



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

### MEMORANDUM

**TO:** Chairman Barry T. Smitherman  
Commissioner David Porter  
Commissioner Christi Craddick

**FROM:** Cristina Self, Attorney-- General Counsel Section  
Office of General Counsel *ms*

**THROUGH:** Lindil C. Fowler, General Counsel *LF*

**DATE:** June 10, 2014

**SUBJECT:** Proposal of amendments to 16 Tex. Admin. Code §8.1, General Applicability and Standards; and §8.215, Odorization of Gas.

June 17, 2014		
Approved	Denied	Abstain
<i>ms</i>	<i>LF</i>	

Attached are Staff's recommended preamble and rule text for the proposal of amendments to 16 TAC §8.1, relating to General Applicability and Standards; and to 16 TAC §8.215, relating to Odorization of Gas.

The proposed amendments to §8.1 would update minimum safety standards by stating that the Commission adopts by reference all federal pipeline safety regulations (promulgated by the U.S. Department of Transportation) as of the effective date of the amended rule. This will ensure that all recent amendments and corrections to the federal rules will be incorporated into the Commission's rules, as required by State Program Guidelines. The proposed amendments to §8.215 would clarify that wick-type farm tap odorizers, though exempt from certain equipment reporting requirements, must continue to comply with gas odorization requirements.

Staff requests the Commission's approval to publish the proposed rule amendments in the *Texas Register* for a 30-day comment period. If approved at conference on June 17<sup>th</sup>, the proposal should appear in the July 4<sup>th</sup> issue of the *Texas Register*. This 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: Jason Boatright, Director --General Counsel Section  
Polly McDonald, Director -- Pipeline Safety Division  
Milton Rister, Executive Director  
Wei Wang, Chief Financial Office

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, and to §8.215, relating to  
3   Odorization of Gas, to clarify an exemption for certain farm tap odorizers.

4           The Commission proposes the amendments in §8.1(b) to update the minimum safety standards by  
5   adopting by reference the United States Department of Transportation's (USDOT) pipeline safety  
6   standards found in 49 U.S.C. §§60101, et seq.; 49 Code of Federal Regulations (CFR) Part 191,  
7   Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and  
8   Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by  
9   Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal  
10   Safety Standards; 49 U.S.C. §§60101, et seq.; 49 CFR Part 195, Transportation of Hazardous Liquids by  
11   Pipeline; 49 CFR Part 199, Drug and Alcohol Testing; and 49 CFR Part 40, Procedures for Transportation  
12   Workplace Drug and Alcohol Testing Programs. The current rule adopts the federal pipeline safety  
13   standards as of October 1, 2011; the proposed amendment changes the date to the effective date of this  
14   section.

15           The most significant change in the federal pipeline regulations since October 1, 2011, updated the  
16   administrative civil penalty maximums for violation of the safety standards to reflect current federal law;  
17   updated the informal hearing and adjudication process for pipeline enforcement matters to reflect current  
18   law; and made other technical corrections and updates to certain administrative procedures. The  
19   amendments did not impose any new operating, maintenance, or other substantive requirements on  
20   pipeline owners or operators, and became effective October 25, 2013. By amending the text of §8.1 to  
21   provide that the Commission adopts all federal pipeline safety regulations adopted by reference in this  
22   section as of the effective date of the section, the Commission will ensure that all amendments and  
23   corrections to the federal rules have been incorporated into the Commission's rules, as required by State  
24   Program Guidelines.

1           The proposed amendments to §8.215(e)(2) clarify the exemption for reporting certain information  
2 about certain types of farm tap odorizers. Currently, and consistent with the federal requirements for gas  
3 odorization set forth in 49 CFR §192.625, the Commission requires each gas company to conduct odorant  
4 concentration tests according to the requirements in the rule, and to record and maintain certain  
5 information regarding the tests in its files for at least two years. The reports must include the odorizer  
6 name and location; the malodorant concentration meter make, model, and serial number; the date the test  
7 was performed, test time, odorizer tested, and distance from odorizer; the test results indicating the  
8 percent of gas in air when the malodor was readily detectable; and the signature of the person performing  
9 the test. As currently written, the provision in subsection (e)(2) appears to exempt farm tap odorizers from  
10 the odorization testing requirements of paragraph (1) of this subsection. This exemption is not consistent  
11 with the requirements of §192.625.

12           Historically, operators were not required to perform the testing of farm tap odorizers that is now  
13 required in §8.215(e)(1). Farm taps were assigned an odorizer ID number and the homeowner or operator  
14 was required to fill out certain forms for each farm tap and submit them to the Commission on a quarterly  
15 basis. Approximately ten years ago, the Commission moved the pipeline safety rules from Chapter 7 of  
16 the Texas Administrative Code to Chapter 8, simultaneously making a number of clarifying  
17 organizational changes. The intent of subsection (e)(2) at that time was to remove the requirement for  
18 odorizers to have ID numbers and to eliminate the requirement that odorizer equipment reports be  
19 performed on wick-type odorizers.

20           Typically, a wick-type odorizer is a small steel bottle, containing only a pint to a quart of odorant,  
21 and installed on the service line adjacent to the meter. Similar to those used in a kerosene lantern, one  
22 end of the wick extends through a hole in the container while the other end is placed directly in the stream  
23 of gas. The odorant is drawn up the wick from the container into the gas stream. There is no manufactured  
24 equipment and therefore no malodorant concentration meter make, model, and serial number to report.

1           When the rules were previously amended, there was no intent to remove the requirement that  
2 operators test for adequate odorization; the Commission has continued to require operators to conduct  
3 those tests. The intent was to exempt wick-type odorizers from the equipment reporting requirements. The  
4 proposed amendment expressly states the limit of the exemption.

5           Mary Ross McDonald, Director, Pipeline Safety Division, has determined that for the first five  
6 years the amendments will be in effect, there will be minimal fiscal implications for state and local  
7 governments as a result of enforcing or administering the proposed amendment. Texas intrastate pipeline  
8 operators already must comply with the federal pipeline safety requirements that are adopted by reference  
9 in §8.1; the Commission's proposed amendment merely updates the effective date of the incorporation of  
10 those federal regulations. Additionally, Ms. McDonald has determined that the amendments to  
11 §8.215(e)(2) simply clarify the wording in the rule to conform to the manner in which this provision has  
12 historically been administered. There will be no change to the operating procedures of the Pipeline Safety  
13 Division and therefore no effect on pipeline operators that have farm taps.

14           Ms. McDonald has determined that for each year of the first five years that the amendments will  
15 be in effect, the primary public benefit will be maintaining accurate references in the rule to the federal  
16 pipeline safety standards that are enforced by the Commission, and an accurate statement of the  
17 exemption criteria for reporting certain types of information regarding farm tap odorizers.

18           The Commission anticipates that there will be no probable economic cost or adverse effect upon  
19 individuals, small businesses, or micro-businesses resulting from compliance with the proposed  
20 amendments. The proposed amendment to §8.1 would simply change the date as of which the  
21 Commission has adopted by reference the federal pipeline safety rules. Texas pipeline operators are  
22 already required to comply with the federal rules. Under 49 U.S.C. §§60101, et seq., the Commission is  
23 authorized to enforce pipeline safety regulations so long as the state's scheme of regulation is as strict as  
24 or stricter than the federal system. In order to be considered "as strict as or stricter than" the federal

1 scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited  
2 application. Therefore, even though the rules already apply in Texas, the Commission must also adopt the  
3 rules by reference. The proposed amendment to §8.215(e)(2) will accurately state the exemption for  
4 reporting equipment information for wick-type farm tap odorizers.

5 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic  
6 Effect, requires that as a part of the rulemaking process, a state agency prepare an economic impact  
7 statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses,  
8 and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule  
9 if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.  
10 Because the Commission has determined that the proposed amendment is not anticipated to have an  
11 adverse economic effect on individuals, small businesses, or micro-businesses that are pipeline operators,  
12 and because the Commission has determined that it is consistent with the health, safety, and  
13 environmental and economic welfare of the state to have all persons engaged in the operation of pipelines  
14 and pipeline facilities conform to the same safety standards, rather than allowing those operators that are  
15 small businesses to follow some other standards, the economic impact statement and regulatory flexibility  
16 analysis described in Texas Government Code, §2006.002, are not required.

17 The Commission finds that the proposed amendments will not affect a local economy. Therefore,  
18 the Commission has not prepared a local employment impact statement pursuant to Texas Government  
19 Code, §2001.022.

20 Ms. McDonald has determined that the proposed amendments are not major environmental rules,  
21 as the proposed amendments do not meet the criteria set forth in Texas Government Code, §2001.0225(a).  
22 Accordingly, the Commission has not prepared the draft impact analysis or final regulatory analysis  
23 required under that section.

24 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,

1 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at  
2 [www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings](http://www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings); or by electronic mail to  
3 [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us). The Commission will accept comments until noon (12:00 p.m.) on  
4 Monday, August 4, 2014, which is 31 days after publication in the *Texas Register*. Comments should  
5 refer to GUD No. 10350. The Commission finds that this comment period is reasonable because the  
6 proposal and an online comment form will be available on the Commission's web site more than two  
7 weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to  
8 review, analyze, draft, and submit comments. The Commission encourages all interested persons to  
9 submit comments no later than the deadline. The Commission cannot guarantee that comments submitted  
10 after the deadline will be considered. For further information, call Ms. McDonald at (512) 463-7008. The  
11 status of Commission rulemakings in progress is available at  
12 [www.rrc.state.tx.us/legal/rules/proposed-rules](http://www.rrc.state.tx.us/legal/rules/proposed-rules).

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

1 accordance with, 49 United States Code Annotated, §§60101, et seq.

2 Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code,  
3 §§121.201-121.211; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code  
4 Annotated, §§60101, et seq., are affected by the proposed amendments.

5 Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101;  
6 Texas Utilities Code, §§121.201-121.211; §121.251 and §121.253, §§121.5005-121.507; and 49 United  
7 States Code Annotated, §§60101, et seq.

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

10  
11 §8.1. General Applicability and Standards.

12 (a) (No change.)

13 (b) Minimum safety standards. The Commission adopts by reference the following provisions, as  
14 modified in this chapter, effective as of the effective date of this section [~~October 1, 2011~~].

15 (1)-(4) (No change.)

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

17  
18 §8.215. Odorization of Gas.

19 (a)-(d) (No change.)

20 (e) Malodorant concentration tests and reports.

21 (1) (No change.)

22 (2) Wick-type farm [Farm] tap odorizers shall be exempt from the odorization  
23 equipment reporting [testing] requirements of paragraph (1)(B) [~~(1)~~] of this subsection.

24

1 (3) (No change.)

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

4 Issued in Austin, Texas, on June 17, 2014.

5 Filed with the Office of the Secretary of State on June 17, 2014.



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Railroad Commission of Texas