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RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner Wayne Christian
Commissioner Jim Wright

FROM: Haley Cochran, Attorney *HC*
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel

DATE: August 17, 2021

SUBJECT: Amendments to 16 TAC §8.1, relating to General Applicability and Standards

Attached is Staff's recommendation to adopt amendments to 16 Tex. Admin. Code Section 8.1. The amendments update the effective date of the rule in subsection (b) to incorporate federal pipeline safety requirements added in recent federal rulemakings. The current rule adopts by reference federal requirements as of January 22, 2019 (the effective date of the last rule amendments). The rule would be changed to adopt the requirements by reference as of September 13, 2021, and therefore, would incorporate four federal rulemakings, including PHMSA's rulemaking amending minimum safety standards for underground natural gas storage facilities. The requirements imposed by the federal rulemakings are summarized in the attached preamble.

On June 8, 2021, the Commission approved the publication of the proposed amendments in the Texas Register for a 30-day comment period, which ended on July 26, 2021. The Commission did not receive any comments on the proposal.

Staff recommends that the Commission adopt the amendments with a change to the proposed text as published in the June 25, 2021 issue of the *Texas Register* (46 TexReg 3801). The recommended change is to revise the effective date of the amendments from September 6, 2021 to September 13, 2021.

cc: Wei Wang, Executive Director
Kari French, Director, Oversight and Safety Division
Stephanie Weidman, Pipeline Safety Director

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1 The Railroad Commission of Texas (Commission) adopts an amendment to §8.1, relating to General
2 Applicability and Standards, with a change to the proposed text as published in the June 25, 2021, issue of the
3 *Texas Register* (46 TexReg 3801). The Commission adopts the amendment in §8.1(b) to update the minimum
4 safety standards and to adopt by reference the Department of Transportation (DOT) pipeline safety standards
5 found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident
6 Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by
7 Pipeline: Minimum Federal Safety Standards; 49 CFR Part 195, Transportation of Hazardous Liquids by
8 Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for Transportation
9 Workplace Drug and Alcohol Testing Programs. Subsection (b) adopts the federal pipeline safety standards as
10 of September 13, 2021, to capture the federal Pipeline and Hazardous Materials Safety Administration
11 (PHMSA) pipeline safety rule amendments summarized in the following paragraphs.

12 Docket No. PHMSA-2011-0023: Amdt. Nos. 191-26; 192-125, amended the federal pipeline safety
13 regulations in 49 CFR Parts 191 and 192 to improve the safety of onshore gas transmission pipelines, effective
14 July 1, 2020. The final rule addresses congressional mandates, National Transportation Safety Board (NTSB)
15 recommendations, and responds to public input. The amendments address integrity management requirements
16 and other requirements, and they focus on: (1) the actions an operator must take to reconfirm the maximum
17 allowable operating pressure of previously untested natural gas transmission pipelines and pipelines lacking
18 certain material or operational records; (2) the periodic assessment of pipelines in populated areas not
19 designated as "high consequence areas;" (3) the reporting of exceedances of maximum allowable operating
20 pressure; (4) the consideration of seismicity as a risk factor in integrity management; (5) safety features on in-
21 line inspection launchers and receivers; (6) a 6-month grace period for 7-calendar-year integrity management
22 reassessment intervals; and (7) related recordkeeping provisions.

23 Docket No. PHMSA-2010-0229: Amdt. No. 195-102, amended the federal pipeline safety regulations
24 in 49 CFR Part 195 in response to congressional mandates, NTSB and Government Accountability Office
25 recommendations, lessons learned, and public input, effective July 1, 2020. PHMSA amended the Pipeline
26 Safety Regulations to improve the safety of pipelines transporting hazardous liquids. Specifically, the PHMSA
27 amendments extended reporting requirements to certain hazardous liquid gravity and rural gathering lines;
28 required the inspection of pipelines in areas affected by extreme weather and natural disasters; required
29 integrity assessments at least once every 10 years of onshore hazardous liquid pipeline segments located
30 outside of high consequence areas and that are "piggable" (i.e., can accommodate in-line inspection devices);
31 extended the required use of leak detection systems beyond high consequence areas to all regulated, non-
32 gathering hazardous liquid pipelines; and required that all pipelines in or affecting high consequence areas be
33 capable of accommodating in-line inspection tools within 20 years, unless the basic construction of a pipeline

1 cannot be modified to permit that accommodation. Additionally, PHMSA clarified other regulations and
2 incorporated Sections 14 and 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.

3 PHMSA Rulemaking RIN 2105-AE78 amended PHMSA regulations in 49 CFR Part 199 and federal
4 regulations in 49 CFR Part 40 governing drug testing for safety-sensitive employees to ensure consistency
5 with the recent amendments made to the DOT's regulation, "Procedures for Transportation Workplace Drug
6 and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone,
7 and hydromorphone to DOT-regulated drug testing programs, effective July 1, 2020. The changes to the
8 DOT's regulation make it necessary to refer to these substances, as well as the previously covered drugs
9 morphine, 6-acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates."
10 Rulemaking RIN 21095-AE78 amended the term in the PHMSA regulations to ensure that all DOT drug
11 testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug
12 Testing Programs. In addition, the amendments included the term "opioids" in the wording of the DOT's
13 annual information collection requirement and clarify section 40.26 and Appendix H regarding the
14 requirement for employers to follow the DOT's instructions for the annual information collection.

15 Finally, Docket No. PHMSA-2016-0016: Amdt. Nos. 191-27; 192-126; 195-103, published PHMSA's
16 final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGFSFs). On
17 December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015
18 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of
19 Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum
20 Institute (API) Recommended Practices (RPs): API RP 1170, "Design and Operation of Solution-mined Salt
21 Caverns Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of
22 Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September
23 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement
24 would apply as a "shall") unless an operator provides written justification for not implementing the practice,
25 including an explanation for why it is impracticable and not necessary for safety. Based on the comments
26 received to the IFR and a petition for reconsideration, PHMSA determined that the RPs, as originally
27 published, provided PHMSA with a stronger basis upon which to base enforcement than the IFR. The final
28 rule also addressed recommendations from commenters and a petition for reconsideration of the IFR by
29 modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role,
30 reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding
31 risk management requirements for solution-mined salt caverns. Further, in Amdt. No. 191-28, PHMSA
32 corrected portions of the UNGSF final rule that inadvertently removed certain reporting requirements for
33 natural gas pipeline operators. Pursuant to PHMSA's final UNGSF rule, the Commission intends to submit a

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1 Certification under 49 U.S.C. §60105 and agree to adopt and enforce federal UNGSF regulations for intrastate
2 facilities.

3 The Commission received no comments on the proposed amendments.

4 The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052,
5 which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or
6 operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt
7 all necessary rules for governing and regulating persons and their operations under the jurisdiction of the
8 Commission, including such rules as the Commission may consider necessary and appropriate to implement
9 state responsibility under any federal law or rules governing such persons and their operations; Texas Natural
10 Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation
11 of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as
12 provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, 121.213-121.214,
13 which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas
14 and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any
15 other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

16 Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas
17 Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; and 49
18 United States Code Annotated, §§60101, et seq.

19 Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas
20 Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

21

22 §8.1. General Applicability and Standards.

23 (a) Applicability.

24 (1) The rules in this chapter establish minimum standards of accepted good practice and apply
25 to:

26 (A) all gas pipeline facilities and facilities used in the intrastate transportation of gas,
27 including LPG distribution systems and master metered systems, as provided in 49 United States Code
28 (U.S.C.) §§60101, et seq.; and Texas Utilities Code, §§121.001 - 121.507;

29 (B) onshore pipeline and gathering and production facilities, beginning after the first
30 point of measurement and ending as defined by 49 CFR Part 192 as the beginning of an onshore gathering line.
31 The gathering and production beyond this first point of measurement shall be subject to 49 CFR §192.8 and
32 shall be subject to the rules as defined as Type A or Type B gathering lines as those Class 2, 3, or 4 areas as
33 defined by 49 CFR §192.5;

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1 (C) the intrastate pipeline transportation of hazardous liquids or carbon dioxide and all
2 intrastate pipeline facilities as provided in 49 U.S.C. §§60101, et seq.; and Texas Natural Resources Code,
3 §117.011 and §117.012; and

4 (D) all pipeline facilities originating in Texas waters (three marine leagues and all bay
5 areas). These pipeline facilities include those production and flow lines originating at the well.

6 (2) The regulations do not apply to those facilities and transportation services subject to
7 federal jurisdiction under: 15 U.S.C. §§717, et seq.; or 49 U.S.C. §§60101, et seq.[:]

8 (b) Minimum safety standards. The Commission adopts by reference the following provisions, as
9 modified in this chapter, effective **September 13, 2021** [~~January 22, 2019~~].

10 (1) Natural gas pipelines, including LPG distribution systems and master metered systems,
11 shall be designed, constructed, maintained, and operated in accordance with 49 U.S.C. §§60101, et seq.; 49
12 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual
13 Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural
14 and Other Gas by Pipeline: Minimum Federal Safety Standards; and 49 CFR Part 193, Liquefied Natural Gas
15 Facilities: Federal Safety Standards.

16 (2) Hazardous liquids or carbon dioxide pipelines shall comply with 49 U.S.C. §§60101, et
17 seq.; and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline.

18 (3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part 199,
19 Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol
20 Testing Programs.

21 (4) All operators of pipelines and/or pipeline facilities regulated by this chapter, other than
22 master metered systems and distribution systems, shall comply with §3.70 of this title (relating to Pipeline
23 Permits Required).

24 (c) Special situations. Nothing in this chapter shall prevent the Commission, after notice and hearing,
25 from prescribing more stringent standards in particular situations. In special circumstances, the Commission
26 may require the following:

27 (1) Any operator which cannot determine to its satisfaction the standards applicable to special
28 circumstances may request in writing the Commission's advice and recommendations. In a special case, and
29 for good cause shown, the Commission may authorize exemption, modification, or temporary suspension of
30 any of the provisions of this chapter, pursuant to the provisions of §8.125 of this title (relating to Waiver
31 Procedure).

32 (2) If an operator transports gas and/or operates pipeline facilities which are in part subject to
33 the jurisdiction of the Commission and in part subject to the Department of Transportation pursuant to 49

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1 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of its pipeline facilities
2 and transportation be subject to the exclusive jurisdiction of the Department of Transportation. If the operator
3 files a written statement under oath that it will fully comply with the federal safety rules and regulations, the
4 Commission may grant an exemption from compliance with this chapter.

5 (d) Retention of DOT filings. A person filing any document or information with the Department of
6 Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall retain a
7 copy of that document or information. Such person is not required to concurrently file that document or
8 information with the Division unless another rule in this chapter requires the document or information to be
9 filed with the Division or unless the Division requests a copy.

10 (e) Penalties. A person who submits incorrect or false information with the intent of misleading the
11 Commission regarding any material aspect of an application or other information required to be filed at the
12 Commission may be penalized as set out in Texas Natural Resources Code, §§117.051 - 117.054, and/or Texas
13 Utilities Code, §§121.206 - 121.210, and the Commission may dismiss with prejudice to refiling an application
14 containing incorrect or false information or reject any other filing containing incorrect or false information.

15 (f) Retroactivity. Nothing in this chapter shall be applied retroactively to any existing intrastate
16 pipeline facilities concerning design, fabrication, installation, or established operating pressure, except as
17 required by the Office of Pipeline Safety, Department of Transportation. All intrastate pipeline facilities shall
18 be subject to the other safety requirements of this chapter.

19 (g) Compliance deadlines. Operators shall comply with the applicable requirements of this section
20 according to the following guidelines.

21 (1) Each operator of a pipeline and/or pipeline facility that is new, replaced, relocated, or
22 otherwise changed shall comply with the applicable requirements of this section at the time the pipeline and/or
23 pipeline facility goes into service.

24 (2) An operator whose pipeline and/or pipeline facility was not previously regulated but has
25 become subject to regulation pursuant to the changed definition in 49 CFR Part 192 and subsection (a)(1)(B)
26 of this section shall comply with the applicable requirements of this section no later than the stated date:

27 (A) for cathodic protection (49 CFR Part 192), March 1, 2012;

28 (B) for damage prevention (49 CFR 192.614), September 1, 2010;

29 (C) to establish an MAOP (49 CFR 192.619), March 1, 2010;

30 (D) for line markers (49 CFR 192.707), March 1, 2011;

31 (E) for public education and liaison (49 CFR 192.616), March 1, 2011; and

32 (F) for other provisions applicable to Type A gathering lines (49 CFR 192.8(c)),

33 March 1, 2011.

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1 This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found
2 to be a valid exercise of the agency's legal authority.
3 Issued in Austin, Texas, on 8/24/2021, 2021.
4 Filed with the Office of the Secretary of State on August 24, 2021.

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Christi Craddick, Chairman

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