

REGULATORY ALERT

SERVICE COMPANIES AND TECHNICIANS



House Bill (HB) 2174, enacted by the 85th Texas Legislature, was signed by the Governor and is effective September 1, 2017. HB 2174 amended the Texas Agriculture Code, Chapter 13, Sections 13.001, 13.029, 13.101, 13.1011, 13.1015, 13.1016, 13.1017, 13.114 & 13.1151 and Chapter 17, Sections 17.072 & 17.073, changing the Texas Department of Agriculture's role in the inspection and testing of motor fuel metering devices and motor fuel quality to verify compliance with standards promulgated by the National Institute of Standards and Technology (NIST) and American Society for Testing and Materials (ASTM), which are adopted by law. Licensed Service Companies and Technicians are now responsible for inspecting, testing, and calibrating devices with a flow rate of 20 gallons per minute (gpm) or less and motor fuel quality inspection and testing. The Department is responsible for performing audits, reviews, registration inspections, and/or service observations in accordance with Chapter 13 and Chapter 17 of the Texas Agriculture Code.

Effective September 1, 2017, Licensed Service Companies, acting in accordance with the Department's regulations, will be responsible for the following:

- A Licensed Service Technician (LST) will perform the compliance inspections required by Chapter 13 and Chapter 17 of the Texas Agriculture Code, as described in HB 2174, in addition to performing other duties, such as service calibrations.
- LSTs will also conduct complaint inspections at the request of a facility that operates devices with a flow rate of 20 gpm or less, within 30 days of the Department's notification. **Facilities may not use a Licensed Service Company (LSC) that is owned and/or operated, in any aspect, by an entity which is owned or operated by the entity of the facility noted in the complaint.**
- In addition to providing service reports to the Department, LSTs will be required to report their inspection findings in the comments section of the Department's current LSC online report for other issues including, but not limited to: leaky hoses, devices with displays that are not functioning, devices pre-registering fuel not yet dispensed (pump jump), devices with missing consumer information stickers, devices found to have credit card skimmers, devices with non-functioning auto shut off mechanisms, devices with discrepancies in sale or price computations, devices that contain incorrect or unverifiable information on receipts, and other issues as specified in NIST Handbooks 44 and 112.
- LSTs will be required to report the number and type of devices for each facility to the Department, to verify compliance with the Department's certificate of registration for the facility and report unregistered locations and/or devices.
- An LST will also take fuel quality samples for lab testing based on complaints and in accordance with a schedule developed by the Department.

Effective September 1, 2017, the Department, under the direction of the Commissioner of Agriculture, will be responsible for the following:

- Tracking complaints and notifying facilities if a complaint inspection is required.
- Auditing all LSC and LST reports along with supporting documentation for all inspections, tests and calibrations of motor fuel metering devices. All LSC or LST documentation will be legally binding on the LSC, LST, and facility, and will be used by the Department to enforce its regulations and NIST standards.
- Completing service observations and field audits at facilities operating motor fuel metering devices to ensure consumer protection.
- Continuing to enforce registration requirements for all commercial weighing and measuring devices, LSCs and LSTs.
- Continuing to issue license renewals to facilities operating commercial weighing and measuring devices, LSCs and LSTs servicing commercial devices.
- Continuing to enforce current laws and regulations applicable to facilities, LSCs, and LSTs.
- Continuing to require that consumer information stickers are displayed on the face of each pump and LSC seals to be affixed to the face of all motor fuel metering devices per nozzle or meter.
- Continuing to require a Weights and Measures Certificate of Registration to be prominently posted at the registered location so as to be legible, in plain sight of, and physically accessible to the average consumer.

Terms and Definitions added to the Department's Regulations in the Texas Administrative Code (subject to change):

Audit—An official evaluation and assessment of all inspections and TDA administrative reviews completed by the Department.

Inspection—The act of examining, testing, or calibrating a weighing or measuring device, or motor fuel metering device, including a limited amount of TDA administrative reviews and onsite facility review duties.

Motor fuel metering device—A liquid measuring device used to dispense motor fuel for commercial sale at a flow rate of 20 gallons per minute or less.

Representative of the Commissioner—An individual employed by the department, authorized to perform one or more of the following: audits, reviews, inspections, and/or use observations under specified chapters of the Texas Agriculture Code.

Representative of the Department—A licensed service technician acting on behalf of the department to complete inspections, tests, and calibrations on motor fuel metering devices.

Service observation—A field audit completed by a representative of the Commissioner that occurs periodically to ensure LSC compliance standard of inspecting, testing, and calibrating.