

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments §§21.31-21.40 relating to Utility Accommodation; and new §§21.961-21.972 relating to Leasing of Right of Way to Saltwater Pipeline Operators to be codified under Title 43, Texas Administrative Code, Part 1.

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.

Submitted and reviewed by:



Director, Right of Way

Recommended by:



Executive Director

113973 JUN 26 14

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §§21.31-21.40 concerning Utility Accommodation and
4 new Subchapter R, Leasing of Right of Way to Saltwater Pipeline
5 Operators, §§21.961-21.972.

6

7 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

8 The Texas Department of Transportation proposes new sections
9 concerning the implementation of Senate Bill 514, 83rd
10 Legislature, Regular Session, 2013, which adds Subchapter T of
11 the Natural Resources Code §§91.901-91.905, and authorizes a
12 saltwater pipeline operator to install, maintain, and operate a
13 pipeline through, under, along, across, or over a public road,
14 by lease agreement and other conditions set forth by the Texas
15 Transportation Commission. The goal of the bill is to encourage
16 the use of state right of way and the construction of saltwater
17 pipelines as a mechanism of transport for this wastewater from
18 drill sites to disposal injection wells. New Subchapter R is
19 added to 43 TAC Chapter 21 (§§21.961-21.972) setting forth the
20 leasing requirements. Additionally, the new sections make minor
21 and non-substantive changes to §§21.31-21.40 in Chapter 21,
22 Subchapter C, Utility Accommodations, to modify definitions and
23 terms of relocation for saltwater pipeline facilities in
24 conformance with Senate Bill 514.

25

1 Amendments to §21.31, Definitions, add definitions for
2 "saltwater", "saltwater pipeline", and "saltwater pipeline
3 operator." This section also broadens other definitions to
4 include saltwater and saltwater pipelines. This section expands
5 the definition of a private utility to include saltwater
6 pipeline facilities while specifically excluding saltwater
7 pipeline facilities from the definition of a public utility.

8
9 Amendments to §21.32, Purpose, clarify that the subchapter
10 applies to utility facilities within the state highway system's
11 right of way.

12
13 Amendments to §21.33, Applicability, specify the facilities to
14 which the subchapter applies.

15
16 Amendments to §21.34, Scope, clarify that the subchapter governs
17 matters concerning accommodation, location, and methods for the
18 installation, adjustment, relocation, and maintenance of
19 "utility facilities on state highway rights of way" rather than
20 "utilities on state highway rights of way." The term "utility"
21 is defined as an entity that owns a utility facility, which is
22 also a defined term.

23
24 Amendments to §21.35, Exceptions, correct the usage of the terms
25 "utility" and "utility facility" within that section.

1
2 Amendments to §21.36, Rights of Utilities, provides that, in
3 accordance with Transportation Code, §91.902, a saltwater
4 pipeline operator may place a saltwater pipeline facility over,
5 under, or across a highway, subject to highway purposes and may
6 be allowed to place such a facility longitudinally within a
7 highway right of way, but only by lease.

8
9 Amendments to §21.37, Design, provide consistency in the usage
10 of the term "utility facility." The amendments also clarify
11 that permission from the department is required to attach any
12 utility facility to the structure of a bridge that is on the
13 state highway system.

14
15 Amendments to §21.38, Construction and Maintenance, provide
16 consistency in the usage of the terms "utility facility" and
17 "high-pressure pipeline."

18
19 Amendments to §21.39, Ownership, Function, Abandonment, and
20 Idling of Facilities, require the operator of a saltwater
21 pipeline facility located by lease within the state's right of
22 way to obtain the department's written approval before
23 transferring ownership of the facility. The amendments also
24 provide consistency in the usage of the term "utility facility."

25

1 Amendments to §21.40, Underground Utilities, provide consistency
2 in the usage of the terms "utility," "utility facility," and the
3 various pipeline terms.

4

5 New Subchapter R consists of §§21.961-21.972.

6

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

12

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

15

16 New §21.963, Lease of Right of Way for a Saltwater Pipeline
17 Facility, authorizes the director of the right of way division
18 or the director's designee to execute the lease of an area
19 within a right of way for the installation, operation, and
20 maintenance of a saltwater pipeline facility on a finding that
21 (1) there is sufficient area within the right of way to
22 accommodate the saltwater pipeline facility, (2) the area to be
23 leased will not be needed for highway purposes during the term
24 of the lease, and (3) the lessee's use of the right of way will
25 be consistent with safety, maintenance, operation, and

1 beautification of the state highway system. The section
2 provides that payment for the lease may not be less than fair
3 market value, that costs of administering the lease may be
4 considered in establishing the amount charged for the lease, and
5 that the term of the lease may exceed 10 years only if the lease
6 contains a provision allowing the department to terminate the
7 lease with not more than 12 months' notice.

8

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

15

16 New §21.965, Lease Agreement, describes the agreement between
17 the department and the saltwater pipeline operator. The
18 agreement must be in writing, executed by the right of way
19 division director, and approved by the Federal Highway
20 Administration. The agreement may not impair the states use of
21 the State's right of way for highway uses. The section
22 specifies that information that is required to be included in
23 the lease, including the term of the lease, the lease payment
24 amounts, and the bond requirements.

25

1 New §21.966, Disposition of Payments, declares that all payments
2 received shall be deposited in the state highway fund.

3

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

13

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

18

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

24

25 New §21.970, Clearances, Safety Requirements, and Standards,

1 requires strict adherence to the standards of utility
2 accommodation rules. This section provides that the saltwater
3 pipeline facility may in no way interfere with the safety and
4 free flow of traffic on the highway facility. The section also
5 sets forth that a saltwater pipeline facility may not adversely
6 affect the use, safety, and appearance of the highway facility.

7
8 New §21.971, Marker or Tracking Device, requires department
9 approval of all markers or tracking devices to be located within
10 the highway right of way.

11
12 New §21.972, Changes of and Access to Highway Facilities,
13 provides that a saltwater pipeline facility may not require
14 change in alignment of an existing highway facility without
15 department approval. This section also requires that during
16 construction, the saltwater pipeline facility must permit access
17 to the highway facility.

18
19 FISCAL NOTE

20 James Bass, Chief Financial Officer, has determined that for
21 each of the first five years in which the amendments and new
22 sections as proposed are in effect, there will be no fiscal
23 implications for state or local governments as a result of
24 enforcing or administering the amendments and new sections.

25

1 John Campbell, Director, Right of Way Division, has certified
2 that there will be no significant impact on local economies or
3 overall employment as a result of enforcing or administering the
4 amendments and new sections.

5

6 PUBLIC BENEFIT AND COST

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

16

17 PUBLIC HEARING

18 Pursuant to the Administrative Procedure Act, Government Code,
19 Chapter 2001, the Texas Department of Transportation will
20 conduct a public hearing to receive comments concerning the
21 proposed rules. The public hearing will be held at 9:00 a.m. on
22 July 25, 2014, in the Ric Williamson Hearing Room, First Floor,
23 Dewitt C. Greer State Highway Building, 125 East 11th Street,
24 Austin, Texas and will be conducted in accordance with the
25 procedures specified in 43 TAC §1.5. Those desiring to make

1 comments or presentations may register starting at 8:30 a.m.
2 Any interested persons may appear and offer comments, either
3 orally or in writing; however, questioning of those making
4 presentations will be reserved exclusively to the presiding
5 officer as may be necessary to ensure a complete record. While
6 any person with pertinent comments will be granted an
7 opportunity to present them during the course of the hearing,
8 the presiding officer reserves the right to restrict testimony
9 in terms of time and repetitive content. Organizations,
10 associations, or groups are encouraged to present their commonly
11 held views and identical or similar comments through a
12 representative member when possible. Comments on the proposed
13 text should include appropriate citations to sections,
14 subsections, paragraphs, etc. for proper reference. Any
15 suggestions or requests for alternative language or other
16 revisions to the proposed text should be submitted in written
17 form. Presentations must remain pertinent to the issues being
18 discussed. A person may not assign a portion of his or her time
19 to another speaker. Persons with disabilities who plan to
20 attend this meeting and who may need auxiliary aids or services
21 such as interpreters for persons who are deaf or hearing
22 impaired, readers, large print or Braille, are requested to
23 contact Government and Public Affairs Division, 125 East 11th
24 Street, Austin, Texas 78701-2483, (512) 463-6086 at least five
25 working days prior to the hearing so that appropriate services

1 can be provided.

2

3 SUBMITTAL OF COMMENTS

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

15

16 STATUTORY AUTHORITY

17 The amendments and new sections are proposed under
18 Transportation Code, §201.101, which provides the Texas
19 Transportation Commission with the authority to establish rules
20 for the conduct of the work of the department, and more
21 specifically, Transportation Code, §§202.052 and 202.053, which
22 authorize the department to lease a highway right of way and
23 Natural Resources Code, §91.902, which authorizes the Texas
24 Transportation Commission to adopt rules to implement Natural
25 Resources Code, Chapter 91, Subchapter T.

- 1
- 2 CROSS REFERENCE TO STATUTE
- 3 Natural Resources Code, Chapter 91, Subchapter T and
- 4 Transportation Code, Chapter 202, Subchapter C.

1 SUBCHAPTER C. UTILITY ACCOMMODATION

2 §21.31. Definitions. The following words and terms, when used
3 in this subchapter, shall have the following meanings, unless
4 the context clearly indicates otherwise.

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

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

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

11 (B) is unknown or cannot be located.

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

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

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

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

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

23 (8) Certified as-installed construction plans--The

1 construction plans for the installation of a utility facility,
2 accompanied by an affidavit certifying that the facility was
3 installed in accordance with the plans.

4 (9) Commission--The Texas Transportation Commission.

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

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

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

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

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

18 (15) Design vehicle load (HS-20)--A design load
19 designation used for bridge design analysis representing a
20 three-axle truck loaded with four tons on the front axle and 16
21 tons on each of the other two axles. The HS-20 designation is
22 one of many established by AASHTO for use in the structural
23 design and analysis of bridges.

1 (16) Director--The chief administrative officer in charge
2 of either the Maintenance Division or the Right of Way Division,
3 or a successor division of either the Maintenance Division or
4 the Right of Way Division.

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

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

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

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

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

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

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

23 (24) Freeway--A divided highway with frontage roads or

1 full control of access.

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

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

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

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

1 square inch.

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

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

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

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

20 (33) Low-pressure pipeline [~~gas or liquid petroleum~~
21 lines]~~--A pipeline that is [Gas or liquid petroleum pipelines~~
22 ~~that are]~~ operated at a pressure not exceeding 60 pounds per
23 square inch.

1 (34) Mainlanes--The traveled way of a freeway or
2 controlled access highway that carries through traffic.

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

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

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

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

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

18 (40) Public utility--A person, firm, corporation, river
19 authority, municipality, or other political subdivision that is
20 engaged in the business of transporting or distributing a
21 utility product that directly or indirectly serves the public
22 and that is authorized by state law to operate, construct, and
23 maintain its facilities over, under, across, on, or along

1 highways. The term includes a common carrier and a gas
2 corporation. This term does not include a saltwater pipeline
3 operator whose only right to occupy state right of way is by a
4 lease under Natural Resources Code, §91.902.

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

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

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

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

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

22 (46) Saltwater pipeline operator--A person, firm,
23 corporation or other entity that owns, installs, manages,

1 operates, leases, or controls a saltwater pipeline that is not a
2 public utility.

3 (47) [~~44~~] Service line--A utility facility that conveys
4 electricity, gas, water, or telecommunication services from a
5 main or conduit located in the right of way to a meter or other
6 measuring device that services a customer or to the outside wall
7 of a structure, whichever is applicable and nearer the right of
8 way.

9 (48) [~~45~~] TMUTCD--The most recent edition of Texas
10 Manual on Uniform Traffic Control Devices for Streets and
11 Highways.

12 (49) [~~46~~] Traffic impact analysis--A traffic
13 engineering study that determines the potential current and
14 future traffic impacts of a proposed traffic generator and that
15 is signed, sealed, and dated by an engineer licensed to practice
16 in the state of Texas.

17 (50) [~~47~~] Transmission line--That part of a utility
18 system connecting a main energy or material source with a
19 distribution system.

20 (51) [~~48~~] Use and occupancy agreement--The written
21 document, whether in the form of an agreement, acknowledgment,
22 notice, or request, by which the department approves the use and
23 occupancy of highway right of way by utility facilities.

1 (52) [~~(49)~~] Utility--Any entity owning a utility
2 facility. [~~public or private utility.~~]

3 (53) [~~(50)~~] Utility appurtenances--Any attachments or
4 integral parts of a utility facility, including fire hydrants,
5 valves, communication controller boxes and pedestals, electric
6 boxes, and gas regulators.

7 (54) [~~(51)~~] Utility facilities--All utility lines,
8 pipelines, saltwater pipelines, conduits, cables, and their
9 appurtenances within the highway right of way except those for
10 highway-oriented needs, including underground, surface, or
11 overhead facilities either singularly or in combination, which
12 may be transmission, distribution, service, or gathering lines.

13 (55) [~~(52)~~] Utility product--The product [~~A commodity~~],
14 such as water, saltwater, steam, electricity, gas, oil, or crude
15 resources or communications, cable television, or waste disposal
16 services, carried by the utility facility. [~~that directly or~~
17 ~~indirectly serves the public.~~]

18 (56) [~~(53)~~] Utility strip--The area of land established
19 within a control of access highway, located longitudinally
20 within the area between the outer traveled way and the right of
21 way line, for the nonexclusive use, occupancy, and access by one
22 or more authorized [~~public~~] utilities.

23 (57) [~~(54)~~] Utility structure--A pole, bridge, tower, or

1 other aboveground structure on which a conduit, line, pipeline,
2 or other utility facility is attached.

3

4 §21.32. Purpose. This subchapter prescribes the minimum
5 requirements for the accommodation, method, materials, and
6 location for the installation, adjustment, and maintenance of
7 utility facilities [~~public and private utilities~~] within the
8 right of way of the state highway system. These requirements
9 are provided in the interests of the safety, protection, use,
10 and future development of highways with due consideration given
11 to the public service afforded by adequate and economical
12 utility facilities [~~installations~~].

13

14 §21.33. Applicability.

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

18 (1) new utility facility installations;

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

21 (3) adjustments or relocations of utility facilities
22 [~~utilities~~]; and

23 (4) existing utility facilities [~~installations~~] retained

1 within the right of way.

2 (b) The provisions of this subchapter concerning utility
3 accommodation do not apply to utility facilities [~~utilities~~]
4 located within the rights of way of completed highways for which
5 agreements with the department were entered into before the
6 effective date of this subchapter.

7 (c) This subchapter applies to utility facilities [~~lines~~]
8 not specifically mentioned in accordance with the nature of the
9 utility facility [~~line~~]. All pipelines [~~lines~~] carrying
10 corrosive, caustic, flammable, [or] explosive, or otherwise
11 hazardous materials and saltwater pipelines shall conform to the
12 provisions for high-pressure pipelines. [~~gas and liquid fuel~~
13 ~~lines.~~]

14 (d) The district engineer may prescribe special district
15 supplemental accommodation requirements on a specific
16 installation or adjustment based on the specific soil, terrain,
17 climate, vegetation, traffic characteristics, type of utility
18 facility [~~line~~], or other factors unique to the area. If the
19 district supplemental accommodation requirements are more strict
20 than the minimum requirements of this subchapter, the
21 supplemental accommodation requirements must be detailed in
22 writing.

23

1 §21.34. Scope. This subchapter governs matters concerning
2 accommodation, location, and methods for the installation,
3 adjustment, relocation, and maintenance of utility facilities
4 [~~utilities~~] on state highway rights of way, but does not alter
5 current authority for their installation nor determination of
6 financial responsibilities for placement or adjustment. To the
7 extent that a federal or state law, code, regulation, rule, or
8 order prescribes a higher degree of protection for highway
9 facilities or the traveling public than the protection provided
10 by this subchapter, the federal or state provision controls.

11

12 §21.35. Exceptions.

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

17 (1) the Right of Way Division Director using the form
18 entitled "Certification for Utility Accommodation" for all
19 utility facilities [~~utilities~~] occupying the right of way under
20 a utility joint use agreement; or

21 (2) the Maintenance Division Director, when a use and
22 occupancy agreement, other than a utility joint use agreement,
23 is received for a proposed utility facility installation on an

1 existing highway.

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

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

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

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

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

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

22

23 §21.36. Rights of Utilities.

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

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

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

19 (d) [~~(e)~~] If an entity requests the installation of a new
20 utility facility or the adjustment or relocation of an existing
21 utility facility longitudinally within a highway right of way
22 and the entity's legal authority to install, adjust, or relocate
23 its facility longitudinally within the highway right of way is

1 not readily evident, the department may require that the entity
2 provide:

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

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

11

12 §21.37. Design.

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

23 (1) the requirements of this subchapter;

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

4 (3) 23 CFR Part 645B, Accommodation of Utilities;

5 (4) 49 CFR Part 192, Transportation of Natural and Other
6 Gas by Pipeline: Minimum Federal Safety Standards;

7 (5) 49 CFR Part 195, Transportation of Hazardous Liquids
8 by Pipeline;

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

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

13 (8) 30 TAC §§290.38 - 290.47, relating to Rules and
14 Regulations for Public Water Systems;

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

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

20 (b) Location.

21 (1) Utility facilities [~~lines~~] shall be located to avoid
22 or minimize the need for adjustment for future highway projects
23 and improvements, to allow other utilities equal access in the

1 right of way, and to permit access to utility facilities for
2 their maintenance with minimum interference to highway traffic.

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

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

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

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

19 (6) A utility facility on controlled access highways or
20 freeways shall be located to permit maintenance of the facility
21 by access from frontage roads, nearby or adjacent roads and
22 streets, or trails along or near the right of way line without
23 access from the mainlanes or ramps. A utility facility may not

1 be located longitudinally in the center median or outer
2 separation of controlled access highways or freeways.

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

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

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

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

18 (ii) survey data as directed by the department to
19 identify and designate the location of a utility strip, the
20 utility strip's relationship to existing highway facilities and
21 the right of way line, and the specific area of use, occupancy,
22 and access for installation and maintenance of the utility
23 facility;

1 (iii) a plan for the utility's access to, from, and
2 within the utility strip with clearly described procedures that
3 preserve the safety and free flow of traffic on the controlled
4 access highway or freeway during installation, maintenance, and
5 emergency service or repair of the utility facility; and

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

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

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

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

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

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

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

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

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

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

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

1 opinion of the district.

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

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

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

15 (5) As-built plans or certified as-installed construction
16 plans shall include the installed location, vertical elevations,
17 and horizontal alignments of the utility facility based upon the
18 department's survey data, the relationship to existing highway
19 facilities and the right of way line, and access procedures for
20 maintenance of the utility facility. As-installed construction
21 plans certified by a utility or its representative shall be
22 submitted to the department for each relocation or new
23 installation. In the alternative, if approved by the director

1 of the Maintenance Division or Right of Way Division, a district
2 may require a utility to deliver either as-installed
3 construction plans that are certified by an independent party or
4 final as-built plans that are signed and sealed by an engineer
5 or registered professional land surveyor. In determining
6 whether to authorize a requirement for independently certified
7 or signed and sealed plans, the director shall consider:

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

11 (B) the type of utility facility; and

12 (C) [+B+] past performance of the utility in providing
13 accurate location data and conformance with its certified as-
14 installed construction plans.

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

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

23 (B) the complexity of required traffic control plans;

1 (C) the type of utility facility;
2 (D) [+E] whether the installation or adjustment
3 activity requires a storm water pollution prevention plan; and
4 (E) [+D] the utility's past performance in providing
5 accurate location data and conformance with its construction
6 plans.

7 (d) Tunnels and bridges.

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

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

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

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

22 (D) Where a casing is not provided for a pipeline on or
23 in a utility structure, additional protective measures shall be

1 taken, such as employing a higher factor of safety in the
2 design, construction, and testing of the pipeline than would be
3 required for cased construction.

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

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

12 (G) Sectionalized block valves shall be installed in
13 lines at or near ends of utility structures, pursuant to 49 CFR
14 §192.179, Transmission Line Valves, unless segments of the lines
15 can be isolated by other sectionalizing devices within a
16 distance acceptable to the department.

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

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

23 (2) Non-interstate highways. If a utility facility

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

17 (e) Joint use of utility and highway structures.

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

21 (2) Where other arrangements for a utility facility
22 ~~[line]~~ to span an obstruction are not feasible, the utility may
23 submit a request to the district for attachment of the utility

1 facility [~~line~~] to a bridge structure through a bridge
2 attachment agreement. Each attachment will be considered on an
3 individual basis, and permission to attach will not be
4 considered as establishing a precedent for granting of
5 subsequent requests for attachment.

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

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

1 spare conduits.

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

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

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

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

18 (f) Aesthetics. A utility will notify the department
19 before removing, trimming, or replacing trees, bushes,
20 shrubbery, or any other aesthetic features. The department must
21 approve the extent and method of removal, trimming, or
22 replacement of trees, bushes, shrubbery, or any other aesthetic
23 feature.

1 (g) Design and construction responsibility.

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

4 (2) If a state highway improvement project requires the
5 adjustment or relocation of a communication, water, or waste
6 water facility that is 100 percent reimbursable by the
7 department under the requirements of Transportation Code,
8 §203.092 or the adjustment or relocation of a facility of an
9 electric distribution provider, such as an electric service
10 corporation, regional electric cooperative, or municipal or
11 joint-agency electric service provider, that is 100 percent
12 reimbursable by the department under the requirements of
13 Transportation Code, §203.092, the utility by agreement with the
14 executive director may authorize the department to procure the
15 design of an adjustment or relocation and include the resulting
16 plan in the construction contract for the adjustment or
17 relocation.

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

22 (4) The utility must approve the resulting plan for the
23 adjustment or relocation before it may be included in the

1 construction contract. The utility is responsible for ensuring
2 that the design and construction meet all regulatory and
3 environmental compliance requirements.

4 (5) The agreement must provide for:

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

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

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

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

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

22 (9) All provisions of this subchapter and 43 TAC Chapter
23 21, Subchapter B that apply to the design, estimates, and scope

1 of an adjustment or relocation apply to a project carried out
2 under an agreement entered into under this subsection.

3

4 §21.38. Construction and Maintenance.

5 (a) General.

6 (1) A utility is responsible for the construction and
7 maintenance of its utility facility, including installation,
8 adjustment or relocation, replacement, expansion, and repair.
9 Construction and maintenance must conform to the requirements of
10 §21.37 of this subchapter (relating to Design) and shall be
11 accomplished in a manner and to a standard acceptable to the
12 department.

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

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

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

1 situation, the utility shall notify the district as soon as
2 possible.

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

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

10 (b) Vegetation and site clean-up.

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

19 (2) To preserve and protect trees, bushes, and other
20 aesthetic features on the right of way, the department may
21 specify the extent and methods of tree, bush, shrubbery, or any
22 other aesthetic feature's removal, trimming, or replacement, in
23 conjunction with paragraph (1) of this subsection. The district

1 engineer shall use due consideration in establishing the value
2 of trees and other aesthetic features in the proximity of a
3 proposed utility facility and any special district requirements
4 justified by the value of the trees and other aesthetic
5 features.

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

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

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

23 (6) The utility shall reimburse the department for all

1 costs incurred to repair damage to the right of way that results
2 from the actions of the utility. These costs may include
3 restoration of and repairs to the pavement structure, drainage
4 structures, terrain, landscaping, or fences.

5 (c) Traffic control.

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

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

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

23 (d) Work restrictions.

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

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

12 (e) Utility work included in a highway construction
13 contract.

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

21 (A) including the adjustment or relocation of the
22 utility facility in the construction contract is necessary to
23 meet the construction sequencing of the state highway

1 improvement project or will expedite the project;

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

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

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

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

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

22 (3) If the adjustment or relocation of the utility
23 facility included in the construction contract is not 100

1 percent reimbursable by the department under the requirements of
2 Transportation Code, §203.092, the utility is responsible for
3 advancing or otherwise paying to the department the utility's
4 prorata share under state law of the funds necessary for
5 construction work related to the adjustment or relocation.

6 (4) An agreement under this subsection must provide:

7 (A) the estimated cost of the construction work related
8 to the adjustment or relocation, including the cost of any
9 betterment, to be performed by the department's contractor, and
10 the utility's prorata share of the cost based on eligibility for
11 department cost participation under Transportation Code,
12 §203.092;

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

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

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

23 (E) that the utility is responsible for physically

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

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

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

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

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

23 (7) After completion of the construction work under an

1 agreement under this subsection, the utility is responsible for
2 any ongoing maintenance of the utility facility in compliance
3 with this section.

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

9 (9) All provisions of this subchapter and 43 TAC Chapter
10 21, Subchapter B (relating to Utility Adjustment, Relocation, or
11 Removal) that apply to the design, estimates, and scope of an
12 adjustment or relocation apply to a project carried out under an
13 agreement entered into under this subsection.

14

15 §21.39. Ownership, Function, Abandonment, and Idling of
16 Facilities

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

21 (1) provide the name, address, and phone number of the
22 new owner and a person to be contacted on matters concerning the
23 utility facility;

1 (2) acknowledge whether the new owner is a public
2 utility, common carrier, or other entity authorized by state law
3 to operate, construct, and maintain its lines over, under,
4 across, on, or along state highways as specified in §21.36(a) of
5 this subchapter; and

6 (3) update all call signs and markers.

7 (b) Saltwater pipeline facility change of ownership.
8 Notwithstanding subsection (a), if the utility facility is a
9 saltwater pipeline facility located within the state's right of
10 way by lease, the saltwater pipeline operator shall obtain
11 written approval from the department before ownership of the
12 saltwater pipeline facility may be transferred.

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

22 (d) [~~e~~] Abandonment or idling of facility.

23 (1) Notice. If a utility abandons or idles a utility

1 facility, it must, within a reasonable period of time, notify
2 the department of that status in writing and in the case of
3 abandonment, indicate whether the utility facility will be
4 removed or abandoned in place.

5 (2) Abandonment in place.

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

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

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

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

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

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

23 (vi) any additional information requested by the

1 department.

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

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

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

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

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

1 federal, state, or local laws or codes, or industry standards,
2 whichever are more stringent. If the pipeline [~~line~~] is
3 approved for abandonment in place, the utility shall:

4 (A) purge, cut, and cap or plug the ends of all
5 pipeline facilities at the right of way lines;

6 (B) submit to the department a written certification
7 that the abandonment conforms with all requirements of this
8 section, current federal, state, or local laws or codes, or
9 industry standards, whichever are more stringent;

10 (C) slurry-fill the pipeline [~~facility~~], if the
11 department determines it is needed due to the age, condition,
12 material type, quantity, and size of the facility; and

13 (D) disconnect each pipeline from all sources and
14 supplies of gas, purge each pipeline of gas and, in the case of
15 submerged pipelines, fill each pipeline with water or other
16 approved materials, and seal it at the ends.

17 (6) Abandoned gas service lines. For each gas service
18 line approved for abandonment in place, the utility shall:

19 (A) provide a locking device or other means designed to
20 prevent opening on each valve that is closed, to prevent the
21 flow of gas to the customer;

22 (B) install in the service line or in the meter
23 assembly a mechanical device or fitting that will prevent the

1 flow of gas;

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

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

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

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

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

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

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

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

22 (E) the location of the abandoned facilities; and

23 (F) any additional information requested by the

1 department.

2

3 §21.40. Underground Utilities.

4 (a) General.

5 (1) Encasement.

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

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

17 (C) Encasement may be of metallic or non-metallic
18 material. Encasement material shall be designed to support the
19 load of the highway and superimposed loads thereon, including
20 that of construction machinery. The strength of the encasement
21 material shall equal or exceed structural requirements for
22 drainage culverts and it shall be composed of material of
23 satisfactory durability for conditions to which it may be

1 subjected. The length of any encasement under the roadway shall
2 be provided from top of backslope to top of backslope for cut
3 sections, five feet beyond the toe of slope for fill sections,
4 and five feet beyond the face of the curb for curb sections.
5 These lengths of encasement include areas under center medians
6 and outer separations, unless otherwise specifically addressed
7 in subsections (b)-(f) of this section.

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

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

16 (A) width -- five feet, or three times the diameter of
17 the pipe, whichever is greater;

18 (B) thickness -- six inches, at minimum;

19 (C) reinforcement -- #4 bars at 12 inch centers each
20 way or equivalent reinforcement; and

21 (D) cover -- no less than six inches of sand or
22 equivalent cushion between the bottom of the slab/cap and the
23 top of the pipe.

1 (3) Manholes.

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

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

21 (C) Inline manholes are the only type permitted within
22 the right of way. The width dimensions shall be no larger than
23 necessary to hold equipment involved and to meet safety

1 standards for maintenance personnel. Outside width, the
2 dimension of the manhole perpendicular to the highway, shall not
3 exceed ten feet, with the length to be held to a reasonable
4 minimum. The outside diameter of the manhole chimney at the
5 ground level shall not exceed 36 inches, except that if the
6 utility demonstrates necessity, the district may, at its
7 discretion, allow an outside diameter of up to 50 inches. The
8 top of the roof of the manhole shall be five feet or more below
9 ground level.

10 (D) All manhole covers shall be installed flush with
11 the ground or pavement structure. In order to minimize
12 vandalism, manhole covers must weigh at least 175 pounds.
13 Manhole rings and covers must be designed for HS-20 loading.

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

19 (4) Installation.

20 (A) Utility facilities [~~Lines~~] placed beneath any
21 existing highway shall be installed by boring or tunneling.
22 Jacking may not be used unless approved in writing by the
23 district. The district may require encasement of lines

1 installed by boring or jacking. The use of explosives is
2 prohibited. Pipe bursting or fluid/mist jetting may be allowed
3 at the discretion of the department.

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

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

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

13 (iii) 16 feet for ramps; or

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

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

21 (D) For curbed highway crossings, all borings shall
22 extend beneath travel and parking lanes and extend beyond the
23 back of curb, plus:

1 (i) 30 feet from facilities with speed limits of 40
2 mph or greater; or

3 (ii) five feet from facilities with speed limits of
4 less than 40 mph or less, plus any additional width necessary to
5 clear an existing sidewalk.

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

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

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

22 (5) Nonmetallic pipe detection. Where nonmetallic pipe
23 is installed, whether longitudinally or at a crossing, a durable

1 metal wire or other district-approved means of detection shall
2 be concurrently installed.

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

6 (A) deep cuts;

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

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

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

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

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

16 (7) Clearances. Except as specified in this subchapter,
17 there shall be a minimum of 12 inches vertical and horizontal
18 clearance between a new utility facility [~~pipeline~~] and an
19 existing utility facility, unless a greater clearance is
20 required by the district. However, if an installation of
21 another utility facility or highway feature cannot take place
22 without disturbing an existing utility facility, the minimum
23 clearance will be 24 inches.

1 (8) Crossings. A district may require crossings with no
2 longitudinal connections to be encased within the right of way.

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

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

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

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

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

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

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

3 (b) Gas and liquid petroleum pipelines and saltwater
4 pipelines [~~lines~~].

5 (1) Low-pressure pipelines [~~lines~~].

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

13 (i) For encased low-pressure gas pipelines [~~lines~~],
14 the minimum depth of cover shall be:

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

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

19 (III) 30 inches for unencased sections of encased
20 pipelines [~~lines~~] outside of pavement structure.

21 (ii) For unencased low-pressure gas pipelines
22 [~~lines~~], the minimum depth of cover shall be:

23 (I) 60 inches under the pavement surface or 18

1 inches under the pavement structure for paved areas;

2 (II) 48 inches outside paved areas and under

3 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 [~~lines~~]

11 crossing the pavement shall be placed in a steel encasement.

12 The district may waive this encasement requirement if the

13 pipeline [~~line~~] is of welded steel construction and is protected

14 from corrosion by cathodic protective measures or cold tar epoxy

15 wrapping, and the utility signs a written agreement that the

16 pavement will not be cut for pipeline repairs at any time in the

17 future.

18 (D) Vents. One or more vents shall be provided for

19 each casing or series of casings. For casings longer than 150

20 feet, vents shall be provided at both ends. On shorter casings,

21 a vent shall be located at the high end with a marker placed at

22 the low end. Vents shall be placed at the right of way line

23 immediately above the pipeline, situated so as not to interfere

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

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

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

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

13 (A) Depth of cover for crossings.

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

22 (I) the greater of 18 inches or one-half the
23 diameter of the pipe, under pavement structures;

1 (II) 30 inches if the line is outside the pavement
2 structure or under a ditch; or

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

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

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

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

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

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

18 (D) Unencasement.

19 (i) Where encasement is not employed, the utility
20 shall show that the welded steel carrier pipe will provide
21 sufficient strength to withstand the internal design pressure
22 and the dead and live loads of the pavement structure and
23 traffic. Additional protective measures must include:

1 (I) heavier wall thickness, higher factor of safety
2 in design, or both;

3 (II) adequate coating and wrapping;

4 (III) cathodic protection; and

5 (IV) the use of Barlow's formula regarding maximum
6 allowable operating pressure and wall thickness, as specified in
7 49 CFR §192.105.

8 (ii) Shallow anode bed types exceeding 48 inches in
9 width shall not be permitted in the right of way. All others
10 must have a depth of coverage of at least 36 inches. Deep well
11 anode beds of up to 60 inches in diameter are acceptable.
12 Rectifier and meter loop poles shall be placed at or near the
13 right of way line.

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

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

22 (E) Vents. Vents shall be installed at both ends of a
23 casing, regardless of length, with a marker on at least one end.

1 Vents shall be placed at the right of way line immediately above
2 the pipeline, situated so as not to interfere with highway
3 maintenance or be concealed by vegetation. The owner's name,
4 address, and emergency telephone number shall be shown on each
5 vent marker.

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

9 (c) Water lines.

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

13 (2) Depth of cover. The minimum depth of cover shall be
14 30 inches, but not less than 18 inches below the pavement
15 structure for crossings.

16 (3) Encasement. Unless another type of encasement is
17 approved by the district, water lines crossing under paved
18 highways must be placed in a steel encasement pipe within the
19 limits of the right of way. At the district's discretion,
20 encasement may be omitted under center medians and outer
21 separations that are more than 76 feet wide. At the district's
22 discretion, encasement under side road entrances may be omitted
23 in consideration of traffic volume, condition of highway,

1 maintenance responsibility, or district practice. Existing
2 water lines 24 inches or greater may be allowed to remain
3 unencased under the pavement of new low volume highways,
4 provided depth and all other requirements of 30 TAC §290.44 are
5 met.

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

12 (5) Aboveground appurtenances.

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

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

1 be used.

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

6 (d) Nonpotable water control facilities.

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

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

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

21 (4) Location and design requirements. Open ditch
22 facilities and buried pipe facilities designed and constructed
23 in accordance with this subchapter may be installed across the

1 right of way. Longitudinal buried pipe facilities installed
2 within the right of way must conform with §21.41(c) of this
3 subchapter, consistent with the clearances applicable to all
4 roadside obstacles. Open ditch facilities shall not be
5 installed longitudinally within the right of way, nor will any
6 aboveground appurtenances be permitted within the horizontal
7 clearance.

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

11 (e) Sanitary sewer lines.

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

15 (2) Depth of cover. The minimum depth of cover shall be
16 30 inches, but not less than 18 inches below any pavement
17 structure.

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

1 than 76 feet wide.

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

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

13 (f) Electric and communication Lines.

14 (1) Underground electric lines.

15 (A) Depth of cover. All underground electric lines
16 placed within the right of way may be installed by direct bury
17 at depths according to the voltage of electric lines as required
18 by the National Electrical Safety Code and as shown in the
19 following chart.

1 Figure §21.40(f)(1)(A)

Minimum Depth of Cover by Voltage	
Voltage	Minimum Depth of Cover
22,000 or less	30 inches
22,001 to 40,000	36 inches
40,001 and greater	42 inches

2

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

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

20 (D) Aboveground appurtenances.

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

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

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

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

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

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

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

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

23 (VII) the installation will be compatible with

1 adjacent land uses.

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

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

7 (2) Underground communication lines.

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

16 (B) Crossings.

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

21 (ii) The top of the fiber optic facility shall be
22 placed a minimum of 42 inches below the ditch grade or 18 inches
23 below the pavement structure or 60 inches below the top of the

1 pavement surface, whichever is greater. The department may
2 authorize a minimum depth of cover of not less than 36 inches
3 below the ditch grade or 60 inches below the top of the pavement
4 surface, whichever is greater, if the utility [~~owner/operator~~]
5 waives damages and fully indemnifies the department in a form
6 acceptable to the department.

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

10 (I) at less than minimum depth;

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

13 (III) near another hazardous location.

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

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

1 construction and for possible future utility installations.

2 (D) Multiple conduits.

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

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

11 (E) Aboveground appurtenances.

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

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

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

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

23 (III) the installation will not reduce visibility

1 and sight distance of the traveling public;

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

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

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

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

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

1 SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE

2 OPERATORS

3 §21.961. Purpose.

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

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

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

15
16 §21.962. Definitions. The following words and terms, when used
17 in this subchapter, shall have the following meanings unless the
18 context clearly indicates otherwise:

19 (1) Commission--The Texas Transportation Commission.

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

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

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

1 of the department.

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

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

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

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

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

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

22

23 §21.963. Lease of Right of Way for a Saltwater Pipeline

1 Facility.

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

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

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

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

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

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

21

22 §21.964. Lease Request.

23 (a) To lease an area within the right of way a person must

1 submit, at the person's sole expense, a written application to
2 the district administrator of the district in which the right of
3 way is located. The application must be in a form approved by
4 the department and must include:

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

7 (2) a legal description of the proposed premises;

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

11 (4) sketches or drawings that show:

12 (A) the proposed premises;

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

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

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

18 (E) with preliminary drainage plans, if applicable;

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

21 (6) the proposed term of the lease; and

22 (7) the name, address, and telephone number of the
23 individual or entity that is authorized to furnish any

1 additional information requested by the department relating to
2 the application.

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

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

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

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

18
19 §21.965. Lease Agreement.

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

23 (b) The department may not execute a lease that would

1 impair or relinquish the state's right to use the property when
2 needed to construct or improve the highway facility for which it
3 was acquired.

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

8 (d) The lease must contain:

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

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

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

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

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

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

23 (7) permission for the employees and authorized

1 representatives of the department to enter the premises for the
2 inspection, maintenance, or reconstruction of highway facilities
3 or for determining compliance with the terms of the lease;

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

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

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

17 (A) forfeits any deposits under the lease;

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

21 (11) a requirement that the lessee provide a security
22 bond not to exceed six months rental under the lease, as
23 provided under Transportation Code, §202.053;

1 (12) a requirement that lessee provide a removal bond in
2 an amount equal to the anticipated future cost of removing any
3 saltwater pipeline facilities and appurtenances, as well as the
4 restoration and mitigation of the right of way to a suitable and
5 safe, pre-lease condition, based on a removal, restoration, and
6 mitigation plan approved by the department;

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

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

21 (15) A statement that neither the lease nor the premises
22 shall be transferred, assigned, or conveyed to another party
23 without prior written approval of the district administrator;

1 (16) a statement that the lessee shall keep the lease and
2 any improvements on the premises free of all liens and may not
3 use the lease or such an improvement as security for any loan,
4 except that the department may allow the lessee to mortgage or
5 otherwise pledge or grant a security interest in the leasehold
6 interest to secure financing for the acquisition of the
7 leasehold or for the construction and operation of the saltwater
8 pipeline facility permitted under the lease, subject to the
9 terms of the lease;

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

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

17 (19) a description of applicable nondiscrimination
18 requirements;

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

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

3
4 §21.966. Disposition of Payments. All payments received under
5 this subchapter will be deposited into the state highway fund.

6
7 §21.967. Termination of Lease.

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

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

13 (1) the premises has been abandoned;

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

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

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

20 (d) On termination of the lease for any reason, the
21 saltwater pipeline operator shall remove the saltwater pipeline
22 facility and to restore the right of way to the condition in
23 which it existed on the date the lease was fully executed, at no

1 cost to the department.

2

3 §21.968. Federal Highway Administration Approvals. All matters
4 relating to the leasing of federal-aid highway right of way are
5 subject to the approval of the Federal Highway Administration.

6

7 §21.969. Use of Right of Way under Lease. A saltwater pipeline
8 operator's use of right of way under a lease under this
9 subchapter does not constitute an abandonment of the right of
10 way by the department, nor create a property interest in the
11 lessee.

12

13 §21.970. Clearances, Safety Requirements, and Standards.

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

20 (b) The saltwater pipeline operator may not install a
21 saltwater pipeline facility in a location that will interfere
22 with the visibility or reduce sight distance or in any other way
23 interfere with the safety and free flow of traffic or level of

1 service on highway facilities.

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

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

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

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

23 (g) The design, occupancy, and use of any saltwater

1 pipeline facility may not result in the use, safety, appearance,
2 and the enjoyment of the highway facilities being adversely
3 affected by fumes, vapors, odors, drippings, droppings, or
4 discharges of any kind from the saltwater pipeline facility.

5
6 §21.971. Marker or Tracking Device. All markers or tracking
7 devices to be located or maintained in the right of way by a
8 lessee must have prior written approval by the district
9 administrator and may contain only information that indicates
10 ownership, contact information, or warning information.

11
12 §21.972. Changes of and Access to Highway Facilities.

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

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

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

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