



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 *HJC*

THROUGH: Alexander C. Schoch, General Counsel *AS*

DATE: April 17, 2018

SUBJECT: Proposed Amendments to 16 TAC §3.52 and §3.53

| April 24, 2018 | | |
|-------------------------------------|--------|---------|
| Approved | Denied | Abstain |
| <i>CC</i> <i>RS</i> <i>WC</i> | | |

Attached is Staff's recommendation to publish amendments to 16 Tex. Admin. Code §3.52 and §3.53. The amendments to §3.53 would allow operators to elect not to perform or file a production capability test for a well after the initial test has been filed, except in certain circumstances. If the operator elects not to perform such a test, then the Commission would use the results of the most recent test or optional allocation on file with the Commission. Under the proposed amendments, operators would still be required to file the Form W-10 annually to report the status of each well. The proposed amendments to §3.52 would remove references to annual tests to reflect the proposed amendments to §3.53.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on April 24th, the proposal should appear in the May 11, 2018 issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Lori Wrotenbery, Director – Oil and Gas Division
Jason Clark, Asst. Director for Administrative Compliance – Oil and Gas Division

1 The Railroad Commission of Texas (Commission) proposes amendments to §3.53, relating to
2 Annual Well Tests and Well Status Reports Required. The amendments would adjust the testing
3 requirements for oil wells to minimize the frequency of such tests, thereby reducing the administrative
4 burden for those wells and associated costs to industry. The Commission also proposes amendments to
5 §3.52, relating to Oil Well Allowable Production, to reflect the changes in §3.53.

6 Requirements for oil well production capability testing are found in both §3.52 and §3.53, as well
7 as §3.51, relating to Oil Potential Well Test Forms Required. The current version of §3.53 requires
8 operators to test the production capability of oil wells annually and report the results of the test to the
9 Commission on Form W-10, Oil Well Status Report. The Commission proposes new subsection (a)(4) to
10 specify that an operator may elect not to perform or file a test for a well after the initial potential test has
11 been filed, except in certain circumstances. If the operator elects not to perform such a test, then the
12 Commission would use the results of the most recent test or optional allocation on file with the
13 Commission.

14 Notwithstanding subsection (a)(4), proposed new subsection (a)(5) would require that an operator
15 perform the initial potential test in the following situations: when the well is recompleted into a different
16 regulatory field; when the well is reclassified from gas to oil; when an inactive well is returned to
17 production; when necessary to reinstate an allowable; or when required by Commission order, special
18 field rule, or other Commission rule. For example, operators of wells authorized to surface commingle
19 production pursuant to §§3.26 and 3.27 of this title (relating to Separating Devices, Tanks, and Surface
20 Commingling of Oil, and Gas To Be Measured and Surface Commingling of Gas, respectively) would be
21 required to conduct and report tests at the same frequency at which those tests are currently required by
22 those rules and §3.52 or by the order authorizing the commingling.

23 The overall effect of the proposed amendments would be to require testing in specific instances,
24 rather than as a general requirement. Under the proposed amendments, operators would still be required

1 to file Form W-10 annually to report the status of each well.

2 The proposed amendments to §3.52(f)(4) remove references to annual tests to reflect the proposed
3 amendments to §3.53, which eliminate the requirement for annual testing in most cases. The Commission
4 also proposes other non-substantive clarifications and updates in both rules.

5 Mr. Jason Clark, Assistant Director for Administrative Compliance, Oil & Gas Division, has
6 determined that for each year of the first five years the amendments will be in effect there will be fiscal
7 implications to the Commission and to the regulated industry as a result of the amendments. There will be
8 no fiscal effect on local government.

9 Mr. Clark estimates that there would be a one-time cost of \$65,000 associated with programming
10 modifications to the Commission's data processing systems to implement the proposed amendments.
11 These modifications will enable the Commission's systems to perform the necessary calculations to
12 identify wells for which tests are still required and to track the source of the data in well records. For
13 wells for which testing is not required, the modifications will enable the Commission's systems to use
14 existing test information to calculate the well allowable.

15 Mr. Clark has determined that for each year of the first five years the proposed amendments are in
16 effect, the anticipated public benefit will be more efficient use of Commission resources due to reduced
17 administrative costs associated with routine testing. Approximately 250,108 wells were required to
18 provide test information in calendar year 2017 and Commission staff estimates the proposed amendments
19 could decrease test filings on Form W-10 by up to 90 percent.

20 Mr. Clark has also determined that there is no economic cost for persons required to comply with
21 the proposed amendments. Industry will, however, benefit from the modified testing and filing
22 requirements. According to Commission records from calendar year 2017, operators were required to
23 perform annual testing on approximately 250,108 oil wells. Commission staff estimates that of these
24 wells, approximately 22,500 would still require testing under the proposed amendments. The remaining

1 227,608 wells would no longer require routine testing, resulting in an estimated savings to industry of up
2 to \$52,000,000.

3 The Commission has determined that the proposed amendments to §§3.52 and 3.53 will not have
4 an adverse economic effect on rural communities, small businesses or micro-businesses. As noted above,
5 there is no anticipated additional cost for any person required to comply with the proposed amendments.
6 Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility
7 analysis pursuant to Texas Government Code §2006.002.

8 The Commission has also determined that the proposed amendments will not affect a local
9 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
10 Texas Government Code §2001.022.

11 The Commission has determined that the amendments do not meet the statutory definition of a
12 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
13 analysis conducted pursuant to that section is not required.

14 During the first five years that the rules would be in effect, the proposed rule does not: create or
15 eliminate a government program; create or eliminate any employee positions; require an increase or
16 decrease in future legislative appropriations; require an increase or decrease in fees paid to the agency;
17 create a new regulation; increase or decrease the number of individuals subject to the rule's applicability;
18 expand, limit, or repeal an existing regulation; or effect the state's economy. The proposed amendments
19 modify the requirements for testing the production capability of oil wells such that testing is required in
20 specific instances, rather than as a general requirement every year.

21 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
22 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
23 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
24 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Friday,

1 June 1, 2018. The Commission finds that this comment period is reasonable because the proposal and an
2 online comment form will be available on the Commission's website more than two weeks prior to *Texas*
3 *Register* publication of the proposal, giving interested persons additional time to review, analyze, draft,
4 and submit comments. The Commission cannot guarantee that comments submitted after the deadline will
5 be considered. For further information, call Jason Clark, Assistant Director for Administrative
6 Compliance, Oil & Gas Division, at (512) 463-2655. The status of Commission rulemakings in progress
7 is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

8 The Commission proposes the amendments under Texas Natural Resources Code §§81.051 and
9 81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or
10 operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and
11 regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code
12 §§85.042, 85.201, 85.202, 86.041 and 86.042, which require the Commission to adopt rules to control
13 waste of oil and gas; and Texas Natural Resources Code §85.053 and §85.054, which authorize the
14 Commission to adopt rules relating to the allocation of production allowables.

15 Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.042, 85.053, 85.054,
16 85.201, 85.202, 86.041, and 86.042.

17 Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 85, and 86.
18 §3.52. Oil Well Allowable Production.

19 (a) The daily allowable production of any lease or property shall not include production based
20 upon the daily potential production of the field or area in which such well is located unless such well is
21 actually on production, and such lease or property shall share in the total allowable production of the field
22 or area, only to the extent of such well's actual ability to produce from day to day regardless of the rated
23 potential production thereof according to the Commission [~~commission~~] schedules.

24 (b) Production of a well in any one day shall not exceed 110% of the top well allowable as fixed

1 by applicable rules and orders. Production and runs from a lease during the monthly allowable period
2 shall not exceed 105% of the monthly allowable for the well or wells on the lease. However, the volume
3 of oil that is produced and removed from the producing property as tolerance production shall be treated
4 as overproduction and overruns shall be made up during the next succeeding month.

5 (c) All oil allowable volumes shall be measured in a manner consistent with §3.71 of this title
6 (relating to Pipeline Tariffs) (Statewide Rule 71).

7 (d) A newly completed well coming into production during a proration period will be gauged
8 either by a Commission [~~commission~~] agent, or pipeline gauger if a Commission [~~commission~~] agent is
9 not available, if an offset lease owner witnesses the gauge taken by the pipeline gauger. The allowable
10 production of such newly completed well shall be in addition to the existing total allowable production of
11 the field as previously ascertained. The well whose allowable is thus fixed shall take its ratable share of
12 production at the next succeeding schedule date according to rule.

13 (e) All oil produced from any well governed by any proration order of the Commission
14 [~~commission~~] shall be charged against the allowable daily production of such well regardless of the
15 disposition which is made of the oil so produced.

16 (f) The operator of any lease or unitized area in the State of Texas may be permitted to produce
17 the total allowable for any such lease or unitized area subject to the following provisions:

18 (1) The operator must submit an application to produce that total allowable on a lease or
19 unit production basis to the Commission [~~commission~~] with a plat showing the subject lease or unit as
20 well as the adjacent properties thereto. Such plat shall identify properly all properties and wells. The
21 applicant shall give written notice to all operators in the field when application is made for permission to
22 produce on a lease basis in a field. If no protest is received by the Commission [~~commission~~] within 15
23 days of the date of mailing, the application may be granted by administrative action. If protest is received,
24 notice will be given and the matter set for hearing.

1 (2) The total daily allowable of the lease or unit shall be initially established as an
2 allowable equal to the sum of the current allowables for all wells on the lease or unit. The allowable
3 credited to any new or existing well may be increased to the top well allowable permitted by subsequently
4 filing a new potential test on that well. The maximum total daily allowable of the lease or unit will be
5 equal to the sum of the scheduled top allowables assignable to each well for its proration unit.

6 (3) The total daily allowable of the lease or unit may be produced in any quantity from
7 any well or combination of wells with the exception that wells nearer than a regular location from a lease
8 or unit line shall not be permitted to produce more than their normal allowables and wells at a distance of
9 a regular location from a lease or unit line shall not be produced at a rate of more than two times the top
10 allowable for such well unless waivers of objection to rates in excess of this limit have been obtained
11 from the operators of wells offsetting the well.

12 (4) Well [~~Annual well~~] test or allocation:

13 (A) A [~~An annual~~] well test[;] or an allocation pursuant to §3.53 [~~§3.53(a)(2)~~] of
14 this title (relating to Annual Well Tests and Well Status Reports Required) shall be made and reported on
15 the form prescribed by the Commission [~~oil well status report form~~] on each lease or unit property to
16 which a lease production basis has been granted showing an individual well test or allocation on each oil
17 well on the property made during the prescribed test period determined by the Commission [~~commission~~].
18 Well [~~Annual well~~] tests may be witnessed by offset operators. An offset operator that desires to witness a
19 [~~an annual~~] well test shall give the testing operator written notice of its desire to witness the next
20 [~~scheduled annual~~] well test of a specific well. A testing operator that has received prior written notice
21 that an offset operator desires to witness a [~~an annual~~] well test shall give that offset operator at least 24
22 hours advance notice of the date of the next [~~annual~~] well test for that well. The Commission will use the
23 test or allocation data in the preparation of the oil proration schedule. The total schedule daily lease
24 allowable shall be the sum of the individual well allowables as determined under applicable rules and the

1 lease production basis shall be designated on the oil proration schedule by an appropriate symbol. All
2 wells on the lease for which an allowable is requested shall have their production volumes reported
3 pursuant to §3.53(a) of this title.

4 (B) Any producing well with a gas-oil ratio in excess of that permitted by the
5 applicable rules shall have its daily allowable calculated by dividing the producing gas-oil ratio into the
6 daily gas limit of the well.

7 (5) The Commission shall continue to require special tests in cases of commingled
8 production where individual lease apportionment is determined by this method. Other special tests may be
9 required as the Commission deems necessary.

10 (6) In the event that the monthly gas production of the lease or unit exceeds the
11 permissible monthly lease gas limit, the volume of gas in excess of the lease gas limit shall be considered
12 overproduction and must be made up by underproduction of the lease gas limit. Whenever the
13 overproduced amount equals the next month's lease gas limit the overproduced amount shall immediately
14 be reduced to zero by shutting in the lease or by other means acceptable to the Commission.

15 (7) The East Texas Field is excluded from the provisions of this section.

16 (g) Administrative cancelation of overproduction.

17 (1) An operator may request in writing to the Commission that overproduction for a
18 specific lease be canceled. The request shall include a listing of the names and addresses of all offsetting
19 operators in the same field as the lease for which the request is filed.

20 (2) Upon receipt of an operator's written request:

21 (A) Commission staff shall determine whether the operator's wells on the
22 specified lease are in compliance with Commission rules excluding rules pertaining to overproduction.

23 (B) If the wells are found to be in compliance, the Commission staff shall send
24 written notice to offset operators as identified in the request advising them of the request and giving them

1 not less than 15 days to file a written objection to the request.

2 (C) If no objection to the request is received, the overproduction on the lease
3 requested by the operator shall be canceled.

4 (D) If objection to the request is received or if Commission staff determines that
5 the operator's wells are not in compliance with Commission rules excluding rules pertaining to
6 overproduction, then the requested cancelation shall not be administratively approved. The operator may
7 request that the matter be scheduled for public hearing pursuant to Tex. Nat. Res. Code §86.090. The
8 burden of proof shall be on the applicant operator.

9

10 §3.53. Annual Well Tests and Well Status Reports Required.

11 (a) Oil wells.

12 (1) Unless otherwise provided for in this section, each operator of producing oil wells
13 shall annually test each producing oil well for a 24-hour period during the test period [~~specified on the~~
14 ~~well status report form~~] and shall record all oil, gas and water volumes resulting from the test on the form
15 prescribed by the Commission.

16 (2) For any oil well capable of producing no more than five barrels of oil per 24-hour
17 period, the operator of such well may report the required oil, gas and water volumes based on an
18 allocation of that well's production on a prorated daily basis, rather than an actual well test. This option of
19 using production allocation instead of actual well tests does not apply to surface-commingled wells,
20 swabbed wells, the East Texas Field or the following Panhandle fields: Panhandle Carson County Field
21 (Field Number 68845-001); Panhandle Collingsworth County Field (Field Number 68859-001);
22 Panhandle Gray County Field (Field Number 68873-001); Panhandle Hutchison County Field (Field
23 Number 68887-001); Panhandle Moore County Field [~~field~~] (Field Number 68901-001); Panhandle Potter

1 County Field (Field Number 68915-001); and Panhandle Wheeler County Field (Field Number 68929-
2 001).

3 (3) Each operator of a well or wells listed in the oil proration schedule shall file with the
4 Commission [~~commission~~] an oil well status report form in accordance with instructions on the form. All
5 wells on a lease, and injection and disposal wells, must be reported.

6 (4) After the initial potential test is filed with the Commission, an operator may elect not
7 to perform and/or file a subsequent test for the well. In those cases, the Commission shall use for the
8 purpose of this section the results of the most recent test or optional allocation on file with the
9 Commission. Operators of wells listed on the proration schedule shall continue to file the oil well status
10 report annually to report the producing or shut-in status of each well.

11 (5) Notwithstanding paragraph (4) of this subsection, an operator shall perform an initial
12 potential test or report the optional allocation in accordance with paragraph (2) of this subsection when:

13 (A) the well is recompleted into a different regulatory field;

14 (B) the well is reclassified from gas to oil;

15 (C) the well is an inactive well as defined in §3.15 of this title (relating to Surface
16 Equipment Removal Requirements and Inactive Wells) and the operator resumes production from the
17 well;

18 (D) necessary to reinstate an allowable; or

19 (E) required by Commission order, special field rule, or other Commission rule.

20 (6) [(4)] Changes in oil well status filed between regularly scheduled oil well status
21 surveys shall be submitted on oil well status report forms in accordance with the instructions on the forms
22 [thereon].

23 (b) Gas wells. Each operator of a gas well producing liquid hydrocarbons shall file with the
24 Commission [~~commission~~] gas well status reports in accordance with the instructions on the forms

1 [thereon].

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

4 Issued in Austin, Texas on April 24, 2018.

5 Filed with the Office of the Secretary of State on April 24, 2018.



Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas