director's designee to execute the lease of an area within a right of way for the installation, operation, and maintenance of a saltwater pipeline facility on a finding that (1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility, (2) the area to be leased will not be needed for highway purposes during the term of the lease, and (3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and
beautification of the state highway system. The section provides that payment for the lease may not be less than fair market value, that costs of administering the lease may be considered in establishing the amount charged for the lease, and that the term of the lease may exceed 10 years only if the lease contains a provision allowing the department to terminate the lease with not more than 12 months’ notice.

New §21.964, Lease Request, describes the procedure for each request and outlines the necessary information needed for evaluation of the lease request. The required information must include a description of the saltwater pipeline facility, engineering plans, a description of the highway right-of-way to be leased, and any other information desired by the department.

New §21.965, Lease Agreement, describes the agreement between the department and the saltwater pipeline operator. The agreement must be in writing, executed by the right of way division director, and approved by the Federal Highway Administration. The agreement may not impair the states use of the State’s right of way for highway uses. The section specifies that information that is required to be included in the lease, including the term of the lease, the lease payment amounts, and the bond requirements.
New §21.966, Disposition of Payments, declares that all payments received shall be deposited in the state highway fund.

New §21.967, Termination of Lease, outlines the conditions under which an agreement may be terminated and the terms that must be included in the lease concerning termination. The lease may provide the department and the saltwater pipeline operator with specified rights to terminate an agreement with or without cause. The lease also must specify that upon termination the saltwater pipeline operator must remove the saltwater pipeline facility and restore the highway right-of-way, at no cost to the department.

New §21.968, Federal Highway Administration Approvals, clarifies that all matters relating to leasing of all highway right of way are subject to the approval of the Federal Highway Administration.

New §21.969, Use of Right of Way under Lease, declares that the use of leased right of way does not constitute abandonment of the property by the department. This section also declares that the lease of highway right of way does not create a property interest in the lessee.

New §21.970, Clearances, Safety Requirements, and Standards,
requires strict adherence to the standards of utility accommodation rules. This section provides that the saltwater pipeline facility may in no way interfere with the safety and free flow of traffic on the highway facility. The section also sets forth that a saltwater pipeline facility may not adversely affect the use, safety, and appearance of the highway facility.

New §21.971, Marker or Tracking Device, requires department approval of all markers or tracking devices to be located within the highway right of way.

New §21.972, Changes of and Access to Highway Facilities, provides that a saltwater pipeline facility may not require change in alignment of an existing highway facility without department approval. This section also requires that during construction, the saltwater pipeline facility must permit access to the highway facility.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new sections.
John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Campbell has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be that in providing this alternative method of transporting disposal saltwater we can reduce highway congestion and improve the air quality. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:00 a.m. on July 25, 2014, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make
comments or presentations may register starting at 8:30 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-6086 at least five working days prior to the hearing so that appropriate services
can be provided.

SUBMITTAL OF COMMENTS
Written comments on the proposed amendments to §§21.31-21.40 and new §§21.961-21.972 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Saltwater pipelines." The deadline for receipt of comments is 5:00 p.m. on August 11, 2014. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments and new sections, or is an employee of the department.

STATUTORY AUTHORITY
The amendments and new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§202.052 and 202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.
CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.
SUBCHAPTER C. UTILITY ACCOMMODATION

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

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Abandoned utility--A utility facility that no longer carries a product or performs a function and for which the owner:

(A) does not plan to use in future operations; or

(B) is unknown or cannot be located.

(3) Access denial line--A line concurrent with the common property line across which access to the highway facility from the adjoining property is not permitted.

(4) As-Built plans--Drawings showing the actual locations of installed or relocated utility facilities.

(5) Border width--The area between the edge of pavement structure or back of curb to the right of way line.

(6) Bridge abutment joint--The joint between the approach slab and bridge structure.

(7) Center median--The area between opposite directions of travel on a divided highway.

(8) Certified as-installed construction plans--The
construction plans for the installation of a utility facility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(9) Commission--The Texas Transportation Commission.

(10) Common carrier--As defined in the Natural Resources Code, §111.002.

(11) Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utility facilities.

(12) Controlled access highway--A highway so designated by the commission on which owners or occupants of abutting lands and other persons are denied access to or from the highway mainlanes.

(13) Department--The Texas Department of Transportation.

(14) Depth of cover--The minimum depth as measured from the top of the utility line to the ground line or top of pavement.

(15) Design vehicle load (HS-20)--A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.
(16) Director--The chief administrative officer in charge of either the Maintenance Division or the Right of Way Division, or a successor division of either the Maintenance Division or the Right of Way Division.

(17) Distribution line--That part of a utility system connecting a transmission line to a service line.

(18) District--One of the 25 geographical districts into which the department is divided.

(19) District engineer--The chief administrative officer in charge of a district, or his or her designee.

(20) Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(21) Engineer--A person licensed to practice engineering in the state of Texas.

(22) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(23) Executive director--The chief administrative officer of the department, or that officer's designee not below the level of assistant executive director.

(24) Freeway--A divided highway with frontage roads or
full control of access.

(25) Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(26) Gathering line--A line that delivers a raw utility product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product.

(27) Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(28) High-pressure pipeline [gas or liquid petroleum lines]--A pipeline that is operated, [Gas or liquid petroleum pipelines that are operated] or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per

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1 square inch.

(29) Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

(30) Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.

(31) Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(32) Joint use agreement--A use and occupancy agreement that describes the obligations, responsibilities, rights, and privileges vested in the department and retained by the utility, and used for situations in which the utility has a compensable interest in the land occupied by its facilities and the land is to be jointly occupied and used for highway and utility purposes.

(33) Low-pressure pipeline [gas or liquid petroleum lines]--A pipeline that is [Gas or liquid petroleum pipelines that are] operated at a pressure not exceeding 60 pounds per square inch.
(34) Mainlanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(35) Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(36) Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the mainlanes by department permit.

(37) Outer separation--The area between the mainlanes of a highway for through traffic and a frontage road.

(38) Pavement structure--The combination of the surface, base course, and subbase.

(39) Private utility--A person, firm, corporation, or other entity engaged in a utility business other than a public utility or saltwater pipeline operator. The term includes [business described in paragraph (40) of this section, including] an individual who owns a service line.

(40) Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along
highways. The term includes a common carrier and a gas corporation. This term does not include a saltwater pipeline operator whose only right to occupy state right of way is by a lease under Natural Resources Code, §91.902.

(41) Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.

(42) Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(43) Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(44) Saltwater--Water containing salt and other substances produced during the drilling or operation of an oil, gas, or other type of well.

(45) Saltwater pipeline--A pipeline that carries saltwater. The term includes a pipeline that carries water and water based solutions from an oil or gas well on which hydraulic fracturing treatment has been performed to a waste disposal well.

(46) Saltwater pipeline operator--A person, firm, corporation or other entity that owns, installs, manages,
operates, leases, or controls a saltwater pipeline that is not a public utility.

(47) [44] Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.


(49) [46] Traffic impact analysis--A traffic engineering study that determines the potential current and future traffic impacts of a proposed traffic generator and that is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(50) [47] Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(51) [48] Use and occupancy agreement--The written document, whether in the form of an agreement, acknowledgment, notice, or request, by which the department approves the use and occupancy of highway right of way by utility facilities.

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Utility--Any entity owning a utility facility. [public or private utility.]

Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, communication controller boxes and pedestals, electric boxes, and gas regulators.

Utility facilities--All utility lines, pipelines, saltwater pipelines, conduits, cables, and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

Utility product--The product [A commodity], such as water, saltwater, steam, electricity, gas, oil, or crude resources or communications, cable television, or waste disposal services, carried by the utility facility. [that directly or indirectly serves the public.]

Utility strip--The area of land established within a control of access highway, located longitudinally within the area between the outer traveled way and the right of way line, for the nonexclusive use, occupancy, and access by one or more authorized [public] utilities.

Utility structure--A pole, bridge, tower, or
other aboveground structure on which a conduit, line, pipeline, or other utility facility is attached.

§21.32. Purpose. This subchapter prescribes the minimum requirements for the accommodation, method, materials, and location for the installation, adjustment, and maintenance of utility facilities within the right of way of the state highway system. These requirements are provided in the interests of the safety, protection, use, and future development of highways with due consideration given to the public service afforded by adequate and economical utilities.


(a) For highways under department jurisdiction, the provisions of this subchapter concerning utility accommodation apply to:

(1) new utility facility installations;

(2) additions to or maintenance of existing utility facility installations;

(3) adjustments or relocations of utility facilities; and

(4) existing utility facilities retained...
within the right of way.

(b) The provisions of this subchapter concerning utility accommodation do not apply to utility facilities located within the rights of way of completed highways for which agreements with the department were entered into before the effective date of this subchapter.

(c) This subchapter applies to utility facilities not specifically mentioned in accordance with the nature of the utility facility. All pipelines carrying corrosive, caustic, flammable, or explosive, or otherwise hazardous materials and saltwater pipelines shall conform to the provisions for high-pressure pipelines.

(d) The district engineer may prescribe special district supplemental accommodation requirements on a specific installation or adjustment based on the specific soil, terrain, climate, vegetation, traffic characteristics, type of utility facility, or other factors unique to the area. If the district supplemental accommodation requirements are more strict than the minimum requirements of this subchapter, the supplemental accommodation requirements must be detailed in writing.

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§21.34. Scope. This subchapter governs matters concerning accommodation, location, and methods for the installation, adjustment, relocation, and maintenance of utility facilities on state highway rights of way, but does not alter current authority for their installation nor determination of financial responsibilities for placement or adjustment. To the extent that a federal or state law, code, regulation, rule, or order prescribes a higher degree of protection for highway facilities or the traveling public than the protection provided by this subchapter, the federal or state provision controls.

§21.35. Exceptions.

(a) Exceptions to any provisions contained in these sections and relating to utility accommodation shall be justified and recommended for approval by the district engineer and authorized by:

(1) the Right of Way Division Director using the form entitled "Certification for Utility Accommodation" for all utility facilities occupying the right of way under a utility joint use agreement; or

(2) the Maintenance Division Director, when a use and occupancy agreement, other than a utility joint use agreement, is received for a proposed utility facility installation on an
right of way.

(b) Requests for exceptions will be considered only where the utility shows that extreme hardship or unusual conditions provide justification and where alternate measures can be prescribed in keeping with the intent of this subchapter. All requests for exceptions must be fully documented with design data and other pertinent information.

(c) For each request for exception the utility must clearly demonstrate that:

(1) the accommodation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the highway;

(2) the accommodation will not be constructed or serviced by direct access from the mainlanes of a freeway or connecting ramps;

(3) the accommodation will not interfere with or impair the present use or future expansion of the highway; and

(4) any alternative location would be contrary to the public interest, demonstrated by an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the proposed use of the right of way.

(a) Under state law, public utilities have a right to 
operate, construct, and maintain their facilities over, under, 
across, on, or along highways, subject to highway purposes. 
This includes entities authorized by law to transport or 
distribute natural gas, water, electric power, telephone, or 
cable television[ or salt water] and those common carriers 
[that are] authorized to construct and operate [common carrier 
petroleum and] petroleum product and saltwater pipelines 
[lines].

(b) A private utility may place a utility facility over, 
under, or across a highway, subject to highway purposes, but it 
is not permitted to place a utility facility longitudinally on a 
highway right of way.

(c) A saltwater pipeline operator may place a saltwater 
pipeline facility over, under, or across a highway, subject to 
highway purposes. A saltwater pipeline operator may, by lease 
only, be permitted to place a saltwater pipeline facility 
longitudinally within a highway right of way.

(d) If an entity requests the installation of a new 
utility facility or the adjustment or relocation of an existing 
utility facility longitudinally within a highway right of way 
and the entity's legal authority to install, adjust, or relocate 
its facility longitudinally within the highway right of way is
not readily evident, the department may require that the entity provide:

(1) a written certification that it is an entity authorized by state law to operate, construct, and maintain its utility facilities over, under, across, on, or along state highways; and

(2) documentation that substantiates that the entity filed its status with the applicable state regulatory commission or agency and its facilities are subject to public safety regulation.


(a) General. Utility facility design will be accomplished in a manner and to a standard acceptable to the department. The location and manner in which a utility facility installation, adjustment, or relocation work will be performed within the right of way must be reviewed and approved by the department. Measures must be taken to preserve the safety and free flow of traffic, structural integrity of the highway or highway structure, ease of highway maintenance, appearance of the highway, and the integrity of the utility facility. Utility facility installations shall conform with:

(1) the requirements of this subchapter;
(2) the National Electrical Safety Code rules for the installation and maintenance of electric supply and communication lines;

(3) 23 CFR Part 645B, Accommodation of Utilities;

(4) 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards;

(5) 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline;

(6) the latest American Society for Testing and Materials (ASTM) specifications;

(7) the latest edition of the Texas Manual on Uniform Traffic Control Devices;

(8) 30 TAC §§290.38 - 290.47, relating to Rules and Regulations for Public Water Systems;

(9) applicable state and federal environmental regulations, including storm water pollution prevention, endangered species, and wetlands; and

(10) applicable Railroad Commission of Texas and Texas Commission on Environmental Quality safety regulations.

(b) Location.

(1) Utility facilities [lines] shall be located to avoid or minimize the need for adjustment for future highway projects and improvements, to allow other utilities equal access in the
right of way, and to permit access to utility facilities for
their maintenance with minimum interference to highway traffic.

(2) Longitudinal installations, if allowed, shall be
located on uniform alignments to the right of way line to
provide space for future highway construction and possible
future utility facility installations.

(3) New utility facilities [lines] crossing the highway
shall be installed at approximately 90 degrees to the centerline
of the highway.

(4) The horizontal and vertical location of overhead
utility facilities [lines] shall conform with §21.41 of this
subchapter (relating to Overhead Electric and Communication
Lines), consistent with the clearances applicable to all
roadside obstacles. No aboveground fixed objects will be
allowed in the horizontal clearance.

(5) Every effort must be made to insure that the proposed
installation is compatible with existing and approved future
utility facilities.

(6) A utility facility on controlled access highways or
freeways shall be located to permit maintenance of the facility
by access from frontage roads, nearby or adjacent roads and
streets, or trails along or near the right of way line without
access from the mainlanes or ramps. A utility facility may not
be located longitudinally in the center median or outer
separation of controlled access highways or freeways.

(7) On highways with frontage roads, longitudinal utility
facility installations may be located between the frontage road
and the right of way line. Utility facilities shall not be
placed or allowed to remain in the center median, outer
separation, or beneath any pavement, including shoulders.

(8) The procedures and requirements of this paragraph
apply if a longitudinal installation is proposed within existing
access denial lines of a controlled access highway or freeway
without frontage roads.

(A) The public utility or saltwater pipeline operator
seeking the installation shall submit to the district engineer a
written request that includes for each facility proposed for
installation the following detailed information:

(i) the information required by §21.35 of this
subchapter (relating to Exceptions);

(ii) survey data as directed by the department to
identify and designate the location of a utility strip, the
utility strip's relationship to existing highway facilities and
the right of way line, and the specific area of use, occupancy,
and access for installation and maintenance of the utility
facility;
(iii) a plan for the utility's access to, from, and within the utility strip with clearly described procedures that preserve the safety and free flow of traffic on the controlled access highway or freeway during installation, maintenance, and emergency service or repair of the utility facility; and

(iv) any additional information, including an engineering study requested by the department, that is reasonably necessary for a determination of the impact of the proposed utility facility on the safety, design, construction, operation, maintenance, and stability of the controlled access highway.

(B) If the requested utility facility installation meets the conditions of §21.35 of this subchapter and the other applicable requirements of this subchapter, the department shall establish a utility strip along the outer edge of the right of way by:

(i) locating a utility-access denial line between the proposed utility facility installation and the mainlanes and connecting ramps; and

(ii) designating the specific area of use, occupancy, and access for installation and maintenance of the requested utility facility.

(C) The department may adjust the utility-access denial

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line of an established utility strip to accommodate additional
authorized utility facilities within the utility strip.

(D) The utility requesting installation of the utility
facility is responsible for all costs associated with providing
the information required for designation of a new or expanded
utility strip. The utility shall delineate the utility-access
denial line on the ground by setting readily identifiable,
durable, and weatherproof permanent markers to represent or
reference the corners, angle points, and points of curvature or
tangency of the utility-access denial line.

(E) All existing and proposed fences shall be located
at the freeway right of way line.

(F) Denial of access regarding property adjoining the
right of way line will not be altered.

(c) Plans. The plans shall protect the public investment
in the highway, inclusive of all its components, and maintain
traffic capacity and safety for each highway user.

(1) All utility facility installations shall be of
durable materials designed for long life expectancy and
relatively free from the need for routine servicing or
maintenance. In addition to the requirements of this
subchapter, any existing utility facilities lines to remain in
place must be of satisfactory design and condition in the
opinion of the district.

(2) **Utility facility** installation shall not disturb existing drainage courses. In addition, soil erosion shall be held to a minimum and sediment from the construction site shall be kept away from the highway and drain inlets.

(3) **Utility facility installations** [expansions] shall be planned to minimize hazards to, and interference with, future highway projects or other utility installations.

(4) Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the utility facility based on the department's survey data, the relationship to existing highway facilities and the right of way line, and location of existing utility facilities that may be affected by the proposed utility facility.

(5) As-built plans or certified as-installed construction plans shall include the installed location, vertical elevations, and horizontal alignments of the utility facility based upon the department's survey data, the relationship to existing highway facilities and the right of way line, and access procedures for maintenance of the utility facility. As-installed construction plans certified by a utility or its representative shall be submitted to the department for each relocation or new installation. In the alternative, if approved by the director...
of the Maintenance Division or Right of Way Division, a district
may require a utility to deliver either as-installed
construction plans that are certified by an independent party or
final as-built plans that are signed and sealed by an engineer
or registered professional land surveyor. In determining
whether to authorize a requirement for independently certified
or signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the
proposed utility facility's proximity to department facilities
and other utility facilities that may be impacted; [and]

(B) the type of utility facility; and

(C) past performance of the utility in providing
accurate location data and conformance with its certified as-
installed construction plans.

(6) If approved by the director of the Maintenance
Division or the Right of Way Division, a district may require a
utility to deliver plans that are signed and sealed by an
engineer. In determining whether to authorize a requirement for
signed and sealed plans, the director shall consider:

(A) the amount of available right of way or the
proposed utility facility's proximity to department facilities
or other utility facilities that may be impacted;

(B) the complexity of required traffic control plans;
(C) the type of utility facility;

(D) [\(\) whether the installation or adjustment activity requires a storm water pollution prevention plan; and

(E) [\(\) the utility's past performance in providing accurate location data and conformance with its construction plans.

(d) Tunnels and bridges.

(1) Interstate highways. In providing a utility tunnel or utility bridge, the requirements in subparagraphs (A) - (I) apply.

(A) Mutually hazardous transmittants, such as fuels and electric energy, shall be isolated by compartmentalizing or by auxiliary encasement of incompatible carriers.

(B) The utility tunnel or utility bridge structure shall conform in design, appearance, location, bury, earthwork, and markings to the culvert and bridge practices of the department.

(C) Where a pipeline on or in a utility structure is encased, the casing shall be effectively opened or vented at each end to prevent possible build up of pressure and to detect leakage of gases or fluids.

(D) Where a casing is not provided for a pipeline on or in a utility structure, additional protective measures shall be
taken, such as employing a higher factor of safety in the
design, construction, and testing of the pipeline than would be
required for cased construction.

(E) Communication and electric power lines shall be
insulated, grounded, and carried in protective conduit or pipe
from the point of exit from the ground to reentry, and the cable
carried to a manhole located beyond the backwall of the
structure.

(F) Carrier and casing pipe for gas, liquid petroleum,
hazardous product, and water lines shall be insulated from
electric power line attachments.

(G) Sectionalized block valves shall be installed in
lines at or near ends of utility structures, pursuant to 49 CFR
§192.179, Transmission Line Valves, unless segments of the lines
can be isolated by other sectionalizing devices within a
distance acceptable to the department.

(H) Any maintenance, servicing, or repair of the
utility lines will be the responsibility of the utility.

(I) The utility shall notify the district 48 hours in
advance of any maintenance, servicing, or repair; however, in an
emergency situation, the utility shall notify the district as
soon as practicable.

(2) Non-interstate highways. If a utility facility
[utility’s line] exists on the utility’s [its] own easement and it would be more economical to the department to adjust the utility facility [line] across a highway by use of a utility tunnel or bridge rather than to provide separately trenched and cased crossing, consideration should be given to provision of such a structure. Where the utility facility [line] was placed through an approved use and occupancy agreement and the adjustment of the utility facility is the sole responsibility of the utility [owner], the department may allow for the provision of a utility structure without cost to the department, provided the conditions outlined in subsection (a) of this section and all other pertinent requirements are met. If a structure is to serve as a joint utility/pedestrian crossing or a joint utility/sign support structure, the department will participate to the extent necessary for accommodation of pedestrians or highway signs only.

(e) Joint use of utility and highway structures.

(1) The attachment of utility facilities [lines] to bridges and grade separation structures is prohibited if other locations are feasible and reasonable.

(2) Where other arrangements for a utility facility [line] to span an obstruction are not feasible, the utility may submit a request to the district for attachment of the utility.
facility [line] to a bridge structure through a bridge attachment agreement. Each attachment will be considered on an individual basis, and permission to attach will not be considered as establishing a precedent for granting of subsequent requests for attachment.

(A) When it is impractical to carry a self-supporting communication line across a stream or other obstruction, the department may permit the attachment of the utility facility [line] to its bridge. If approved on existing bridges, the utility facility [line] must be enclosed in a conduit and so located on the bridge structure as not to interfere with stream flow, traffic, or routine maintenance operations. When a request is made before construction of a bridge, if approved, suitable conduits may be provided in the structure if the utility bears the cost of all additional work and materials involved.

(B) If it is the department's responsibility to provide for the adjustment of telephone lines or telephone conduits to accommodate the construction of a highway and the adjustment provides for the placement of telephone conduits in a bridge, the department will allow a reasonable number of spare telephone conduits in the structure if the spares are placed at the time of construction and the telephone company bears the cost of the
spare conduits.

(C) A utility shall not attach a utility facility [gas or liquid fuel lines] to a bridge without the written approval of the executive director.

(D) Power lines carrying greater than 600 volts shall not be permitted on bridges.

(E) When a utility is granted permission to attach a utility facility [pipeline] to a proposed bridge prior to construction, any additional costs associated with the design or construction to accommodate the utility facility [pipeline] are the responsibility of the utility.

(F) A utility requesting permission to attach a utility facility [pipeline] to an existing bridge shall submit sufficient information to allow the department to conduct a stress analysis to determine the effect of the added load on the bridge structure. The department may require other details of the proposed attachment as they affect safety and maintenance.

(f) Aesthetics. A utility will notify the department before removing, trimming, or replacing trees, bushes, shrubbery, or any other aesthetic features. The department must approve the extent and method of removal, trimming, or replacement of trees, bushes, shrubbery, or any other aesthetic feature.
(g) Design and construction responsibility.

(1) The utility is responsible for the design of the installation, adjustment, or relocation of a utility facility.

(2) If a state highway improvement project requires the adjustment or relocation of a communication, water, or waste water facility that is 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092 or the adjustment or relocation of a facility of an electric distribution provider, such as an electric service corporation, regional electric cooperative, or municipal or joint-agency electric service provider, that is 100 percent reimbursable by the department under the requirements of Transportation Code, §203.092, the utility by agreement with the executive director may authorize the department to procure the design of an adjustment or relocation and include the resulting plan in the construction contract for the adjustment or relocation.

(3) Under the agreement the department may use only an engineering consultant approved by the utility. An employee of the department may not be used to provide engineering services under the agreement.

(4) The utility must approve the resulting plan for the adjustment or relocation before it may be included in the
construction contract. The utility is responsible for ensuring that the design and construction meet all regulatory and environmental compliance requirements.

(5) The agreement must provide for:

(A) concurrent construction inspection by the utility during construction; and

(B) final acceptance by the utility of the design and construction after the construction is completed.

(6) During the relocation or adjustment construction work under the agreement, the utility remains liable under any certificate of service. The department is not responsible for any issue related to the design or construction of the adjustment or relocation of the utility facility after final acceptance by the utility of the adjustment or relocation.

(7) After the completion of the construction work under the agreement, the utility is responsible for any ongoing maintenance, including compliance with §21.38 of this subchapter (relating to Construction and Maintenance).

(8) The department will reimburse the utility for eligible expenses incurred in approving and inspecting the design documents.

(9) All provisions of this subchapter and 43 TAC Chapter 21, Subchapter B that apply to the design, estimates, and scope
of an adjustment or relocation apply to a project carried out under an agreement entered into under this subsection.

§21.38. Construction and Maintenance.

(a) General.

(1) A utility is responsible for the construction and maintenance of its utility facility, including installation, adjustment or relocation, replacement, expansion, and repair. Construction and maintenance must conform to the requirements of §21.37 of this subchapter (relating to Design) and shall be accomplished in a manner and to a standard acceptable to the department.

(2) The provisions of this section apply to all utility facility types, unless otherwise specified in §21.40 and §21.41 of this subchapter (relating to Underground Utilities and Overhead Electric and Communication Lines, respectively).

(3) Utilities with utility facilities on the right of way shall be responsible and accountable to preserve and protect the safety of the traveling public and the public's investment in the highway facility.

(4) When an existing approved utility facility requires construction or maintenance, the utility shall notify the district 48 hours before the start of any work. In an emergency...
situation, the utility shall notify the district as soon as possible.

(5) The utility shall not cut into the pavement or concrete riprap without written permission from the department.

(6) Utilities shall reimburse the department for the cost of measures taken by the department in the interest of public safety, restoration, clean-up, and repairs to the highway and right of way made necessary by the utility's failure to comply with the provisions of this subchapter.

(b) Vegetation and site clean-up.

(1) When utility construction or maintenance is complete, the utility shall restore the right of way to substantially the same condition that existed before the construction or maintenance, including reseeding or resodding to prevent erosion. After the area is brought to grade, the entire disturbed area shall be covered in accordance with the department's Standard Specifications for Construction and Maintenance of Highways Streets & Bridges.

(2) To preserve and protect trees, bushes, and other aesthetic features on the right of way, the department may specify the extent and methods of tree, bush, shrubbery, or any other aesthetic feature's removal, trimming, or replacement, in conjunction with paragraph (1) of this subsection. The district
engineer shall use due consideration in establishing the value of trees and other aesthetic features in the proximity of a proposed utility facility and any special district requirements justified by the value of the trees and other aesthetic features.

(3) If settlement or erosion occurs due to the actions of the utility, the utility shall, at its expense, reshape, reseed, or resod the area as directed by the department. Reseeding, resodding, or repair under this section shall be completed within a reasonable period of time that is acceptable to the department.

(4) Pruning of trees shall comply with the department's Roadside Vegetation Management Manual. When unapproved pruning or cutting occurs, the utility shall be responsible for the replacement of trees or for damages to existing trees and bushes.

(5) Highways adjacent to utility construction sites shall be kept free from debris, construction material, and mud. At the end of every construction day, construction equipment and materials shall be removed from the horizontal clearance, placed as far from the pavement edge as possible, and properly protected.

(6) The utility shall reimburse the department for all
costs incurred to repair damage to the right of way that results from the actions of the utility. These costs may include restoration of and repairs to the pavement structure, drainage structures, terrain, landscaping, or fences.

(c) Traffic control.

(1) The utility shall be responsible for the safety of, and shall minimize disruption to, the traveling public with proper traffic control.

(2) Appropriate measures shall be taken in the interests of safety, traffic convenience, and access to adjacent property that meet the requirements of the department's Compliant Work Zone Traffic Control Device List. The utility shall place appropriate signs, markings, and barricades before beginning work and shall maintain them to warn motorists and pedestrians properly. All traffic control devices shall conform to the TMUTCD and the National Cooperative Highway Research Project Report 350.

(3) All utility pits opened within the horizontal clearance must, in compliance with National Cooperative Highway Research Project Report 350, be properly protected with concrete traffic barriers, metal beam guard fencing, appropriate end treatments, or other appropriate warning devices.

(d) Work restrictions.
(1) The department reserves the right to halt construction or maintenance during hazardous situations, such as inclement weather, peak traffic hours, special events, or holidays, or for non-compliance with a use and occupancy agreement. Requests for emergency maintenance shall be directed to the appropriate district office.

(2) If the department determines that the facility was not constructed or maintained in the location or in the manner shown on the approved construction plans, the department may require the utility to take appropriate corrective action as determined by the department.

e) Utility work included in a highway construction contract.

(1) If a state highway improvement project requires the adjustment or relocation of a utility facility, the utility by agreement with the department may authorize the department to include the adjustment or relocation of the utility facility in the highway construction contract. The department may enter into an agreement under this subsection only if the district engineer determines that:

(A) including the adjustment or relocation of the utility facility in the construction contract is necessary to meet the construction sequencing of the state highway
improvement project or will expedite the project;

(B) the adjustment or relocation of the utility facility by the department's contractor can be accomplished in conformity with all applicable local, state, and federal regulations for the installation of the particular utility facility; and

(C) the adjustment or relocation of the utility facility by the department's contractor will not involve an unreasonably high risk of:

(i) danger to the traveling public, highway, or construction workers due to the presence of hazardous materials, high pressure pipelines [gas or liquid petroleum lines], or other potentially dangerous utility products; or

(ii) prolonged interruption of the delivery of a utility product that is essential to public health and safety.

(2) The utility must approve the plans, specifications, and cost estimate for the adjustment or relocation of the utility facility before it may be included in the construction contract. The utility is responsible for ensuring that the design and construction of the utility facility meet all regulatory and environmental compliance requirements.

(3) If the adjustment or relocation of the utility facility included in the construction contract is not 100
percent reimbursable by the department under the requirements of Transportation Code, §203.092, the utility is responsible for advancing or otherwise paying to the department the utility's prorata share under state law of the funds necessary for construction work related to the adjustment or relocation.

(4) An agreement under this subsection must provide:

(A) the estimated cost of the construction work related to the adjustment or relocation, including the cost of any betterment, to be performed by the department's contractor, and the utility's prorata share of the cost based on eligibility for department cost participation under Transportation Code, §203.092;

(B) for payment to the department of the utility's prorata share, if any, of the estimated cost under paragraph (4)(A) of this subsection at least 45 days before the date set for the receipt and opening of bids for the highway construction contract;

(C) a description of the construction work related to the adjustment or relocation, including any betterment, that is to be performed by the utility at no cost to the department;

(D) for concurrent construction inspection by the utility during construction;

(E) that the utility is responsible for physically
Right of Way

connecting the installed utility facility to its existing
utility facilities to make the installed facility operational
and for performing any tests required to assure compliance with
all applicable safety standards and regulations;

(F) for final acceptance by the utility of the
adjustment or relocation after the construction work is
completed; and

(G) any other provisions that the district engineer
considers to be necessary or desirable.

(5) When used in this subsection, "betterment" means any
upgrading of the utility facility being adjusted or relocated
that is not attributable to the highway construction project nor
required in order to comply with any other law, code, or
ordinance, and is made solely for the benefit and at the
election of the utility.

(6) During the adjustment or relocation of a utility
facility under an agreement under this subsection, the utility
remains liable under any certificate of service. The department
is not responsible for any issue related to the design or
construction of the adjustment or relocation of the utility
facility after final acceptance by the utility of the utility
facility.

(7) After completion of the construction work under an
agreement under this subsection, the utility is responsible for any ongoing maintenance of the utility facility in compliance with this section.

(8) If the adjustment or relocation of the utility facility is reimbursable by the department under the requirements of Transportation Code, §203.092, the department will reimburse the utility for eligible expenses incurred in approving and inspecting the construction work.

(9) All provisions of this subchapter and 43 TAC Chapter 21, Subchapter B (relating to Utility Adjustment, Relocation, or Removal) that apply to the design, estimates, and scope of an adjustment or relocation apply to a project carried out under an agreement entered into under this subsection.


(a) Change of ownership. If a utility sells, assigns, or conveys its utility facility to another company, the new owner must, within a reasonable period of time, notify the department of the sale in writing and:

(1) provide the name, address, and phone number of the new owner and a person to be contacted on matters concerning the utility facility;
(2) acknowledge whether the new owner is a public utility, common carrier, or other entity authorized by state law to operate, construct, and maintain its lines over, under, across, on, or along state highways as specified in §21.36(a) of this subchapter; and

(3) update all call signs and markers.

(b) Saltwater pipeline facility change of ownership.

Notwithstanding subsection (a), if the utility facility is a saltwater pipeline facility located within the state’s right of way by lease, the saltwater pipeline operator shall obtain written approval from the department before ownership of the saltwater pipeline facility may be transferred.

(c) Change of function. If a utility wishes to materially change the character, use, or function of an approved utility facility and that new character, use, or function would result in the application of more stringent requirements under the provisions of this subchapter than are applicable to the approved utility facility, the utility must submit to the department a written request for a new use and occupancy agreement and otherwise comply with the requirements contained in this subchapter concerning utility accommodation.

(d) Abandonment or idling of facility.

(1) Notice. If a utility abandons or idles a utility
facility, it must, within a reasonable period of time, notify
the department of that status in writing and in the case of
abandonment, indicate whether the utility facility will be
removed or abandoned in place.

(2) Abandonment in place.

(A) A utility that wishes to abandon a utility facility
in place must submit a written request to the district engineer
for each type of facility. The request must include the
following detailed information for each facility proposed for
abandonment:

(i) offsets from property lines and the centerline of
the highway;

(ii) coordinates based on the global positioning
system (GPS) or a survey datum as directed by the department;

(iii) the age, condition, material type, current
status, quantity, and size of the utility facility;

(iv) a legend explaining symbols, characters,
abbreviations, scale, and other data shown on any as-built
drawing or record mapping;

(v) a statement certifying that the utility facility
does not contain, or is not composed of, hazardous or
contaminated materials; and

(vi) any additional information requested by the
department.

(B) If the district engineer approves the abandonment in place, the utility facility owner shall continue to map, locate, and mark its abandoned utility facilities as required by this subchapter, federal regulations, or standards adopted by industry organizations, whichever is more restrictive.

(C) Abandonment shall not be construed as a change in ownership of the utility facility.

(3) Abandonment costs and restoration of public right of way. The utility shall be responsible for all costs associated with the maintenance or removal of its abandoned or idled utility facilities [lines] within the right of way, unless removal of the line is caused by an active highway project and adjustment is the financial responsibility of the department.

(4) Voids. Significant voids beneath the right of way are prohibited. The department, at the discretion of the district engineer, may require that a utility facility be filled with cement slurry or backfilled in accordance with department standards.

(5) High and low pressure [gas] pipeline abandonment. Each utility [owner/operator] shall conduct abandonment or deactivation of [gas] pipelines within the right of way in compliance with the requirements of this section, current

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federal, state, or local laws or codes, or industry standards, 
whichever are more stringent. If the pipeline is 
approved for abandonment in place, the utility shall: 
(A) purge, cut, and cap or plug the ends of all 
pipeline facilities at the right of way lines; 
(B) submit to the department a written certification 
that the abandonment conforms with all requirements of this 
section, current federal, state, or local laws or codes, or 
industry standards, whichever are more stringent; 
(C) slurry-fill the pipeline, if the 
department determines it is needed due to the age, condition, 
material type, quantity, and size of the facility; and 
(D) disconnect each pipeline from all sources and 
supplies of gas, purge each pipeline of gas and, in the case of 
submerged pipelines, fill each pipeline with water or other 
approved materials, and seal it at the ends. 
(6) Abandoned gas service lines. For each gas service 
line approved for abandonment in place, the utility shall: 
(A) provide a locking device or other means designed to 
prevent opening on each valve that is closed, to prevent the 
flow of gas to the customer; 
(B) install in the service line or in the meter 
assembly a mechanical device or fitting that will prevent the
flow of gas;

(C) physically disconnect the customer's piping from the gas supply and seal the open pipe ends;

(D) insure that a combustible mixture is not present after purging; and

(E) fill each abandoned vault with a suitable compacted material.

(7) Record keeping for abandoned utility facilities. A record of underground utility facilities abandoned in the right of way shall be maintained in a utility's permanent files until the utility facility is completely removed from the ground, and shall be provided to the department promptly upon request. This record must include:

(A) offsets from property lines and the centerline of the right of way;

(B) coordinates derived from the global positioning system being used by the department or a survey datum as directed by the department;

(C) the type, quantity, and size of the equipment;

(D) a legend explaining symbols, characters, abbreviations, scale, and other data shown on map;

(E) the location of the abandoned facilities; and

(F) any additional information requested by the

(a) General.

(1) Encasement.

(A) Underground utility facilities crossing the highway shall be encased in the interest of safety, protection of the utility, protection of the highway, and for access to the utility facility. Casing shall consist of a pipe or other separate structure around and outside the carrier line. The utility must demonstrate that the casing will be adequate for the expected loads and stresses.

(B) Casing pipe shall be steel, concrete, or plastic pipe as approved by the district, except that if horizontal directional drilling is used to place the casing, high-density polyethylene (HDPE) pipe must be used in place of plastic pipe.

(C) Encasement may be of metallic or non-metallic material. Encasement material shall be designed to support the load of the highway and superimposed loads thereon, including that of construction machinery. The strength of the encasement material shall equal or exceed structural requirements for drainage culverts and it shall be composed of material of satisfactory durability for conditions to which it may be
subjected. The length of any encasement under the roadway shall be provided from top of backslope to top of backslope for cut sections, five feet beyond the toe of slope for fill sections, and five feet beyond the face of the curb for curb sections. These lengths of encasement include areas under center medians and outer separations, unless otherwise specifically addressed in subsections (b)-(f) of this section.

(D) The department will provide an example graphic upon request of a typical section showing encasement lengths.

(2) Depth. Where placements at the depths in this section are impractical or where unusual conditions exist, the department may allow installations at a lesser depth, but will require other means of protection, including encasement or the placement of a reinforced concrete slab. Reinforced concrete slabs or caps shall meet the following standards:

(A) width -- five feet, or three times the diameter of the pipe, whichever is greater;
(B) thickness -- six inches, at minimum;
(C) reinforcement -- #4 bars at 12 inch centers each way or equivalent reinforcement; and
(D) cover -- no less than six inches of sand or equivalent cushion between the bottom of the slab/cap and the top of the pipe.
(3) Manholes.

(A) Manholes shall not be installed unless necessary for installation and maintenance of underground lines. In no case shall a manhole be placed or permitted to remain in the pavement or shoulder of a highway. However, on noncontrolled access highways in urban areas, the district may, in its discretion, allow existing lines to remain in place under existing or proposed highways. In these cases, manholes may remain in place or be installed under traffic lanes of low volume highways in municipalities only if measures are taken to minimize the installations and to avoid locating them at intersections or in wheel paths.

(B) To conserve space, a manhole’s dimensions shall be the minimum acceptable by appropriate engineering and safety standards. The only equipment that may be installed in manholes located on the right of way is that essential to the normal flow of the utility, such as circuit reclosers, cable splices, relays, valves, and regulators. Other equipment, such as substation equipment, large transformers, and pumps, shall be located outside the right of way.

(C) Inline manholes are the only type permitted within the right of way. The width dimensions shall be no larger than necessary to hold equipment involved and to meet safety
standards for maintenance personnel. Outside width, the
dimension of the manhole perpendicular to the highway, shall not
exceed ten feet, with the length to be held to a reasonable
minimum. The outside diameter of the manhole chimney at the
ground level shall not exceed 36 inches, except that if the
utility demonstrates necessity, the district may, at its
discretion, allow an outside diameter of up to 50 inches. The
top of the roof of the manhole shall be five feet or more below
ground level.

(D) All manhole covers shall be installed flush with
the ground or pavement structure. In order to minimize
vandalism, manhole covers must weigh at least 175 pounds.

(E) Manholes shall be straight, inline installations
with a minimum overall width necessary to operate and maintain
the enclosed equipment. The utility is responsible for any
adjustment of the manhole rim that may be needed to meet grade
changes.

(4) Installation.

(A) Utility facilities [Lines] placed beneath any
existing highway shall be installed by boring or tunneling.
Jacking may not be used unless approved in writing by the
district. The district may require encasement of lines
installed by boring or jacking. The use of explosives is prohibited. Pipe bursting or fluid/mist jetting may be allowed at the discretion of the department.

(B) For rural, uncurbed highway crossings, all borings shall extend beneath all travel lanes. Unless precluded by right of way limitations, the following clearances are required for rural highway crossings:

(i) 30 feet from all freeway mainlanes and other high-speed (exceeding 40 mph) highways except as indicated in clauses (ii)-(iv) of this subparagraph;

(ii) 16 feet for high-speed highways with current average daily traffic volumes of 750 vehicles per day or fewer;

(iii) 16 feet for ramps; or

(iv) ten feet for low-speed (40 mph or less) highways.

(C) Annular voids greater than one inch between the bore hole and carrier line (or casing, if used) shall be filled with a slurry grout or other flowable fill acceptable to the department to prevent settlement of any part of the highway facility over the line or casing.

(D) For curbed highway crossings, all borings shall extend beneath travel and parking lanes and extend beyond the back of curb, plus:
(i) 30 feet from facilities with speed limits of 40
mph or greater; or
(ii) five feet from facilities with speed limits of
less than 40 mph or less, plus any additional width necessary to
clear an existing sidewalk.

(E) Where circumstances necessitate the excavation of a
bore pit or the presence of directional boring equipment closer
to the edge of pavement than set forth in paragraphs (2) or (3)
of this subsection, approved protective devices shall be
installed for protection of the traveling public in accordance
with §21.38 of this subchapter. Bore pits shall be located and
constructed in such a manner as not to interfere with the
highway structure or traffic operations. If necessary, shoring
shall be utilized for the protection of the highway, and must be
approved by the district.

(F) All traffic control devices, including signs,
markings, or barricades used to warn motorists and pedestrians
of the construction activity must conform to the TMUTCD.

(G) When trenching longitudinally, backfill or
stabilized sand shall be compacted to densities equal to that of
the surrounding soil.

(5) Nonmetallic pipe detection. Where nonmetallic pipe
is installed, whether longitudinally or at a crossing, a durable
metal wire or other district-approved means of detection shall be concurrently installed.

(6) Unsuitable conditions. The following conditions are generally unsuitable or undesirable for pipeline crossings and shall be avoided:

(A) deep cuts;

(B) locations near footings or bridges and retaining walls;

(C) crossing intersections at-grade or ramp terminals;

(D) locations at cross-drains where the flow of water may be obstructed;

(E) locations within basins or underpasses drained by pump if the pipeline carries a liquid or liquefied gas; or

(F) terrain where minimum depth of cover would be difficult to attain.

(7) Clearances. Except as specified in this subchapter, there shall be a minimum of 12 inches vertical and horizontal clearance between a new utility facility [pipeline] and an existing utility facility, unless a greater clearance is required by the district. However, if an installation of another utility facility or highway feature cannot take place without disturbing an existing utility facility, the minimum clearance will be 24 inches.
(8) Crossings. A district may require crossings with no longitudinal connections to be encased within the right of way.

(9) Drainage easements. Where it is necessary for pipelines to cross department drainage easements outside of the right of way, the depth of cover shall be as specified for each type of utility facility. In cases where soil conditions are such that erosion might occur, or where it is not feasible to obtain specified depth, it shall be the responsibility of the utility to install retards, energy dissipators, encasement, or concrete or equivalent slabs/caps over the pipe, as approved by the department. Where grades on the pipelines must be maintained, such as gravity flow sewer lines, each case will be reviewed on an individual basis, keeping in mind that the main purpose of the channel is to carry drainage water and that this flow must not be obstructed. The utility [owner] is responsible for obtaining any other approvals to occupy the drainage easement.

(10) Existing installations in a highway or transportation project. At the district's discretion, existing longitudinal utility facilities [lines] in a highway or transportation project that otherwise meet the requirements of this subchapter may remain in place if the utility facilities [lines]:

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(A) can be maintained in accordance with §21.37(b)(2) of this subchapter; and

(B) are not located under the pavement structure or shoulder of any proposed or existing highway.

(11) Markers. If a high pressure pipeline [gas or liquid petroleum line] crosses a highway, the utility shall place a readily identifiable, durable, and weatherproof marker over the centerline of the pipe at each right of way line. Readily identifiable, durable, and weatherproof markers shall be placed at a minimum distance of 500 feet or line of sight at the right of way line for pipelines installed longitudinally within the right of way. All markers shall indicate the name, address, emergency telephone number of the utility [owner/operator], and offset from the right of way line. For gas, [or] petroleum, or saltwater pipelines, the pipeline product, operating pressure, and depth of pipe below grade shall also be indicated on the markers. At locations where underground utility facilities [utilities] have been allowed to cross at an angle other than 90 degrees to centerline, the district may require additional markers in the medians and outer separations of the highway.

(12) Backfilling. Underground utility facility installations shall be backfilled with pervious material and outlets for underdrainage.

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(13) Underdrainage. Underdrains shall be provided where necessary. No puddling beneath the highway will be permitted.

(b) Gas and liquid petroleum pipelines and saltwater pipelines.

(1) Low-pressure pipelines.

(A) Depth of cover for crossings. Depth of cover is the depth to the top of the carrier pipe or casing, as applicable. Where materials and other conditions justify, such as on existing pipelines remaining in place, the district may require a minimum depth of cover under the pavement structure of 12 inches or one-half the diameter of the pipe, whichever is greater.

(i) For encased low-pressure gas pipelines, the minimum depth of cover shall be:

(I) 18 inches or one-half the diameter of the pipe, whichever is greater, under pavement structure;

(II) 24 inches outside pavement structure and under ditches (original unsilted flowline); or

(III) 30 inches for unencased sections of encased pipelines outside of pavement structure.

(ii) For unencased low-pressure gas pipelines, the minimum depth of cover shall be:

(I) 60 inches under the pavement surface or
1 inches under the pavement structure for paved areas;
2
   (II) 48 inches outside paved areas and under
ditches (original unsilted flowline); or
4
   (III) a lesser depth if authorized by the district
5 where a reinforced concrete slab is used to protect the
6 pipeline.
7
   (B) Depth of cover for longitudinal placement. The
8 minimum depth of cover for longitudinal installations shall be
9 36 inches.
10
   (C) Encasement. Low-pressure gas pipelines crossing the pavement shall be placed in a steel encasement.
11 The district may waive this encasement requirement if the
12 pipeline is of welded steel construction and is protected
13 from corrosion by cathodic protective measures or cold tar epoxy
14 wrapping, and the utility signs a written agreement that the
15 pavement will not be cut for pipeline repairs at any time in the
16 future.
17
   (D) Vents. One or more vents shall be provided for
18 each casing or series of casings. For casings longer than 150
19 feet, vents shall be provided at both ends. On shorter casings,
20 a vent shall be located at the high end with a marker placed at
21 the low end. Vents shall be placed at the right of way line
22 immediately above the pipeline, situated so as not to interfere

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with highway maintenance or be concealed by vegetation, and
shall be no greater than six inches in diameter. The owner's
name, address, and emergency telephone number shall be shown on
each vent.

(E) Plastic lines. Plastic lines shall be encased
within the right of way on crossings, and must have at least 30
inches of cover.

(F) Aboveground appurtenances. Except for vents, no
above ground utility appurtenances for gas lines shall be
permitted within the right of way.

(2) High-pressure pipelines and saltwater pipelines
[lines].

(A) Depth of cover for crossings.

(i) Depth of cover is the depth to the top of the
carrier pipe or casing, as applicable. Where materials and
other conditions justify, such as on existing lines remaining in
place, the district may approve a minimum depth of cover under
the pavement structure of 12 inches or one-half the diameter of
the pipe, whichever is greater. For encased high-pressure
pipeline [gas or liquid petroleum lines], the minimum depth of
cover shall be:

(I) the greater of 18 inches or one-half the
diameter of the pipe, under pavement structures;
(II) 30 inches if the line is outside the pavement structure or under a ditch; or

(III) 36 inches for unencased sections of encased lines outside the pavement structure.

(ii) Where a reinforced concrete slab is used to protect the pipeline, the district may authorize a reduction in the depths specified in this section. For unencased high-pressure pipelines [gas or liquid petroleum lines], the minimum depth of cover is as follows:

(I) 60 inches under the pavement surface or 18 inches under the pavement structure in paved areas; or

(II) 48 inches if the line is placed outside the pavement structure or under a ditch.

(B) Depth of cover for longitudinal placement. The minimum depth of cover shall be 48 inches.

(C) Encasement. Casing shall consist of a vented steel pipe.

(D) Unencasement.

(i) Where encasement is not employed, the utility shall show that the welded steel carrier pipe will provide sufficient strength to withstand the internal design pressure and the dead and live loads of the pavement structure and traffic. Additional protective measures must include:
(I) heavier wall thickness, higher factor of safety in design, or both;

(II) adequate coating and wrapping;

(III) cathodic protection; and

(IV) the use of Barlow's formula regarding maximum allowable operating pressure and wall thickness, as specified in 49 CFR §192.105.

(ii) Shallow anode bed types exceeding 48 inches in width shall not be permitted in the right of way. All others must have a depth of coverage of at least 36 inches. Deep well anode beds of up to 60 inches in diameter are acceptable.

Rectifier and meter loop poles shall be placed at or near the right of way line.

(iii) The minimum length of the additional protection shall be the same as that required for an encased crossing.

(iv) The district may allow existing lines under low-volume highways to remain in place without encasement or extension of encasement if they are protected by a reinforced concrete slab or equivalent protection or if they are located at a depth of five feet under the pavement structure and not less than four feet under a highway ditch.

(E) Vents. Vents shall be installed at both ends of a casing, regardless of length, with a marker on at least one end.
Vents shall be placed at the right of way line immediately above the pipeline, situated so as not to interfere with highway maintenance or be concealed by vegetation. The owner's name, address, and emergency telephone number shall be shown on each vent marker.

(F) Aboveground appurtenances. Aboveground appurtenances, except vents for gas lines, shall not be permitted within the right of way.

(c) Water lines.

(1) Material type. All material types used for water lines shall conform to American Waterworks Association, applicable local requirements, and 30 TAC §290.44(a).

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below the pavement structure for crossings.

(3) Encasement. Unless another type of encasement is approved by the district, water lines crossing under paved highways must be placed in a steel encasement pipe within the limits of the right of way. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide. At the district's discretion, encasement under side road entrances may be omitted in consideration of traffic volume, condition of highway,
maintenance responsibility, or district practice. Existing water lines 24 inches or greater may be allowed to remain unencased under the pavement of new low volume highways, provided depth and all other requirements of 30 TAC §290.44 are met.

(4) Manholes. The width dimensions shall be no larger than is necessary to hold equipment involved and to meet safety standards for maintenance personnel. The maximum inside diameter of the manhole chimney shall not exceed 48 inches. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Aboveground appurtenances.

(A) Fire hydrants and valves. When feasible, fire hydrants and blow-off valves are to be located at the right of way line. Fire hydrants shall not be placed in the sidewalk or any closer than five feet from the back of the curb. Valve locations shall be placed so as not to interfere with maintenance of the highway.

(B) Water meters. Individual service meters shall be placed outside the limits of the right of way. Master meters for a point of service connection may be placed in a manhole with a maximum width of 48 inch inside diameter. If additional volume is required, a manhole with a neck of 60-inch depth must
be used.

(C) Service lines crossing highway by bore. Lines for customer service that cross the highway may be placed in a high-density polyethylene (HDPE) encasement pipe without joints (rolled pipe).

(d) Nonpotable water control facilities.

(1) Applicability. This subsection applies to agricultural irrigation facilities, water control improvement districts, municipal utility districts, flood control districts, canals, and similar nonpotable water control facilities.

(2) Depth of cover for buried pipe facilities. The minimum depth of cover, regardless of type of pipe used, shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement for buried pipe facilities. Unless the district approves another type of encasement, all non-potable water control lines crossing under paved highways within the right of way must be placed in a steel encasement pipe. At the district's discretion, encasement may be omitted under center medians and outer separations that are more than 76 feet wide.

(4) Location and design requirements. Open ditch facilities and buried pipe facilities designed and constructed in accordance with this subchapter may be installed across the
right of way. Longitudinal buried pipe facilities installed within the right of way must conform with §21.41(c) of this subchapter, consistent with the clearances applicable to all roadside obstacles. Open ditch facilities shall not be installed longitudinally within the right of way, nor will any aboveground appurtenances be permitted within the horizontal clearance.

(5) Levee/ditch travel road location. Coordination with and approval by the district is required where levee/ditch travel roads intersect the highway.

(e) Sanitary sewer lines.

(1) Material type. All material types used for sanitary sewer lines shall conform to 30 TAC §317.2 and applicable local requirements.

(2) Depth of cover. The minimum depth of cover shall be 30 inches, but not less than 18 inches below any pavement structure.

(3) Encasement. Pressurized line crossings under paved highways within the limits of the right of way shall be placed in a steel encasement pipe. Gravity flow lines not conforming to the minimum depth of cover shall be encased in steel or concrete. At the district’s discretion, encasement may be omitted under center medians and outer separations that are more

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than 76 feet wide.

(4) Manholes. Manholes serving sewer lines up to 12 inches shall have a maximum inside diameter of 48 inches. For lines larger than 12 inches, the manhole inside diameter may be increased an equal amount, up to a maximum diameter of 60 inches. Manholes for large interceptor sewers shall be designed to keep the overall dimensions to a minimum. The outside diameter of the manhole chimney at the ground level shall not exceed 36 inches.

(5) Lift stations. Lift stations and pump stations for sanitary sewer lines exceeding 48 inches inside diameter shall be located outside the limits of right of way.

(f) Electric and communication Lines.

(1) Underground electric lines.

(A) Depth of cover. All underground electric lines placed within the right of way may be installed by direct bury at depths according to the voltage of electric lines as required by the National Electrical Safety Code and as shown in the following chart.
Figure §21.40(f)(1)(A)

<table>
<thead>
<tr>
<th>Voltage</th>
<th>Minimum Depth of Cover</th>
</tr>
</thead>
<tbody>
<tr>
<td>22,000 or less</td>
<td>30 inches</td>
</tr>
<tr>
<td>22,001 to 40,000</td>
<td>36 inches</td>
</tr>
<tr>
<td>40,001 and greater</td>
<td>42 inches</td>
</tr>
</tbody>
</table>

(B) Encasement. Electric lines crossing the roadway shall be encased in steel or comparable material greater than or equal to that of ductile iron, with satisfactory joints, or materials and designs that will provide equal or better protection of the integrity of the highway system and resistance to damage from corrosive elements to which they may be exposed. The lines shall be buried a minimum of 36 inches under highway ditches, and 60 inches below the pavement structure. Encasement shall be provided as outlined in this section.

(C) Installation. Longitudinal underground electric lines may be placed by plowing or open trench method. All plowing and trenching shall be performed in a uniform alignment with the right of way. If the installation of the facility is found to deviate from the approved location, the district, at its sole discretion, may require the adjustment of the facility to the approved location. The utility facility shall be located as set forth in §21.37(b) of this subchapter.

(D) Aboveground appurtenances.
(i) Aboveground appurtenances installed as part of an underground electric line shall be located at or near the right of way line, and shall not impede highway maintenance or operations.

(ii) Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement or accommodation of other utility lines is apparent;

(V) the outside width, length (longitudinal with respect to the right of way), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project more than three inches above the ground line, nor extend more than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with
adjacent land uses.

(E) Manholes. Manholes serving electric and communication lines shall conform to the requirements of this section.

(F) Abandonment. Underground electric lines may be abandoned in place at the discretion of the district.

(2) Underground communication lines.

(A) Longitudinal. The minimum depth of cover for cable television and copper cable communications lines shall be 24 inches. The minimum depth of cover for fiber optic facilities shall be 42 inches. If the utility that owns [owner/operator of] a fiber optic facility waives damages and fully indemnifies the department in a form acceptable to the department, the minimum depth of cover may be reduced to not less than 36 inches.

(B) Crossings.

(i) The minimum depth of cover for cable television and copper cable communication lines shall be 24 inches under ditches or 18 inches beneath the bottom of the pavement structure, whichever is greater.

(ii) The top of the fiber optic facility shall be placed a minimum of 42 inches below the ditch grade or 18 inches below the pavement structure or 60 inches below the top of the
pavement surface, whichever is greater. The department may authorize a minimum depth of cover of not less than 36 inches below the ditch grade or 60 inches below the top of the pavement surface, whichever is greater, if the utility [owner/operator] waives damages and fully indemnifies the department in a form acceptable to the department.

(iii) The department may require encasement or other suitable protection when necessary to protect the highway facility when the line is located:

(I) at less than minimum depth;

(II) near the footing of a bridge or other highway structure; or

(III) near another hazardous location.

(iv) Unless the line is encased, installation shall be accomplished by boring a hole the same diameter as the line. The annular void between a drilled hole and the line or casing shall be filled with a material approved by the district to prevent settlement of any part of the highway facility over the line or casing.

(C) Installation. Lines may be placed by plowing or open trench method and shall be located on uniform alignment with the right of way and as near as practical to the right of way line to provide space for possible future highway
construction and for possible future utility installations.

(D) Multiple conduits.

(i) Shared conduits. When an existing utility rents, leases, or sells conduit usage to another utility, the new utility and the conduit owner must jointly submit a use and occupancy agreement before placement of a new line within the conduit.

(ii) Additional conduits. No more than two additional empty conduits may be added for every full conduit line, unless otherwise approved by the district.

(E) Aboveground appurtenances.

(i) Aboveground pedestals or other utility appurtenances installed as a part of an underground communication line shall be located at or near the right of way line, so as not to impede highway maintenance or operations.

(ii) Large equipment housings. Structures that are larger in plan view than single poles may be placed on the right of way if:

(I) the installation will not hinder highway maintenance operations;

(II) the housing will be placed at or near the right of way line;

(III) the installation will not reduce visibility

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and sight distance of the traveling public;

(IV) the dimensions of the housing are minimized, particularly where the need to allow space for highway improvement and accommodation of other utility lines is apparent;

(V) outside width, length (longitudinal), and height dimensions of the aboveground portion of the housing do not exceed 36 inches, 60 inches, and 54 inches respectively;

(VI) the supporting slab does not project further than three inches above ground line, nor extend further than 12 inches on either side of the housing structure; and

(VII) the installation will be compatible with adjacent land uses.

(F) Abandonment. Underground communication lines may be abandoned in place at the discretion of the district.
SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

§21.961. Purpose.

(a) The Texas Department of Transportation may lease any highway right of way not currently needed for highway purposes to a saltwater pipeline operator.

(b) This subchapter establishes leasing requirements and procedures for lease of right of way by saltwater pipeline operators and implements Natural Resources Code, Chapter 91 Subchapter T. This subchapter applies only to leasing and not to other permissive uses of the right of way.

(c) The procedure provided by this subchapter is separate from and in addition to the procedures established under Subchapter L of this chapter (Leasing of Highway Assets).

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

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Director--The director of the right of way division of the department or the director's designee.

(4) District--One of the 25 geographical district offices
of the department.

(5) District administrator--The chief executive officer in charge of a District.

(6) Executive director--The executive director of the department or the executive director’s designee not below the level of deputy executive director.

(7) Premises--The area within a right of way being leased by a saltwater pipeline operator for the installation, operation and maintenance of a saltwater pipeline facility.

(8) Right of way--An interest in real property that is held or controlled by the department for a highway purpose.

(9) Saltwater pipeline facility--A pipeline facility that conducts water containing salt and other substances produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from an oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal.

(10) Saltwater pipeline operator--A person, who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

§21.963. Lease of Right of Way for a Saltwater Pipeline
Facility.

(a) The director may execute the lease of the premises for the installation, operation, and maintenance of a saltwater pipeline facility if the director finds that:

(1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility;

(2) the area proposed as the premises will not be needed for highway purposes during the term of the lease; and

(3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and beautification of the state highway system.

(b) The lessee is required to pay to the department an amount determined by the department that is not less than fair market value for the lease of the premises. The department may consider its costs of administering the lease in establishing the amount charged.

(c) The term of the lease may not exceed 10 years, unless the lease contains a cancellation clause by which the department, in its sole discretion, may terminate the lease with not more than 12 months’ notice.

§21.964. Lease Request.

(a) To lease an area within the right of way a person must
submit, at the person’s sole expense, a written application to the district administrator of the district in which the right of way is located. The application must be in a form approved by the department and must include:

(1) the name and address of the person requesting the lease;

(2) a legal description of the proposed premises;

(3) A description of the saltwater pipeline facility to be installed, including the proposed size and depth of all pipelines and a description of any appurtenances;

(4) sketches or drawings that show:

(A) the proposed premises;

(B) the proposed Pipeline Facility to be constructed or installed;

(C) the existing highway facilities, existing utilities, and other improvements;

(D) all means of proposed access to the area; and

(E) with preliminary drainage plans, if applicable;

(5) adequate information to support a determination to authorize leasing of the proposed premises;

(6) the proposed term of the lease; and

(7) the name, address, and telephone number of the individual or entity that is authorized to furnish any
additional information requested by the department relating to
the application.

(b) In addition to the information required under
subsection (a) of this section, the district administrator may
request additional information, reports, engineering plans or
other data that the district administrator considers necessary
for compliance with this subchapter. The applicant shall
provide those requested items at its sole expense.

(c) As a condition for the lease of the premises,
department may require the saltwater pipeline operator to
furnish an attorney’s title opinion establishing to the
department’s satisfaction that the lease will be consistent with
property rights owned by others.

(d) The district administrator will forward the application
to the right of way division for processing.

(e) The district administrator will inform the applicant of
the actions taken on the application.

§21.965. Lease Agreement.

(a) A lease under this subchapter must be in writing, be
executed by the director, and contain the terms specified in
this section.

(b) The department may not execute a lease that would
imperior or relinquish the state's right to use the property when
needed to construct or improve the highway facility for which it
was acquired.

(c) If the proposed saltwater pipeline facility operator
does not obtain all required governmental approvals or permits
throughout the term of lease, the department will terminate the
lease.

(d) The lease must contain:

(1) information necessary for the department to contact
the lessee;

(2) the amount of rent, any required deposits, the term
of the lease and the method of payment of rental amounts;

(3) a detailed description of the premises, including
engineering plans of the proposed as-built saltwater pipeline
facility;

(4) a description of the authorized use of the Premises;

(5) a statement that any significant revision in the
design of the saltwater pipeline facility is subject to prior
written approval by the district administrator;

(6) a statement that the department has the right to
approve all construction and plans for construction on the
premises;

(7) permission for the employees and authorized
representatives of the department to enter the premises for the
inspection, maintenance, or reconstruction of highway facilities
or for determining compliance with the terms of the lease;

(8) a requirement that lessee maintain, at its sole expense, the saltwater pipeline facility located within the premises in good condition, both as to safety and appearance, and a representation that the required maintenance of the saltwater pipeline facility will not interfere with the highway facilities or the highway use;

(9) a statement that if the district administrator determines that the lessee has failed in its maintenance obligation, the department has the right to enter the premises to perform, at the expense and liability of the lessee, the work required for compliance;

(10) a statement that on breach of the lease by lessee, lessee:

(A) forfeits any deposits under the lease;

(B) shall pay the department for all expenses incurred by the department due to lessee’s failure to comply with the terms of the lease, including all of its litigation costs;

(11) a requirement that the lessee provide a security bond not to exceed six months rental under the lease, as provided under Transportation Code, §202.053;
(12) a requirement that lessee provide a removal bond in an amount equal to the anticipated future cost of removing any saltwater pipeline facilities and appurtenances, as well as the restoration and mitigation of the right of way to a suitable and safe, pre-lease condition, based on a removal, restoration, and mitigation plan approved by the department;

(13) a requirement that the lessee provide, and maintain at all times during the term of the lease, at lessee's sole expense, adequate public liability insurance for the premises, the conduct of lessee's business, and lessee's indemnification obligations to the department set forth in the lease, naming the department as an additional insured and including other endorsements as determined to be necessary by the department, in an amount and form acceptable to the department for the payment of any damage occurring to the right of way, the highway facilities and appurtenances and for the payment to the public for personal injury, loss of life, or property damage that may occur;

(14) a statement that the lease may be terminated as provided by §21.967 of this subchapter (Termination of Lease);

(15) A statement that neither the lease nor the premises shall be transferred, assigned, or conveyed to another party without prior written approval of the district administrator;
(16) a statement that the lessee shall keep the lease and any improvements on the premises free of all liens and may not use the lease or such an improvement as security for any loan, except that the department may allow the lessee to mortgage or otherwise pledge or grant a security interest in the leasehold interest to secure financing for the acquisition of the leasehold or for the construction and operation of the saltwater pipeline facility permitted under the lease, subject to the terms of the lease;

(17) a statement that the lessee is responsible for compliance with all federal, state, and local environmental laws and regulations, including obtaining any required permits or approvals by third parties or governmental entities;

(18) a statement that the lessee assumes all risks of loss resulting from the lease and indemnifies the department for any claims and losses related to the lease;

(19) a description of applicable nondiscrimination requirements;

(20) a requirement that the lessee promptly restore the highway facilities and any associated facilities in the right of way to their former condition of usefulness after the installation or maintenance of the saltwater pipeline facility is complete; and

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(21) any other provisions that the department considers desirable.

§21.966. Disposition of Payments. All payments received under this subchapter will be deposited into the state highway fund.

§21.967. Termination of Lease.

(a) The department will terminate a lease under this subchapter if the saltwater pipeline facility operator does not obtain all required governmental approvals or permits.

(b) The department may terminate a lease under this subchapter if in the department's sole opinion:

(1) the premises has been abandoned;

(2) the saltwater pipeline operator has not complied with the terms of the lease; or

(3) the premises is necessary for a conflicting highway purpose.

(c) The lease may contain a provision for early termination of the agreement by either party with or without cause.

(d) On termination of the lease for any reason, the saltwater pipeline operator shall remove the saltwater pipeline facility and to restore the right of way to the condition in which it existed on the date the lease was fully executed, at no
§21.968. Federal Highway Administration Approvals. All matters relating to the leasing of federal-aid highway right of way are subject to the approval of the Federal Highway Administration.

§21.969. Use of Right of Way under Lease. A saltwater pipeline operator’s use of right of way under a lease under this subchapter does not constitute an abandonment of the right of way by the department, nor create a property interest in the lessee.


   (a) The saltwater pipeline operator shall use the right of way beneath or above the established gradeline of a highway in conformance with §21.36 and §21.40 of this chapter and shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of highway facilities.

   (b) The saltwater pipeline operator may not install a saltwater pipeline facility in a location that will interfere with the visibility or reduce sight distance or in any other way interfere with the safety and free flow of traffic or level of
service on highway facilities.

(c) Any structural support for a saltwater pipeline facility to be constructed on the right of way shall be located to clear all horizontal and vertical dimensions specified by design standards of the department.

(d) The saltwater pipeline operator may not use right of way in any way that results in any person, whether or not a highway user, being unduly exposed to hazardous materials or conditions.

(e) The saltwater pipeline operator shall provide appropriate safety precautions and features necessary to minimize the possibility of injury to users of either highway facilities or the right of way. The department will not approve construction of saltwater pipeline facilities over or under highway facilities, unless the plans contain adequate provisions, acceptable to the department, for evacuation of the facilities in case of an accident that endangers those occupants.

(f) A saltwater pipeline facility must be fire resistant and conform with existing applicable local codes, a nationally accepted model construction standard, or other standards required by the department.

(g) The design, occupancy, and use of any saltwater
pipeline facility may not result in the use, safety, appearance, and the enjoyment of the highway facilities being adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind from the saltwater pipeline facility.

§21.971. Marker or Tracking Device. All markers or tracking devices to be located or maintained in the right of way by a lessee must have prior written approval by the district administrator and may contain only information that indicates ownership, contact information, or warning information.


(a) Construction or installation of the saltwater pipeline facility may not require any temporary or permanent change in alignment or profile of existing highway facilities unless the lessee obtains the department’s prior written approval of that change.

(b) If the department, in its sole discretion, approves changes in existing highway facilities under subsection (a) of this section, the lessee shall provide the changes at the lessee’s sole expense and without cost to the department.

(c) A saltwater pipeline facility shall be designed and constructed in a manner that will permit access to highway

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facilities for purposes of inspection, maintenance, and
reconstruction when necessary.