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 WAYNE CHRISTIAN, *COMMISSIONER*
 JIM WRIGHT, *COMMISSIONER*



ALEXANDER C. SCHOCH, *GENERAL COUNSEL*

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
 Commissioner Wayne Christian
 Commissioner Jim Wright

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

THROUGH: Alexander C. Schoch, General Counsel

DATE: June 2, 2021

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

| June 8, 2021 | | |
|----------------------------|--------|---------|
| Approved | Denied | Abstain |
| ^{DS} <i>CC</i> | | |
| ^{DS} <i>WC</i> | | |
| ^{DS} <i>JW</i> | | |

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 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 6, 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.

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 June 8th, the proposal should appear in the June 25th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website, giving interested persons more than two additional weeks to review and submit comments to the Commission.

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) proposes an amendment to §8.1 relating to
2 General Applicability and Standards. The Commission proposes the amendment in §8.1(b) to update the
3 minimum safety standards and to adopt by reference the Department of Transportation (DOT) pipeline
4 safety standards found in 49 CFR Part 191, Transportation of Natural and Other Gas by Pipeline; Annual
5 Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of
6 Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 195, Transportation
7 of Hazardous Liquids by Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40,
8 Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Current subsection (b)
9 adopted the federal pipeline safety standards as of January 22, 2019. The amendment changes the date to
10 September 6, 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
13 safety regulations in 49 CFR Parts 191 and 192 to improve the safety of onshore gas transmission
14 pipelines, effective July 1, 2020. The final rule addresses congressional mandates, National
15 Transportation Safety Board (NTSB) recommendations, and responds to public input. The amendments
16 address integrity management requirements and other requirements, and they focus on: (1) the actions an
17 operator must take to reconfirm the maximum allowable operating pressure of previously untested natural
18 gas transmission pipelines and pipelines lacking certain material or operational records; (2) the periodic
19 assessment of pipelines in populated areas not designated as “high consequence areas;” (3) the reporting
20 of exceedances of maximum allowable operating pressure; (4) the consideration of seismicity as a risk
21 factor in integrity management; (5) safety features on in-line inspection launchers and receivers; (6) a 6-
22 month grace period for 7-calendar-year integrity management reassessment intervals; and (7) related
23 recordkeeping provisions.

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

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1 systems beyond high consequence areas to all regulated, non-gathering hazardous liquid pipelines; and
2 required that all pipelines in or affecting high consequence areas be capable of accommodating in-line
3 inspection tools within 20 years, unless the basic construction of a pipeline cannot be modified to permit
4 that accommodation. Additionally, PHMSA clarified other regulations and incorporated Sections 14 and
5 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.

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

19 Finally, Docket No. PHMSA–2016–0016: Amdt. Nos. 191–27; 192–126; 195–103, published
20 PHMSA’s final rule to amend its minimum safety standards for underground natural gas storage facilities
21 (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in
22 response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting
23 our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two
24 American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, “Design and
25 Operation of Solution-mined Salt Caverns Used for Natural Gas Storage” (First Edition, July 2015); and
26 API RP 1171, “Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and
27 Aquifer Reservoirs” (First Edition, September 2015). The IFR required each provision in the API RPs to
28 apply as mandatory (i.e., each “should” statement would apply as a “shall”) unless an operator provides
29 written justification for not implementing the practice, including an explanation for why it is
30 impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for
31 reconsideration, PHMSA determined that the RPs, as originally published, provided PHMSA with a
32 stronger basis upon which to base enforcement than the IFR. The final rule also addressed

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1 recommendations from commenters and a petition for reconsideration of the IFR by modifying
2 compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing
3 recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk
4 management requirements for solution-mined salt caverns. Further, in Amdt. No. 191–28, PHMSA
5 corrected portions of the UNGSF final rule that inadvertently removed certain reporting requirements for
6 natural gas pipeline operators. Pursuant to PHMSA's final UNGSF rule, the Commission intends to
7 submit a Certification under 49 U.S.C. §60105 and agree to adopt and enforce federal UNGSF regulations
8 for intrastate facilities.

9 Stephanie Weidman, Pipeline Safety Director, Oversight and Safety Division, has determined
10 there will be a one-time cost to the Commission of approximately \$35,000 in programming costs based on
11 380 hours of programming to implement changes required to enforce federal UNGSF regulations. This
12 cost will be covered using the Commission's existing budget. Ms. Weidman has determined that for the
13 first five years the amendments will be in effect, there will be minimal fiscal implications, if any, for local
14 governments as a result of enforcing the amendments.

15 Ms. Weidman has also determined that the public benefit anticipated as a result of enforcing or
16 administering the amendments will be consistency with federal requirements.

17 Ms. Weidman has determined that for each year of the first five years that the amendments will
18 be in effect, there will be no additional economic costs for persons required to comply as a result of
19 Commission adoption of the proposed amendments. The PHMSA amendments discussed above, which
20 are proposed for adoption by reference in Commission rules, create costs for persons required to comply.
21 However, persons required to comply with the PHMSA requirements must do so regardless of whether
22 the requirements are adopted in Commission rules. Therefore, the proposed amendments to Commission
23 rules do not create economic costs for persons required to comply.

24 In accordance with Texas Government Code, §2006.002, the Commission has determined there
25 will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting
26 from the proposed amendments. As discussed above, there will be no additional economic costs for
27 persons required to comply as a result of adoption of the proposed amendments; therefore, the
28 Commission has not prepared the economic impact statement or the regulatory flexibility analysis quired
29 under §2006.002.

30 The Commission has determined that the proposed rulemaking will not affect a local economy;
31 therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a
32 local employment impact statement for the proposed rules.

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

4 During the first five years that the rule would be in effect, the proposed amendments would not:
5 create or eliminate a government program; create or eliminate any employee positions; require an increase
6 or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation;
7 increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal
8 an existing regulation; or affect the state's economy. The PHMSA amendments discussed above increased
9 the number of individuals subject to the PHMSA rules; however, these individuals are subject to PHMSA
10 requirements even if those requirements are not adopted in Commission rules. The amendments are
11 proposed to adopt by reference DOT pipeline safety standards, including PHMSA's minimum safety
12 standards for UNGSFs. Pursuant to PHMSA's final UNGSF rule, the Commission intends to submit a
13 Certification under 49 U.S.C. §60105 and agree to adopt and enforce federal UNGSF regulations for
14 intrastate facilities.

15 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
16 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
17 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
18 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12 p.m.), on
19 Monday, July 26, 2021. The Commission finds that this comment period is reasonable because the
20 proposal and an online comment form will be available on the Commission's web site more than two
21 weeks prior to Texas Register publication of the proposal, giving interested persons additional time to
22 review, analyze, draft, and submit comments. The Commission encourages all interested persons to
23 submit comments no later than the deadline. The Commission cannot guarantee that comments submitted
24 after the deadline will be considered. For further information, call Ms. Weidman at (512) 463-2519. The
25 status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)
26 [counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

27 The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and
28 §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons
29 owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the
30 Commission to adopt all necessary rules for governing and regulating persons and their operations under
31 the jurisdiction of the Commission, including such rules as the Commission may consider necessary and
32 appropriate to implement state responsibility under any federal law or rules governing such persons and

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1 their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission
2 jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous
3 liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas
4 Utilities Code, §§121.201-121.210, 121.213-121.214, which authorize the Commission to adopt safety
5 standards and practices applicable to the transportation of gas and to associated pipeline facilities within
6 Texas to the maximum degree permissible under, and to take any other requisite action in accordance
7 with, 49 United States Code Annotated, §§60101, et seq.

8 Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101;
9 Texas Utilities Code, §§121.201-121.211; §§121.213-121.214; §121.251 and §121.253, §§121.5005-
10 121.507; and 49 United States Code Annotated, §§60101, et seq.

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

13

14 §8.1. General Applicability and Standards.

15 (a) Applicability.

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

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

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

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

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

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

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1 (b) Minimum safety standards. The Commission adopts by reference the following provisions, as
2 modified in this chapter, effective September 6, 2021~~[January 22, 2019]~~.

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

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

11 (3) All operators of pipelines and/or pipeline facilities shall comply with 49 CFR Part
12 199, Drug and Alcohol Testing, and 49 CFR Part 40, Procedures for Transportation Workplace Drug and
13 Alcohol Testing Programs.

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

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

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

25 (2) If an operator transports gas and/or operates pipeline facilities which are in part
26 subject to the jurisdiction of the Commission and in part subject to the Department of Transportation
27 pursuant to 49 U.S.C. §§60101, et seq.; the operator may request in writing to the Commission that all of
28 its pipeline facilities and transportation be subject to the exclusive jurisdiction of the Department of
29 Transportation. If the operator files a written statement under oath that it will fully comply with the
30 federal safety rules and regulations, the Commission may grant an exemption from compliance with this
31 chapter.

32 (d) Retention of DOT filings. A person filing any document or information with the Department

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1 of Transportation pursuant to the requirements of 49 CFR Parts 190, 191, 192, 193, 195, or 199 shall
2 retain a copy of that document or information. Such person is not required to concurrently file that
3 document or information with the Division unless another rule in this chapter requires the document or
4 information to be filed with the Division or unless the Division requests a copy.

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

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

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

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

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

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

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

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

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

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

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

30 March 1, 2011.

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

June 8th
Issued in Austin, Texas on _____, 2021.

June 8th
Filed with the Office of the Secretary of State on _____, 2021.

DocuSigned by:

Haley Cochran

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