

**TITLE 16 ECONOMIC REGULATION  
PART 1 RAILROAD COMMISSION OF TEXAS  
CHAPTER 2 INFORMAL COMPLAINT  
PROCEDURE**

**§2.1 Informal Complaint Procedure**

(a) Scope and jurisdiction. This section applies to complaints within the Commission's jurisdiction about natural gas purchasing, selling, shipping, transportation, and gathering practices. This section does not apply to matters arising under Texas Utilities Code, Chapter 103, entitled "Jurisdiction and Powers of Municipality," or initiated under Texas Utilities Code, Chapter 104, Subchapter C, entitled "Rate Changes Proposed by Utility," or Subchapter G, entitled "Interim Cost Recovery and Rate Adjustment."

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

(1) Common purchaser--Has the same meaning as is given that term in Texas Natural Resources Code, §111.081.

(2) Complainant--A person who submits a complaint to the Commission pursuant to this section.

(3) Director--The director of the Gas Services Division of the Railroad Commission of Texas or the director's delegate.

(4) Gatherer--A person providing gathering service for a fee for a third party.

(5) Gathering service--Use of a pipeline to collect gas and bring it to a common point.

(6) Informal complaint proceeding--The process set out in this section for addressing complaints against entities within the Commission's jurisdiction, including but not limited to natural gas purchasers, sellers, shippers, transporters, and gatherers.

(7) Mediator--The individual who conducts an informal complaint resolution mediation.

(8) Monitor--The Commission employee appointed by the director to manage an informal complaint proceeding and/or assist a mediator who is not a Commission employee in the management of an informal complaint proceeding. A monitor may also be a mediator.

(9) Natural gas purchaser--A person that purchases natural gas.

(10) Natural gas seller or seller--A person that sells natural gas, including but not limited to a producer.

(11) Natural gas utility--Has the same meaning as is given that term in Texas Utilities Code, §101.003 and §121.001.

(12) Participant--A complainant, respondent, monitor, or mediator in an informal complaint proceeding.

(13) Person--An individual, corporation, partnership, joint venture, or other legal entity of any kind.

(14) Respondent--A person who is the subject of a complaint submitted to the Commission pursuant to this section.

(15) Shipper--A person for which a transporter is currently providing, has provided, or has pending a written request to provide transportation services.

(16) Similarly-situated shipper--A shipper that seeks or receives transportation service under the same or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter. In determining whether conditions of service are the same or substantially the same, the Commission shall evaluate the significance of relevant conditions, including, but not limited to, the following:

- (A) service requirements;
- (B) location of facilities;
- (C) receipt and delivery points;
- (D) length of haul;
- (E) quality of service (firm, interruptible, etc.);
- (F) quantity;
- (G) swing requirements;
- (H) credit worthiness;
- (I) gas quality;
- (J) pressure (including inlet or line pressure);
- (K) duration of service;
- (L) connect requirements;
- (M) conditions and circumstances existing at the time of agreement or negotiation.

(17) Transportation service--The receipt of a shipper's natural gas at a point or points on the facilities of a transporter, and re-delivery of a shipper's natural gas by the transporter at another point or points on the facilities of the transporter, or on another person's facilities, including exchange, backhaul, displacement, and other methods of transportation, provided, however, that the term "transportation service" shall not include processing services or the movement of gas to which the transporter has title.

(18) Transporter--Any common purchaser of gas, any gas utility, or any gas pipeline, that provides gas gathering and/or transmission transportation service for a fee.

(c) Policy.

(1) The Commission encourages affordable, expeditious, and fair settlement and resolution of disputes regarding natural gas purchasers, sellers, transporters, and gatherers. The Commission will not tolerate discrimination among similarly situated shippers and sellers as is prohibited by Texas Natural Resources Code, Chapter 111, entitled "Common Carriers, Public Utilities, and Common Purchasers," and Texas Utilities Code, Title 3, Subtitle A, entitled "Gas Utility Regulatory Act," and Subtitle B, entitled "Regulation of Transportation and Use," and other matters of dispute subject to the Commission's jurisdiction. This section is adopted in furtherance of that policy.

(2) To accomplish the policy set out in this section, Commission employees, acting pursuant to this section, will attempt to facilitate, encourage, and promote resolution and settlement of complaints against natural gas purchasers, sellers, shippers, transporters, gatherers, and other persons subject to the Commission's jurisdiction consistent with the public interest and without lengthy and potentially expensive formal proceedings. The informal complaint procedure is intended to establish a forum for communication, with the goal of achieving mutually acceptable compromise and resolution that is in the public interest.

(3) Filing a complaint pursuant to this section is not a prerequisite to the filing of a formal complaint. If a complaint pertains to the loss of or inability to account for gas, the complaint must be filed pursuant to §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas). The informal complaint resolution process is an optional method for resolving complaints. However, if an informal complaint is filed and the Commission determines that there is sufficient reason to go forward, the respondent shall participate in the process. At any time prior to the mediator's issuance of the confidential memorandum pursuant to subsection (e)(13) of this section, a complainant may unilaterally withdraw an informal complaint or a complainant and respondent may jointly agree to the dismissal of an informal complaint.

(d) General requirements and limitations.

(1) The Commission will not process anonymous complaints under this section.

(2) The communications, records, conduct, and demeanor of the participants in each informal complaint proceeding are confidential and handled in accordance with Texas Government Code, §2009.054, entitled "Confidentiality of Certain Records and Communications."

(3) A mediator shall have completed 40 hours of Texas mediation training that meets the

standards of the Texas Alternative Dispute Resolution Procedures Act, as set out in Texas Government Code, §154.052, and must follow the ethical guidelines for mediators adopted by the Alternative Dispute Resolution Section of the State Bar of Texas.

(4) A mediator may be either a Commission employee or a non-Commission employee. If the complainant and respondent submit a written request to the director agreeing to share all costs of mediation, they may retain a non-Commission employee to conduct the mediation. If the complainant and respondent are unable to agree on whether to engage a non-Commission employee as the mediator, or in the absence of a request for a non-Commission employee mediator, the director shall appoint a Commission employee to conduct the mediation. If the mediator is not a Commission employee, then the director shall appoint a Commission employee as a monitor. The monitor will act as a technical advisor to the non-Commission employee mediator and may, at the direction of the non-Commission employee mediator, participate in the informal complaint proceeding. A non-Commission employee mediator shall have the same duties and obligations of a Commission employee mediator and may, in his or her sole discretion, compel the complainant and respondent to provide information pursuant to subsection (e)(10) of this section.

(5) Mediators and monitors shall not communicate with a Commission hearings examiner or a Commissioner about any material or substantive aspect of a complaint or reply filed pursuant to this section.

(6) Each complainant and respondent in an informal complaint proceeding shall cooperate fully in gathering and disclosing information requested by the mediator or monitor and shall participate in good faith in all aspects of the informal complaint proceeding.

(7) A natural gas purchaser, transporter, or gatherer shall not discontinue or deny service to a shipper or seller during the pendency of an informal complaint proceeding in which both are participants unless one of the following reasons applies for discontinuing service:

(A) There is insufficient capacity on the respective facility or facilities, provided, however, that the purchaser, transporter, or gatherer provide any partial capacity that may be available from time to time.

(B) The natural gas does not meet the quality specifications of the purchaser, transporter, gatherer, or downstream processors, pipelines, or customers. However, if the natural gas is flowing under an agreement and, at the impending termination of that agreement, there is sufficient

capacity, and non-specification gas is being blended for other shippers or sellers in the area, and the acceptance of such volumes from the shipper or seller will not jeopardize downstream market deliverability of the gas, then the purchaser, transporter, or gatherer shall continue to take the gas until the conclusion of the informal complaint process, charging blending fees applicable to similarly situated shippers.

(C) Continuing to take the natural gas would:

(i) create a safety or environmental risk;

(ii) cause a violation of a safety or environmental regulation or permit; or

(iii) interfere with necessary maintenance and repairs of facilities.

(D) There is no existing contractual agreement in effect on the date the complaint is filed at the Commission as to the price to be paid or fees charged for the production during the pendency of the informal complaint process, provided, however, that the production will be taken if the complainant and respondent agree that the price or fees will be determined at a later date.

(E) There is such good cause as the mediator may determine in the particular case.

(8) Notwithstanding anything in paragraph (7) of this subsection that may be construed to the contrary, that paragraph does not change the rights of the parties that are participating in the informal complaint proceeding that those parties have under state law or any other regulation of the Commission.

(9) A transporter, gatherer, or purchaser shall not discriminate against a shipper or seller because the shipper or seller has, in good faith:

(A) filed an informal complaint at the Commission;

(B) filed a formal complaint at the Commission;

(C) instituted or caused to be instituted at the Commission any enforcement proceeding against a purchaser, transporter, or gatherer based on alleged violations of any rule or statute; or

(D) made inquiry to the Commission as to the facts or circumstances surrounding operation of a purchaser's, transporter's, or gatherer's system.

(10) The Commission may commence an enforcement action, initiated by the director, for failure by the complainant or the respondent to comply with all provisions of the informal complaint proceeding.

(e) Informal complaint process.

(1) An informal complaint proceeding is initiated by filing a complaint with the Commission by:

(A) calling the Commission Helpline at (512) 463-7288. Commission staff will answer calls to the Helpline from 8:00 a.m. to 5:00 p.m. on regular Commission business days. A voice mail system will be in place to receive calls during non-business hours; or

(B) submitting a complaint in writing by:

(i) regular United States mail to the following address: Director, Gas Services Division, P.O. Box 12967, Austin, Texas 78711-2967;

(ii) facsimile transmission (fax) to the following number: (512) 463-7962; or

(iii) internet submission by accessing the online form on the Gas Services page of the Commission's website.

(2) Each complaint shall include the following information:

(A) the name of the individual submitting the complaint;

(B) the complainant's name, mailing address, telephone number, and, if applicable, e-mail address and fax number;

(C) the respondent's name, mailing address, telephone number, and if applicable, e-mail address and fax number;

(D) a factual description of the events that are the basis of the complaint, including the onset or duration of such events;

(E) a statement of the current status of negotiations between the complainant and the respondent and a description of any actions the complainant has taken to resolve the dispute;

(F) a statement of the relief sought by complainant; and

(G) all supporting documentation, unless the complaint is made by telephone, in which case the documentation shall be supplied at a later time.

(3) The director shall assign a complaint to a monitor who shall promptly contact the complainant to confirm receipt of the complaint and to obtain any additional relevant and supporting documentation pertaining to the complaint. The monitor shall advise the complainant of its right to have the complaint mediated by a Commission employee or by a non-Commission employee mediator. If the complainant has submitted the complaint by telephone and wishes to pursue the matter, the monitor shall direct the complainant to

submit the complaint by e-mail, facsimile, or letter, along with supporting documentation.

(4) After the monitor determines that the complainant has provided all required information, the monitor shall notify the respondent of the complaint by mailing to the respondent, via certified mail, return receipt requested, a copy of the complaint and all supporting documentation. This notification shall include notice to the respondent of its right to have the matter heard by a non-Commission employee mediator pursuant to the agreement of the complainant and the respondent.

(5) The respondent shall reply in writing to both the monitor and the complainant within 14 calendar days from the date of the monitor's notification letter. The respondent's reply shall address the substance of the complaint and either propose a solution or explain why the complaint is incorrect.

(6) The complainant and the respondent will be given 14 calendar days from the date of the respondent's reply to resolve the complaint without the participation of a mediator.

(7) If the complainant and the respondent have not reached an agreement, the monitor shall determine within seven days after expiration of the period allowed for informal resolution in paragraph (6) of this subsection whether either the complainant or the respondent or both want the matter referred to a Commission or non-Commission mediator and shall refer the matter back to the director.

(8) In the event the complainant and respondent agree upon a non-Commission employee mediator, then the monitor shall notify the agreed upon mediator. In the event the complainant and respondent desire to use a non-Commission employee mediator and are unable to agree upon the selection of a non-Commission employee mediator, each party shall each submit the name of its preferred mediator and the preferred mediators so designated shall choose a third mediator who will preside over the process.

(9) In accordance with the procedure set forth in subsection (d)(4) of this section, the director shall appoint a mediator within seven days after receipt of the information in paragraph (7) of this subsection.

(10) The mediator shall, within 14 calendar days after the appointment provided in paragraph (8) of this subsection, review all information received from the complainant and respondent. The mediator may request additional information as the mediator deems necessary. At any time during an informal complaint procedure, the mediator may request and review documents or information the mediator considers necessary in evaluating the complaint. The mediator shall furnish

the complainant and respondent with a written summary of all relevant documents and information reviewed. The mediator's summary shall not disclose confidential information.

(11) The monitor shall schedule a mediation meeting with the complainant and respondent, which the mediator shall conduct, to occur within 14 calendar days after the date of the mediator's written summary. The monitor shall promptly notify the complainant and respondent of the date, time and location of the meeting, which may be conducted at the headquarters of the Commission in Austin, Texas; in the Commission's offices in the district in which the complaint arises; or at any other location by agreement of the participants.

(12) The complainant and respondent shall participate in the mediation meeting and undertake in good faith to settle all issues raised in the complaint. The complainant and respondent shall make available during the mediation meeting, in person, representatives who are empowered to make decisions on their behalf.

(13) If the mediation process does not result in a settlement of all issues during the period for mediation provided, after completing the mediation, the mediator shall promptly send a confidential memorandum to the complainant, the respondent, the monitor (unless the monitor is the mediator), and the director that states one or more of the following conclusions, based on the information reviewed by the mediator. The mediator may conclude that:

(A) there are specific actions which, if taken by either the respondent or the complainant or both, could result in resolution of the complaint;

(B) a formal evidentiary hearing may be warranted; or

(C) a formal evidentiary hearing may not be warranted.

(f) A formal evidentiary hearing may be:

(1) initiated by the director as a show cause proceeding; or

(2) requested by either the complainant or the respondent.

(g) Internal report. The director shall maintain an internal report of all complaints received.

(1) The report shall be circulated no less often than once every six months to the Commissioners, the executive director, and the general counsel.

(2) The specific points of the participants' discussions and any negotiated resolution shall not be included in this internal report.

(h) Reimbursement. If the participants request that a mediation meeting be conducted at a

location other than the headquarters of the Commission in Austin, Texas, pursuant to subsection (e)(11) of this section, the participants shall reimburse the Commission for the Commission's costs related to travel to that location.

*Source Note: The provisions of this §2.1 adopted to be effective March 15, 2007, 32 TexReg 1266; amended to be effective April 28, 2008, 33 TexReg 3388; amended to be effective April 25, 2017, 42 TexReg 2165*

### **§2.5 Informal Complaint Process Regarding Loss of or Inability to Account for Gas**

(a) Scope. This section implements the provisions of Texas Natural Resources Code, §85.065, which applies only to the loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas on or after September 1, 2007. The loss of or inability to account for natural gas that is tendered by a producer to a gatherer or transporter of gas before September 1, 2007, is governed by the law in effect on the date the gas was tendered.

(b) Policy. The Commission will apply the policies, definitions, and procedures set forth in §2.1 of this title (relating to Informal Complaint Procedure), to the extent they are consistent with this section. If the provisions of §2.1 of this title are inconsistent with this section or are not applicable, the provisions of this section will apply to complaints filed pursuant to Texas Natural Resources Code, §85.065.

(c) Definitions. In addition to the definitions in §2.1 of this title, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accounting--A comprehensive record of the details of the taking or acceptance of a producer's gas and the movement of that gas from the time and place of taking or acceptance to a delivery point by a person who gathers or transports that gas, which may include measurements, quality analyses, processing, and treatment; amounts used for fuel, dehydration, compression, or flaring; liquids extraction or removal of hydrocarbons; quantity of gas redelivered, allocated, or sold for the producer's account; and the physical system used by the person who gathers or transports gas for a producer.

(2) Loss of or inability to account for gas--For purposes of mediating disputes pertaining to issues involving the "loss of or inability to account for gas," the Commission will examine the difference between the amount of gas metered into a system and the amount metered out.

(3) Person who gathers or transports gas--Any common purchaser of gas, gas utility, or

taker of natural gas including but not limited to a gas pipeline that provides gas gathering and/or transmission transportation service for a fee or some other compensation. A common purchaser that does not gather or transport gas is not subject to this section.

(4) Producer--A person who owns or operates a well or wells producing oil or gas or both.

(5) Waste--Waste of gas as defined in Texas Natural Resources Code, §85.046.

(d) Explanation of loss of or inability to account for gas. As a prerequisite to filing an informal complaint pursuant to Texas Natural Resources Code, §85.065, and this section, a producer must submit a written request for an explanation of loss of or inability to account for gas to a person who gathers or transports gas for the producer in accordance with the requirements of this subsection.

(1) A producer's request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered by the producer to the person shall be in writing and may ask the person to provide any or all of the following information:

(A) the amount of gas tendered by the producer from each well that has a meter;

(B) a laboratory analysis of the composition and heating value of the gas and other substances tendered by the producer, if such an analysis has been performed;

(C) if available, a schematic drawing of the person's system for gathering or transporting gas that shows:

(i) each meter type;

(ii) the date each meter was last calibrated;

(iii) the accuracy of each meter; and

(iv) all equipment that alters, disposes of, or otherwise consumes any of the gas tendered to the person;

(D) the estimated amount of gas used for fuel, flared, or vented for construction, repair, maintenance, or other operational uses and, if the information is available, the location of that use;

(E) the estimated amount of contaminants or other impurities removed from the gas and the location at which the impurities were removed;

(F) the estimated amount of liquid hydrocarbons and condensate removed from the gas and the location at which the liquid hydrocarbons and condensate were removed;

(G) the estimated amount of gas lost and the location at which the gas was lost;

(H) the estimated amount of gas redelivered by the person, including the amount of gas sold that was allocated to the producer, and the location at which the re-delivery of the gas occurred;

(I) any amount of gas received from the producer by the person that remains unaccounted for; and

(J) any other information the person who gathered or transported the gas considers relevant to the request for explanation of loss of or inability to account for gas.

(2) The producer shall submit the written request to the person who gathers or transports gas for the producer. The producer shall address the request to the contact person at the address shown on the Form P-5 for the person who gathers or transports gas for the producer that is on file with the Commission. If there is no Form P-5 for the person who gathers or transports gas for the producer on file at the Commission, the producer shall use the address on the producer's contract with the person who gathers or transports gas for the producer. The producer shall send its complaint by facsimile or e-mail to the contact person and mail the request using United States Postal Service certified mail, return receipt requested, and shall retain a complete copy of the written request and the returned certified mail receipt.

(3) Not later than the 30th day after the date the person who gathers or transports gas receives the request from the producer, the person shall provide the producer, by mail and facsimile or e-mail, a written explanation of any loss of or inability to account for the gas tendered to the person by the producer. The person shall include in the response any relevant information requested by the producer that is available to the person and that would be required to be included in an accounting under paragraph (1) of this subsection. For each element of information sought in a request for explanation for which an amount of gas is to be provided, the person who gathered or transported the gas shall state the method by which the amount was determined (measured, allocated, estimated, or other).

(e) Informal complaint. If a producer has submitted a request under subsection (d) of this section to a person who gathers or transports gas for the producer and the person provides an inadequate explanation of any loss of or inability to account for the gas, or fails to provide any explanation of any loss of or inability to account for the gas by the deadline stated in that subsection, the producer may file with the Commission an informal complaint against the person.

(1) An informal complaint may not be filed before the 30th day after the end of the production period covered by the complaint.

(2) An informal complaint shall comply with the requirements of §2.1 of this title and, in addition, shall:

(A) specify the production period covered by the complaint;

(B) state that at least 30 days have elapsed since the end of the production period covered by the complaint;

(C) if the producer metered the volume of gas tendered to the person who gathered or transported the gas:

(i) describe the type of meter used; and

(ii) state the date the meter was last calibrated; and

(D) include a copy of the producer's request to the person who gathers or transports gas for the producer for an explanation of loss of or inability to account for gas and a copy of the returned certified mail receipt.

(3) Not later than the 14th day after the date the complaint is filed at the Commission, the person who gathered or transported the gas shall provide to the producer and the Commission, by mail and facsimile or e-mail, an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint. The person may provide the accounting on a thousand cubic feet or a million British thermal unit basis, as applicable, and shall provide all elements of information listed in subsection (d)(1)(A) - (J) of this section that the Commission determines are necessary to resolve the complaint. In addition, for each element of information for which an amount of gas is to be provided, the person shall state the method by which the amount was determined (measurement, allocation, estimation, or other).

(4) The Commission may grant an extension of time to the person who gathered or transported the gas to provide the accounting required by paragraph (3) of this subsection, but the additional time may not extend beyond the 45th day after the date the informal complaint was filed.

(5) If the person who gathered or transported the gas does not have the information necessary to provide the accounting required by paragraph (3) of this subsection, the person shall provide to the producer and to the Commission, by mail and facsimile or e-mail, a written explanation of the reason the person does not have the information.

(6) If the person who gathered or transported the gas fails to provide the accounting required by paragraph (3) of this subsection and the explanation required by paragraph (5) of this subsection, the Commission shall consider the informal complaint filed by the producer to be valid

and shall refer the matter for a formal evidentiary hearing.

*Source Note: The provisions of this §2.5 adopted to be effective April 28, 2008, 33 TexReg 3388*

### **§2.7 Administrative Penalties for Failure to Participate**

(a) This section implements the authority delegated to the Commission by Texas Natural Resources Code, §81.058(c), which provides that the Commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the Commission to have failed to participate in the proceeding or failed to provide information requested by a mediator in the proceeding. This section applies to informal complaint resolutions proceedings filed pursuant to §2.1 of this title (relating to Informal Complaint Procedure), and §2.5 of this title (relating to Informal Complaint Process Regarding Loss of or Inability to Account for Gas).

(b) Failure to participate in an informal complaint resolution proceeding may include:

(1) a person who gathers or transports gas not providing, by the 30th day after the date the person receives a request from a producer, a written explanation of any loss of or inability to account for the gas tendered to the person by the producer;

(2) a respondent not replying in writing to both the monitor and the complainant within 14 calendar days from the date of the monitor's notification letter that a complaint has been filed at the Commission;

(3) a respondent's written reply that does not address the substance of the complaint;

(4) a respondent's written reply that does not either propose a solution or explain why the complaint is incorrect;

(5) a person who gathers or transports gas not providing, by the 14th day after the date a complaint is filed at the Commission, the producer and the Commission an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint;

(6) if the Commission has granted an extension of time to the person who gathered or transported the gas to provide the accounting required by §2.5(e)(3) of this title, the failure of the person to respond by the deadline;

(7) if the person who gathered or transported the gas does not have the information necessary to provide the accounting required by

§2.5(e)(3) of this title, the failure of the person to provide to the producer and to the Commission a written explanation of the reason the person does not have the information;

(8) the person who gathered or transported the gas not providing either the accounting required by §2.5(e)(3) of this title or the explanation required by §2.5(e)(5) of this title;

(9) a complainant or a respondent not communicating with the other during the 14 calendar days from the date of the respondent's reply to attempt to resolve the complaint without the participation of a mediator;

(10) a complainant or a respondent not advising the Commission monitor within seven days after expiration of the period allowed for informal resolution whether the person wants the matter referred to a Commission or non-Commission mediator;

(11) in the event the complainant and respondent desire to use a non-Commission employee mediator and are unable to agree upon the selection of a non-Commission employee mediator, failure of a complainant or a respondent to submit the name of a preferred mediator to work with the other's preferred mediator to choose a third mediator who will preside over the process;

(12) a complainant or respondent not providing documents or information the mediator considers necessary in evaluating the complaint and has requested;

(13) a complainant or respondent not attending a scheduled mediation meeting, absent good cause and prior notice to all participants;

(14) a complainant or respondent not participating in the mediation meeting or not undertaking in good faith to settle all issues raised in the complaint; or

(15) a complainant or respondent not making available during the mediation meeting, in person, representatives who are empowered to make decisions on their behalf.

(c) An administrative penalty imposed under this section may not exceed \$5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(d) The amount of any penalty requested, recommended, or finally assessed in an enforcement action brought pursuant to this section will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations of §2.1 or §2.5 of this title, including the number of previous violations;

(2) the demonstrated good faith of the person charged; and

(3) any other factor the Commission considers relevant.

(e) The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the penalty is no longer available.

(f) The remedy provided by this section is cumulative of any other remedy the Commission may order.

*Source Note: The provisions of this §2.7 adopted to be effective April 28, 2008, 33 TexReg 3388*