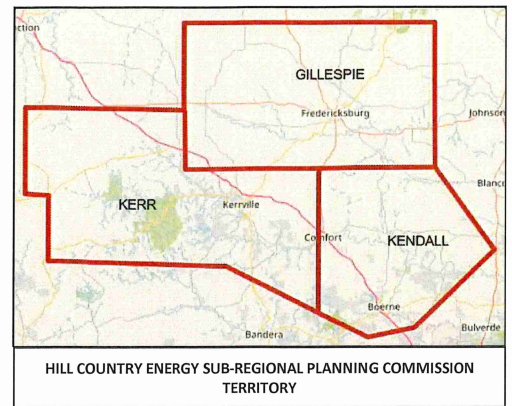


HILL COUNTRY ENERGY SUB-REGIONAL PLANNING COMMISSION



May 7, 2026

State Fire Marshall's Office
via email at: fmrules@tdi.texas.gov

Working Draft Rules relating to HB 3824 and Chapter 187 in the Utilities Code

The Texas Department of Insurance (TDI) and the State Fire Marshal's Office (SFMO) requested comments on their informal working draft of concepts and rules relating to House Bill 3824 (89R, 2025) and the new Battery Energy Storage Facility Safety (BESS) Chapter 187 in the Utilities Code.

On behalf of the Hill Country Energy Sub-Regional Planning Commission (HCESRPC) Legislative Subcommittee, I am pleased to provide the SFMO with the attached comments on your working draft documents. The HCESRPC Legislative Sub-Committee consists of the following individuals:

Rich Paces – Kerr County Commissioner, Precinct 2
Jennifer McCall – Kendall County Commissioner, Precinct 1
David Nash – Gillespie County Resident
Cheryl Grosso – Kendall County Resident

Note that the HCESRPC was formed between Kendall, Kerr and Gillespie Counties in 2025 as a means by which local government would have meaningful coordination with state agencies as provided in Chapter 391.009(c) of the Texas Local Government Code. Additional information about our commission and its activities can be found on our website at www.HCESRPC.com. We appreciate the opportunity to offer comments on your draft documents.

Sincerely,

Rich Paces
President, HCESRPC

Attachment

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Informal Working Draft and Request for Informal Comments on Rules Relating to Battery Energy Storage Facility Safety (BESS)

Posting date: April 10, 2025

Comments due: May 11, 2026

(1) Chapter 187 directs that the chapter applies to all BESS facilities with a capacity of one megawatt hour or greater, and a commercial operations date (defined by the Commissioner) on or after January 1, 2027. NFPA 855 is to govern operations. NFPA 855 applies to facilities with a capacity of 20 megawatt hours.

What standards should apply between 1 and 20 megawatts?

Comments:

All editions of NFPA 855 (Table 1.3) apply to battery energy storage facilities with an aggregate capacity greater than 20 kilowatt hours (kWh) not 20 megawatt hours. The Chapter 187 statute threshold is greater than 1 megawatt; of which, is consistent with the capacities ERCOT administers in the monthly GIS Reports for Large and Small Generators.

There is no distinction between 1 and 20 megawatts in NFPA 855 or Chapter 187 so there are no standards that apply, nor is there any directive in the statute for the Commissioner to address this in the rules.

(2) The amended rules would update NFPA 1 and 101 from the 2021 edition to the 2024 edition. NFPA 855 and UL Standards are incorporated as part of those standards.

Is there a benefit or additional clarity to be gained by adding the expressly stated adoption of the NFPA 855 and UL standards?

Comments:

Yes. Adding the expressly stated adoption of the latest editions of NFPA 855 (2026 Edition) and UL 9540A (6th Edition issued March 13, 2026) is beneficial and adds clarity as follows:

- 1) The 2026 edition of NFPA 855 introduces stricter large-scale fire test (LSFT) requirements, emphasizing enhanced fire and explosion testing protocols for battery energy storage facilities.
- 2) The 6th Edition of UL 9540A formally incorporates LSFT into the certification framework to demonstrate that a thermal runaway event in one battery energy storage system (BESS) does not propagate to adjacent systems. Texas needs the latest edition of UL9540A to be adopted now by rule of the Commissioner to prevent multiple enclosure fires tied to the ever-growing population of BESS facilities coming into operation in Texas in the next 3 years (currently over 900 in the ERCOT planning queue and 220 in operation as of May 2026).
- 3) Added clarity for battery energy storage facility safety is given to the Commissioner by Chapter §187.003.(b) to periodically update the standards and requirements adopted under Subsection (a) as necessary to reflect changes to the nationally recognized standards (i.e., UL

9540A) and the National Fire Protection Association standards (i.e., NFPA 855) on which the Commissioner's standards are based.

(3) The draft rules include guidance on determining commercial operations date.

What should the criteria include?

How should the Commissioner define the commercial operations date?

Comments:

The commercial operations date (COD) criteria are based on when the battery energy storage facility has satisfied all of the requirements of the interconnecting Transmission Service Provider (TSP) to operate the facility and all of the municipality/county requested requirements tied to the COD.

With that said, it becomes the responsibility of the battery operator to comply with the Chapter 187 statutes tied to the COD when requested by a municipality in which the facility is located, or a county in which the facility is in an unincorporated area.

The COD should also be based on satisfying the ERCOT required developer attestations stating that they have not purchased Critical Electric Grid Equipment (CEGE) and Critical Electric Grid Services (CEGS) from a Lone Star Infrastructure Protection Act (LSIPA) Designated Company or LSIPA Designated Country and that their equipment will NOT result in access to or control of CEGE by an LSIPA Designated Company or LSIPA Designated Country.

(4) Utilities Code §187.005 contemplates administrative penalties.

What penalties should be included?

What are reasonable penalties?

Comments:

The state may have penalty and enforcement statutes (civil and/or criminal) for statute and/or fire code violations. If not, one example to consider is from Texas Local Government Sec. 233.067 as follows:

“The appropriate attorney representing the county in civil cases may file a civil action in a court of competent jurisdiction to recover from a person who violates the fire code a civil penalty in an amount not to exceed \$200 for each day on which the violation exists.”

In addition to any fine imposed, an Emergency Cease and Desist Order should be issued until the violation is corrected to the satisfaction of the SFMO and/or the local AHJ.

In areas not under the SFMO's direct jurisdiction, a filed complaint in most cases would trigger the SFMO to review and administer penalties and enforcements per state statutes.

INFORMAL WORKING DRAFT (5 PAGES)

TITLE 28. INSURANCE

Part 1, Texas Department of Insurance

Chapter 34, State Fire Marshal

Page 1 of 5:

(E) Chapter 855, Standard for the Installation of Stationary Energy Storage Systems, to the extent it conflicts with Subchapter J of this chapter (relating to Battery Energy Storage Facility Safety) and Utilities Code Chapter 187, concerning battery energy storage facility safety.

Comments:

There is no Chapter 855, Standard for the Installation of Stationary Energy Storage Systems in NFPA 1 -2024. There is a Chapter 52, Energy Storage Systems and that would make sense as the reference.

Either way, delete this subsection (E) in its entirety. There is no directive in Chapter 187 to the Commissioner to make a rule concerning conflicts with Subchapter J.

Chapter §187.003.(d) explicitly states, “Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is inconsistent with the standards for design, installation, operation, and safety adopted by the Commissioner under Subsection (a).”

This should suffice for the issue of conflicts with Subchapter J.

Page 2 of 5:

§34.1002.(a) The Commissioner adopts NFPA (National Fire Protection Association) NFPA 855-2023, *Standard for the Installation of Stationary Energy Storage Systems*, and UL 9540A.

Comments:

Amend “NFPA 855-2023” to “NFPA 855-2026” and “UL 9540A” to “UL 9540A- 6TH Edition 2026”. See comments to Item **(2)** on Page 1 of this document.

Additionally, exception to the NFPA 855-2026 Chapter 2.3.9 UL Publications as follows:

Exception from: CAN/UL 9540A, *Test Method for Evaluating Thermal Runaway Propagation in Battery Energy Storage Systems*, 2019.

To adopting: ANSI/CAN/UL 9540A, *Test Method for Evaluating Thermal Runaway Propagation in Battery Energy Storage Systems*, 2026.

Exception for UL 9540A - 6th Edition 2026 is not required. Reference to other codes and standards appearing in that edition are interpreted as the latest edition.

NOTE: The NFPA 855 2026 Technical Committee did not reach a consensus on a method for a required large-scale fire test (LSFT) resulting in confusion with Authorities Having Jurisdiction (AHJs) and other stakeholders on how to comply with the LSFT (see Ballot Final, TIA No. 1852). NFPA 855:2026 refers to Annex G for informational purposes only as it relates to LSFT. UL 9540A is currently considered the default for LSFT criteria. Its 6th Edition issued March 13, 2026 contains testing protocol to objectively address the issue of propagation between BESS enclosures.

§34.1002.(b) These copyrighted standards and recommendations are adopted except to the extent they are in conflict with sections of this chapter or any Texas statute or federal law.

Comments:

Delete this sentence in its entirety.

There is no directive in Chapter 187 for the Commissioner to make a rule concerning conflicts with Subchapter J.

Chapter §187.003.(d) states the exception of “Unless expressly authorized by another statute, ... adopted by the Commissioner under Subsection (a).”
This should suffice for the issue of conflicts with Subchapter J.

Page 4 of 5:

Figure: 28 TAC §34.1302 (g)

Code and Violation Columns

Comments:

1) Add row for Code Column – Utilities Code §187.003(f) and
Violation Column – Failure to make available documents

Review of site plans is not part of the SFMO’s duties, but administering a violation via a complaint in most cases is.

2) Last Code in Code Column – Utilities Code §187.004(d)(1)

Amend to – Utilities Code §187.004(d)(2)
Typo error

3)Fine Column – All rows

Consider the “up to \$200/day” penalty previously mentioned. Recommend the §187.003(f) penalty as more severe to mitigate the failure risk of the BESS facility.

In addition to any fine imposed, an Emergency Cease and Desist Order should be issued until the violation is corrected to the satisfaction of the SFMO and/or the local AHJ. This should be stated.

Not Addressed by Informal Working Draft:

§Sec. 187.004(b) – The Commissioner by rule **may** prescribe procedures or requirements as necessary for the purposes of this section.

Recommend Commissioner to refer to the 2024 Emergency Response Guidebook and review Guide 147 in the Orange Section titled “Lithium Ion and Sodium Ion Batteries.’ Pay particular attention to the EVACUATION – Fire verbiage, “If rail car or trailer is involved in a fire, ISOLATE for 500 meters (1/3 mile) in all directions, also initiate evacuation including emergency responders for 500 meters (1/3 mile) in all directions.” There are only 3 other hazardous material guides out to the 62 guides in the Orange Section that call for the emergency responders to evacuate; 2 for explosives and 1 for ammonium nitrate (1947 Texas City explosion). Hazmat Teams are required to first respond due to the uniqueness of these battery fires and the hydrogen fluoride toxicity, and they are typically hours away from BESS facilities located in rural areas protected only by fire departments.

We thank you for your consideration of our comments to the HB 3824 rules.

HCESRPC Legislative Subcommittee