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RYAN SITTON, COMMISSIONER
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ALEXANDER C. SCHOCH, GENERAL COUNSEL


RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM


TO: Chairman Christi Craddick
Commissioner Ryan Sitton
Commissioner Wayne Christian

FROM: Haley Cochran, Attorney
Office of General Counsel 

THROUGH: Alexander C. Schoch, General Counsel 

DATE: August 8, 2017

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

August 15, 2017		
Approved	Denied	Abstain
		

Attached is Staff's recommendation to amend 16 Texas Administrative Code §8.1. The proposed amendment updates 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 October 6, 2014 (the effective date of the rule). The rule would be changed to adopt the requirements by reference as of October 30, 2017, and therefore, would incorporate six federal rulemakings. The requirements imposed by the federal rulemakings are summarized in the attached preamble.

Staff requests the Commission's approval to publish the proposed amendment in the *Texas Register* for a 30-day comment period. If approved at conference on August 15th, the proposal should appear in the September 1st issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website by August 16th, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Kimberly Corley, Executive Director
Kari French, Director, Oversight and Safety Division
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes amendments to §8.1, relating to
2 General Applicability and Standards, to update federal provisions and citations.

3 The Commission proposes the amendments in §8.1(b) to update the minimum safety standards and
4 to adopt by reference the United States Department of Transportation's (DOT) pipeline safety standards
5 found in 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of
6 Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition
7 Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety
8 Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 CFR Part 195,
9 Transportation of Hazardous Liquids by Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49
10 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. The current
11 rule adopts the federal pipeline safety standards as of October 4, 2014; the proposed amendment amends
12 the date to October 30, 2017. The federal safety rule amendments that will be captured are summarized in
13 the following paragraphs.

14 Docket PHMSA-2011-0337, published at 80 Fed. Reg. 165, amended 49 CFR Parts 192, 193,
15 195, and 199 to incorporate by reference new, updated, or reaffirmed editions of the voluntary consensus
16 technical standards. This action allows pipeline operators to use current technologies, improved materials,
17 and updated industry and management practices. The amendment did not require pipeline operators to take
18 on any significant new pipeline safety initiatives. The final rule was effective March 6, 2015. PHMSA later
19 published a correction to Docket PHMSA-2011-0337 at 80 Fed. Reg. 46847. The original document
20 inadvertently removed paragraphs (b)(1) through (b)(4) in 49 CFR 192.153; incorrectly listed a
21 cross-reference in §193.2321(b)(1); incorrectly formatted the word "see" in various sections, and specified
22 an incorrect authority in part 193. The correcting amendments were effective August 6, 2015.

23 Docket PHMSA-2010-0026, published at 80 Fed. Reg. 12762, amended 49 CFR Parts 191, 192,
24 and 195 to make miscellaneous updates regarding performance of post-construction inspections, leak

1 surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol,
2 transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions
3 for hazardous liquid pipeline anomalies. The final rule was effective October 1, 2015. However, on
4 September 30, 2015, PHMSA published at 80 Fed. Reg. 58633 a response to petitions for reconsideration,
5 which delayed the effective date indefinitely for amendments to 49 CFR 192.305, relating to responsibility
6 to conduct construction inspections. As of the date of this rulemaking, PHMSA has not announced a new
7 effective date for the amendments to §192.305. Therefore, those amendments are not incorporated into
8 §8.1.

9 Docket DOT-2016-18328, published at 81 Fed. Reg. 52364, amended 49 CFR Part 40 to conform
10 Department of Transportation (DOT) drug and alcohol testing regulations to legislation that changed the
11 definition of "service agent." The new definition of "service agent" includes all entities that provide
12 services for DOT mandated drug and alcohol programs. The final rule was effective August 8, 2016.

13 Docket PHMSA-2013-0163, published at 82 Fed. Reg. 7972, amended 49 CFR Parts 191, 192,
14 195, and 199, to address requirements of the Pipeline Safety, Regulatory Certainty, and Job Creation Act
15 of 2011. Specifically, PHMSA added a time frame for telephonic or electronic notifications of accidents
16 and incidents and added provisions setting up cost recovery for design reviews of certain new projects,
17 providing a renewal procedure for expiring special permits, and setting out the process for requiring
18 protection of confidential commercial information. PHMSA also amended the drug and alcohol testing
19 requirements and incorporated consensus standards by reference for in-line inspection (ILI) and Stress
20 Corrosion Cracking Direct Assessment (SCCDA). The final rule was effective March 24, 2017.

21 Docket PHMSA-2011-0009, published at 81 Fed. Reg. 70987, amended 49 CFR Part 192 to
22 require an excess flow valve (EFV) on new or replaced branched service lines servicing single-family
23 residences, multifamily residences, and small commercial entities consuming gas volumes not exceeding
24 1,000 Standard Cubic Feet per Hour (SCFH). PHMSA also changed part 192 to require manual service

1 line shut-off valves or EFVs, if appropriate, for new or replaced service lines with meter capacities
2 exceeding 1,000 SCFH. Finally, the rule required operators to notify customers of their right to request
3 installation of an EFV on service lines that are not being newly installed or replaced. The final rule was
4 effective April 14, 2017.

5 Kari French, Director, Oversight and Safety Division, has determined that for the first five years
6 the amendment will be in effect, there will be minimal fiscal implications for state and local governments
7 as a result of enforcing or administering the proposed amendment. In addition, there is no anticipated cost
8 for persons required to comply with the proposed amendment. Texas intrastate pipeline operators already
9 must comply with the federal pipeline safety requirements; the Commission's proposed amendment merely
10 updates the references to those federal statutes.

11 Ms. French has determined that for each year of the first five years that the amendment will be in
12 effect, the primary public benefit will be accurate references to federal pipeline safety standards enforced
13 by the Commission.

14 The Commission has determined that the proposed amendment will not have an adverse economic
15 effect on small businesses or micro-businesses. The proposed amendment would simply change the date as
16 of which the Commission adopts by reference the federal pipeline safety rules. Texas pipelines are already
17 required to comply with the federal rules. Because the proposed amendment will not have an adverse
18 economic effect on small businesses or micro-businesses, the Commission has not prepared the economic
19 impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

20 The Commission has also determined that the proposed new rule will not affect a local economy.
21 Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas
22 Government Code §2001.022.

23 The Commission has determined that the new rule does not meet the statutory definition of a major
24 environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis

1 pursuant to that section is not required.

2 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
3 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
4 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
5 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Wednesday,
6 September 27, 2017. The Commission finds that this comment period is reasonable because the proposal
7 and an online comment form will be available on the Commission's web site more than two weeks prior to
8 *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze,
9 draft, and submit comments. The Commission encourages all interested persons to submit comments no
10 later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will
11 be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission
12 rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

13 The Commission proposes the amendment under Texas Natural Resources Code, §81.051 and
14 §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons
15 owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the
16 Commission to adopt all necessary rules for governing and regulating persons and their operations under
17 the jurisdiction of the Commission, including such rules as the Commission may consider necessary and
18 appropriate to implement state responsibility under any federal law or rules governing such persons and
19 their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission
20 jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous
21 liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas
22 Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and
23 practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the
24 maximum degree permissible under, and to take any other requisite action in accordance with, 49 United

1 States Code Annotated, §§60101, et seq.

2 Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101;

3 Texas Utilities Code, §§121.201-121.211; §121.251 and §121.253, §§121.5005-121.507; and 49 United

4 States Code Annotated, §§60101, et seq.

5 Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas

6 Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

7

8 §8.1. General Applicability and Standards.

9 (a) (No change.)

10 (b) Minimum safety standards. The Commission adopts by reference the following provisions, as
11 modified in this chapter, effective October 30, 2017 [~~as of the effective date of this section~~].

12 (1)-(4) (No change.)

13 (c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 15, 2017.

Filed with the Office of the Secretary of State on August 15, 2017.



Haley Cochran
Rules Attorney
Railroad Commission of Texas