

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Gas Pipeline Safety
Rulemaking**

Case No. GS-09-67

Statement on Regulatory Analysis and Takings Assessment

July 22, 2009

The purpose of the 2009 Gas Pipeline Safety rule amendments, enacted by the federal government and to be adopted by reference into state administrative rule, consist of the following: requires operators to use design and construction features in new and replaced gas transmission pipelines to reduce the risk of internal corrosion and related pipeline failures; amends the notification requirements in existing integrity management regulations for both hazardous liquid and natural gas transmission pipelines; relaxes regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems; adopts, with minor modifications, an interim final rule issued by PHMSA on March 28, 2008, conforming PHMSA's administrative procedures with the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006; and, amends the existing pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels.

Regulatory Analysis

North Dakota Century Code Section 28-32-08 requires an agency to prepare a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- b. Description of the probable impact, including economic impact, of the proposed rule;
- c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
- d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

Individuals within this State who may be affected by these proposed federal amendments consists of both intrastate and interstate hazardous liquid and natural gas operators.

None of the above proposed federal amendments is expected to have an impact on the State's regulated community in excess of fifty thousand dollars.

Any costs associated with the enforcement of the above proposed federal amendments will be taken from the Commission's ongoing gas pipeline safety budget with little or no affect upon that budget.

The Commission acts as agent for the U.S. Department of Transportation, PHMSA, in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities within the State. This is accomplished by entering into a 601055(a) Title 49 agreement with the U.S. Department of Transportation which requires North Dakota to adopt all of the Federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

Takings Assessment

North Dakota Century Code Section 28-32-09(1) requires an agency to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The assessment must:

- a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
- b. Clearly and specifically identify the purpose of the proposed rule.
- c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
- d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
- e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
- f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

None of the above proposed federal amendments will result in a regulatory taking.

The purpose of the proposed federal amendments are stated above.

We do not expect any impact on private property owners as a result of the proposed federal amendments. The proposed rules should not limit the use of private property.

The proposed amendments will not limit the use of private real property and estimated compensation costs will be zero.

Small Entity Regulatory Analysis

This regulatory analysis is not required under Chapter 28-32-08.1, N.D.C.C. because the proposed amendments to existing rules are mandated by federal law.