

**OFFICE OF THE STATE FIRE MARSHAL**

**CALIFORNIA CODE OF REGULATIONS, TITLE 19, DIVISION 1,  
CHAPTER 14**

**HAZARDOUS LIQUID PIPELINE SAFETY**

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

The Office of the State Fire Marshal (OSFM) has provided an update to the Initial Statement of Reasons and recommends approval of the proposed regulatory action. Pursuant to Government Code §51015.1, the State Fire Marshal, shall adopt regulations for the annual inspection of all intrastate hazardous liquid pipelines and operators of intrastate hazardous liquid pipelines under the jurisdiction of the State Fire Marshal to ensure compliance with applicable laws and regulations associated with the implementation of this section.

The OSFM made available a 15-day public comment period for modifications made to the originally proposed regulation text and incorporated documents from April 5, 2017 through April 19, 2017. The OSFM received no public comments on the proposed modifications to the regulation text or on the modifications to the incorporated documents.

**INTRODUCTION**

The Initial Statement of Reasons (ISOR), released August 5, 2016 and all the prior rulemaking file is incorporated by reference herein. The ISOR contains the original text of the proposed regulations, documents relied upon and referenced in the ISOR, the background on the genesis of Section 51015.1, and a description of the specific purpose and rationale for the adoption of the proposed regulations.

A 45-day public comment period was held from August 5, 2016 to September 19, 2016. Following the close of the 45-day comment period no changes were made to the text or incorporated documents of the proposed regulation. The Office of Administrative Law (OAL) reviewed the proposed regulations and determined that portions of the text and incorporated documents related to California Code of Regulations Section 2021(b)Exception did not meet the “necessity” standard as defined in Government Code Section 11349(a). The OSFM elected to enact those sections of the proposed regulation and portions of the incorporated documents that met OAL requirements and to strike Section 2021(b)Exception. The stricken language of Section 2021(b)Exception was subsequently renumbered 2021(b)(1) (referred hereafter as Section 2021(b)(1)) and modified in a 15-day Notice of Modifications of the Text of Proposed Regulations because the modifications are sufficiently related to the original proposal.

The modified Section 2021(b)(1) provides the regulated community an option to request a 30-day extension when submitting requested pipeline information to the OSFM and affords the regulated community some respite and flexibility in meeting the requirements of this newly enacted law. As originally drafted the extension language did not set a standard or burden of proof that an operator needed to meet when the OSFM was considering granting a request for an extension. Therefore, the language of Section 2021(b)(1) has since been modified to require that an operator show “good cause” to the OSFM for an extension to be granted. This new language clarifies the standard that the OSFM will use in evaluating operator extension requests. As discussed in detail below, the inclusion of this language necessitated modification or addition of language in several documents incorporated by reference.

Therefore, the OSFM made available a 15-day public comment period for the modification of the proposed text and incorporated documents in the proposed regulations. The information and documents attached here will provide the specific purpose, rationale, and necessity for the modification language.

### **SPECIFIC PURPOSE AND RATIONALE**

Government Code §51015.1 increases the frequency of intrastate pipeline and operator inspections conducted by the OSFM to an annual basis. Prior to the enactment of Section 51015.1 the OSFM inspected intrastate pipelines and operators once every five (5) years through a certification from the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The PHMSA certification requires the OSFM conduct six (6) different types of inspections on each operator, and two (2) different types of inspections on each pipeline once every five (5) years. The objective of inspecting on an annual basis is to mitigate the risk of spill and/or accident that may harm the environment. Conducting more frequent inspections by the OSFM will ensure compliance with federal and State laws, enhance public safety, protect California’s vital natural resources and wildlife, and reduce the risk of future jurisdictional hazardous liquid pipeline accidents.

Section 2021(b)(1) of the proposed regulations was drafted to provide a time extension and address concerns raised by the regulated community. Discussion with the regulated community elicited concerns that gathering required information, data, and documentation on an annual basis as opposed to every five years could pose logistical challenges. Specifically, to meet the annual inspection requirement of Section 51015.1 the operators must gather data on all its intrastate operations and pipelines in California. Operators were concerned that for some larger operators gathering data could represent a significant amount of work due to the quantity of information and data needed to be gathered. Similarly, smaller operators have fewer staff to dedicate to gathering the required data, even collecting relatively small amounts of data represents a significant time commitment. Additionally, gathering the data required for Section 51015.1 extends beyond the initial year(s) of the annual inspection process. As noted above, operators are still subject to eight PHMSA required inspections in addition to those required under the OSFM annual inspection. In future years where a PHMSA inspection aligns with an annual OSFM inspection, the resources needed to gather

requested data may be further strained. Importantly, the information and data gathered by operators must be reviewed by the OSFM prior to conducting the inspections. Without adequate time for operators to gather necessary and relevant documents, the information and data that the OSFM reviews might not accurately represent the state of operations and pipelines that must be inspected.

## **NECESSITY**

The proposed modification language in Section 2021(b)(1) addresses concerns raised during the OSFM Pipeline Safety Regulations Work Group and the Pipeline Safety Advisory Committee. The inclusion of an extension for good cause in Section 2021(b)(1) would ensure that operators have the necessary time to gather the required data and information for OSFM review while simultaneously lessening the burden on the regulated community. Additionally, since the regulatory requirements of the annual inspections are new to both the OSFM and the regulated community, a time extension serves to alleviate unanticipated timing challenges as the regulations are implemented now and in future years. Finally, and significantly, if an operator fails to submit required data by July 1 annually, the OSFM may assess civil penalties pursuant to Government Code §51018.6 (Section 51018.6). Civil penalties under Section 51018.6 are not insignificant and may subject an operator to penalties of not more than two hundred thousand dollars (\$200,000) for each day that a violation persists, except that the maximum civil penalty shall not exceed two million dollars (\$2,000,000) for any related series of violations. The proposed modification language would allow operators an opportunity to avoid civil penalties with an extension for good cause, while still striving for compliance with the regulations.

## **THE MODIFICATIONS AND AMENDMENTS ARE AS FOLLOWS:**

Modifications were made to documents contained in the original 45-day Initial Statement of Reasons. The modified documents are the: 1) text of regulations, 2) Instructions for Form PSD-101 (dated April 1, 2017), and 3) California State Fire Marshal Annual Inspection Procedures (dated April 1, 2017).

The OSFM is modifying the language to the proposed text and to portions of the documents incorporated by reference related to Section 2021(b)(1) as originally noticed in the 45-day comment period. The proposed modifications will add clarity to Section 2021(b)(1) and amend currently enacted Sections 2020, 2020(b), 2020(c), and 2021(a)(2). The modifications to the text and incorporated documents are illustrated by highlighted double underline for text that has been added, and by highlighted ~~double strike through~~ for text that has been modified.<sup>1</sup>

- Section 2020 in the first sentence removed the unnecessary words “In order” in front of “to” to simplify grammar and add clarity to the sentence for the reference made to the Government Code.

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<sup>1</sup> The double underline and double strike through format was chosen to avoid confusion with existing language in documents incorporated by reference that were intentionally drafted with a single underline for emphasis.

- Section 2021(b)(1) is clarified to allow operators an opportunity to request a 30-day extension when submitting form PSD-101 if the operator can show “good cause.”
- The requirement that operators show “good cause” necessitated modification to two (2) of the documents incorporated by reference, which then required modifications to three (3) sections of the text of the regulation.
- Incorporated by reference document titled “Office of the State Fire Marshal Pipeline Safety Annual Inspection Procedure” is modified to add the “good cause” requirement and revised the date of the document to April 1, 2017.
- Incorporated by reference document titled “Instructions for Form PSD-101” is modified to add the “good cause” requirement and revised the date of the document to April 1, 2017.
- The text of Sections 2020(b), 2020(c), and 2021(a)(2) are amended to change the date of affected documents incorporated by reference to April 1, 2017.

**AMENDED SECTIONS AFTER PREVIOUS 45-DAY PUBLIC COMMENT PERIOD:**  
Sections 2020(b), 2020(c), and 2021(a)(2)

**RENUMBERED SECTIONS AFTER PREVIOUS 45-DAY PUBLIC COMMENT PERIOD:** Section 2021(b) to add Section 2021(b)(1)

**THE FOLLOWING ARE THE SPECIFIC SECTIONS AND RATIONALE FOR THE 15-DAY MODIFICATIONS:** Sections 2020, 2020(b), 2020(c), 2021(a)2, and 2021(b)1

**AMENDED TEXT OF REGULATIONS:**

**Section 2020** first sentence is clarified by removing the words “In order” in front of “to” for simplicity.

**Rationale for revision:** The removal of the words clarifies the grammar in the sentence for the reference made to the Government Code because the extra words are unnecessary.

**Section 2021(b)(1)** is clarified to allow operators an opportunity to request a 30-day extension when submitting form PSD-101 if the operator can show “good cause.”

**Rationale for revision:** Following consultation with the regulated community, the OSFM determined that a time extension may be necessary in some cases. By revising the originally noticed Section 2021(b)(1) to include a showing of “good cause,” the regulated community will be afforded an extension option and will have a clearer understanding of the standard OSFM will apply to extension requests.

**Section 2020(b) and (c)** amends the dates referenced in the regulation text for the document incorporated by reference titled “Office of the State Fire Marshal Pipeline Safety Annual Inspection Procedure.”

**Rationale for revision:** Changes to the document were necessary because the clarification language adding “good cause” to Section 2021(b)(1) was included in the language of the document incorporated by reference. By modifying the language of the document incorporated by reference, the document needed an updated reference date.

**Section 2021(a)(2)** amends the dates referenced in the regulation text for the document incorporated by reference titled “Instructions for Form PSD-101.”

**Rationale for revision:** Changes to the document were necessary because the clarification language adding “good cause” to Section 2021(b)(1) was included in the language of the document incorporated by reference. By modifying the language of the document incorporated by reference, the document needed an updated reference date.

### **AMENDED DOCUMENTS INCORPORATED BY REFERENCE FOR THE 15-DAY MODIFICATIONS:**

The OSFM adopted three (3) documents incorporated by reference during the 45-Day public comment period. The Form PSD-101 remains unchanged. However, amendments to language and date revisions to the following two (2) documents are necessary due to the proposed modification of Section 2021(b)(1):

1. Office of the State Fire Marshal Pipeline Annual Inspection Procedure (dated July 1, 2016) located in the proposed regulations at Section 2020(b) and (c).
2. Instructions for Form PSD-101 (dated July 1, 2016) located in the proposed regulations at Section 2021(a)(2).

### **CALIFORNIA STATE FIRE MARSHAL ANNUAL INSPECTION PROCEDURES (dated April 1, 2017).**

**“Process”:** Under the section titled “1. Gather Operator Information” on the first page of the document, the last sentence of the paragraph is amended to add language from the text of the proposed regulations in Section 2021(b)(1).

**Rationale for revision:** The date on the “CALIFORNIA STATE FIRE MARSHAL ANNUAL INSPECTION PROCEDURES” document is amended from July 1, 2016 to April 1, 2017 to reflect the addition of the language made in the procedures. The CALIFORNIA STATE FIRE MARSHAL ANNUAL INSPECTION PROCEDURES (dated April 1, 2017), as incorporated by reference, is edited to clarify to operators the process and standard by which the OSFM shall approve a request for a 30-day extension to the submittal deadline of Form PSD-101.

The additional language in the procedures clarifies that a 30-day extension beyond the July 1<sup>st</sup> deadline for submitting the Form PSD-101 to the OSFM shall be granted if all the following conditions are met:

- The operator must submit an extension request in writing to the Pipeline Safety Division

- The request must be submitted no later than June 1st
- The request must demonstrate good cause to the OSFM

A detailed discussion of the purpose and why a 30-day extension is needed in the proposed regulation can be found above in the section titled “NECESSITY.”

### **Instructions for Form PSD-101 (dated April 1, 2017) – CALIFORNIA INTRASTATE PIPELINE OPERATOR ANNUAL REPORT.**

**“GENERAL INSTRUCTIONS”**: The fourth paragraph on page one of the document under the heading “GENERAL INSTRUCTIONS” is amended to add language from 2021(b)(1).

**Rationale for revision**: The date on the “Instructions for Form PSD-101” is amended from July 1, 2016 to April 1, 2017 to reflect the addition of the language made in the instructions. The Instructions for Form PSD-101 (dated April 1, 2017), as incorporated by reference, is edited to clarify to operators the process and standard by which the OSFM shall approve a request for a 30-day extension to the submittal deadline of Form PSD-101.

The additional language in the instructions clarifies that a 30-day extension beyond the July 1<sup>st</sup> deadline for submitting the Form PSD-101 to the OSFM shall be granted if all the following conditions are met:

- The operator must submit an extension request in writing to the Pipeline Safety Division
- The request must be submitted no later than June 1st
- The request must demonstrate good cause to the OSFM

A detailed discussion of the purpose and why a 30-day extension is needed in the proposed regulation can be found above in the section titled “NECESSITY.”

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 15-DAY NOTICE PERIOD OF MODIFIED TEXT FROM APRIL 5, 2017 THROUGH APRIL 19, 2017.**

The Office of the State Fire Marshal received no public comments. Following the close of the 15-day comment period no further modifications were made to the text or incorporated documents of the proposed regulation.

### **TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES OR REPORTS**

The OSFM did not rely on any report or document in the development of this rulemaking beyond that previously identified in the Initial Statement of Reasons.

**ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS**

No commenter proposed an alternative to lessen any adverse economic impact, if any, on small business. Government Code Section 11342.610(b)(9) excludes a petroleum producer, a natural gas producer, a refiner or a pipeline from the definition of “small business”.

**ALTERNATIVES DETERMINATION**

The State Fire Marshal has thoroughly reviewed this proposed regulatory action, including both positive and negative impacts it will place upon the industry. The State Fire Marshal has determined that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action described in the Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

**COORDINATION WITH FEDERAL LAW**

The State Fire Marshal has determined that this proposed regulatory action neither conflicts with, nor duplicates, any applicable federal regulation contained in the Code of Federal Regulations. There have been no changes in applicable laws related to the proposed action or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.