

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-19-217**

**Statements on Regulatory Analysis, Small Entity Analysis,  
and Takings Assessment**

**August 9, 2019**

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since December 31, 2017, current to July 31, 2019. A summary/explanation of the specific changes to be adopted by reference for pipeline safety is attached.

**Regulatory Analysis**

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory 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. A 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.

North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state pipeline safety program include intrastate liquefied natural gas facility operators, intrastate natural gas distribution system operators, natural gas and hazardous liquid transmission pipeline operators, and certain natural gas and hazardous liquid gathering system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities and enforcement of safety standards on all liquefied natural gas facilities within the state. This is accomplished by entering into a 601055(a) Title 49 agreement with the United States Department of Transportation that 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.

The intrastate natural gas and hazardous liquid transmission pipeline operators, intrastate natural gas distribution system operators, and liquefied natural gas facility operators must comply with the federal amendments and therefore were impacted financially as a result of PHMSA's adoption of the amendments. Adoption of these amendments for the state pipeline safety program will have no additional impact on the regulated community.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis is required.

### **Small Entity Regulatory Analysis**

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. . . . The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
  - a. Establishment of less stringent compliance or reporting requirements for small entities;
  - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
  - c. Consolidation or simplification of compliance or reporting requirements for small entities;

- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

A small entity regulatory analysis is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

### **Small Entity Economic Impact Analysis**

A small entity economic impact statement is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

### **Takings Assessment**

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a takings assessment is not required.

PHMSA latest rulemakings effective date after December 31, 2017  
 Summary as of 7/31/2019

Part affected	Amendment No.	Federal Register	Description	Effective date after December 31, 2017
190	20	83 FR 60744	Revisions to Civil Penalty Amounts	11/27/2018
192	124	83 FR 58694	Plastic Pipe Rule	1/22/2019
199	28	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19
40	32	82 FR 52229	Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments	1/1/18
40	33	84 FR 16770	Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program	4/23/19

**Part 190, Amendment #20, 83 FR 60744: REVISIONS TO CIVIL PENALTY AMOUNTS**

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2018 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. Maximum civil not to exceed \$213,268 for each violation of a provision of 49 U.S.C. 60101 for each day the violation continues, with a maximum civil penalty not to exceed \$2,132,679 for any related series of violations.

**Part 192, Amendment #124, 83 FR 58694: PLASTIC PIPE RULE**

An amendment of the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or

updated consensus standards for pipe, fittings, and other components; the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions.

**Part 199, Amendment #28, 84 FR 16770:** Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

**Part 40, Amendment #32, 82 FR 52229:** Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments  
The Department of Transportation is amending its drug-testing program regulation to add hydrocodone, hydromorphone, oxymorphone, and oxycodone to its drug-testing panel; add methylenedioxyamphetamine as an initial test analyte; and remove methylenedioxyethylamphetamine as a confirmatory test analyte. The revision of the drug-testing panel harmonizes DOT regulations with the revised HHS Mandatory Guidelines established by the U.S. Department of Health and Human Services for Federal drug-testing programs for urine testing. This final rule clarifies certain existing drug-testing program provisions and definitions, makes technical amendments, and removes the requirement for employers and Consortium/Third Party Administrators to submit blind specimens.

**Part 40, Amendment #33, 84 FR 16770:** Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone,

hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6- acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.