

## Hamre, John G.

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**From:** Hamre, John G.  
**Sent:** Wednesday, May 25, 2022 1:40 PM  
**To:** Jill Grossman (jillgrossman@nd.gov); Grossman, Jill A.  
**Cc:** Schuh, John M.  
**Subject:** Letter to Legislative Council enclosing proposed rules and attachments  
**Attachments:** Letter to Legislative Council enclosing proposed rules and attachments.pdf

Hi Jill,

Please see attached letter with attachments regarding our proposed Rules.

And if you would, please acknowledge receipt for our records.

Thanks!  
John

John G. Hamre  
Administrative Services  
North Dakota Public Service Commission  
600 E. Blvd. Ave.  
Dept. 408  
Bismarck, ND 58505-0480  
701-328-4279  
jghamre@nd.gov



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

*via email only*

25 May 2022

600 East Boulevard, Dept. 408  
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Jill Grossman  
Code Revisor  
North Dakota Legislative Council  
State Capitol  
Bismarck, ND 58505-0360  
[jillgrossman@nd.gov](mailto:jillgrossman@nd.gov)

Re: Proposed Amendments to Administrative Rules  
PSC Case Number GS-21-442

Dear Ms. Grossman:

Enclosed please find proposed amendments to the North Dakota Administrative Code by the North Dakota Public Service Commission. The topic of the rules is proposing amendments to 69-09-03-02, regarding Pipeline Safety. In support of this filing, enclosed please find copies of:

1. The promulgated proposed final Rules;
2. Staff testimony and all other comments;
3. The Commission's 13 April 2022 *Amended Order Submitting Rules to Attorney General*, which includes a summary of all comments;
4. The 29 April 2022 letter from the Attorney General approving the proposed Rules as to legality;
5. Statements on Regulatory Analysis Small Entity Analysis and Takings Assessment;
6. Fiscal Note; and
7. The 25 May 2022 Commission Motion to adopt proposed Rules and forward to Legislative Council.

Thank you for your attention to this matter. If you have any questions, please call 328-2421, or e-mail to [jschuh@nd.gov](mailto:jschuh@nd.gov).

Best regards,

John Schuh  
General Counsel

attachments

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

CHAPTER 69-09-03  
PIPELINE SAFETY

Section  
69-09-03-01 Safety  
69-09-03-02 Adoption of Regulations

**69-09-03-01. Safety.**

Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

**History:** Amended effective July 1, 1986; January 1, 1988; April 1, 2015;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 49-02-04

**Law Implemented:** NDCC 49-02-01.2, 49-02-04

**69-09-03-02. Adoption of regulations.**

The following parts of title 49, Code of Federal Regulations in effect as of ~~August 20, 2020~~ December 1, 2021, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.
5. Part 194 - Response Plans for Onshore Oil Pipelines.
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.

7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-21-442**

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY**

**March 9, 2022**

My name is Caleb Simburger. I am the Program Manager of the Public Service Commission's Gas Pipeline Safety Program.

The purpose of this testimony is to describe the proposed administrative rule changes pertaining to pipeline safety. Under North Dakota Administrative Code chapter 69-09-03, the Commission adopts by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This proposed rule change adopts, by reference, amendments to safety regulations that have been adopted by PHMSA since August 20, 2020, current to December 1, 2021, for gas pipeline safety, liquefied natural gas facility safety and hazardous liquids pipeline safety.

This concludes my testimony.

Thank you.

**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-21-442**

**Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking**

**Case No. RC-22-28**

**AMENDED ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**April 13, 2022**

**Appearances**

Commissioners Julie Fedorchak, Randy Christmann, and Sheri Haugen-Hoffart

**Preliminary Statement**

On January 18, 2022, the North Dakota Public Service Commission (Commission) issued a formal Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing and an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules and Notice of Public Hearing, proposing to amend Section 69-09-03-02, to amend Section 69-05.2-05-06, to amend Chapter 69-05.2-16 index, to amend Section 69-05.2-16-03, to amend Section 69-05.2-16-20, and to amend Section 69-05.2-20-01.

Also on January 18, 2022, Commission Staff (Staff) filed statements regarding the required regulatory analysis, small entity analysis, and takings assessments for the captioned two cases.

On January 19, 2022, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 30 days in advance of the hearing and a copy of the Notices and proposed Rules were sent to the Legislative Council.

The Abbreviated Notice was published in each of the 50 official county newspapers in the state during the weeks of January 26 through January 31, 2022.

On March 9, 2022, the Commission held the public hearing as noticed, beginning at 1:30 p.m. in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed a comment period until March 21, 2022, during which the Commission received and considered data, views, or written and oral comments concerning the proposed rulemaking as part of the rulemaking record.

The proposed rules and amendments are summarized as follows:

**Case No. GS-21-442 - Section 69-09-03-02 – Pipeline Safety**

The purpose of this amendment is to adopt by reference 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 August 20, 2020, current to December 1, 2021. The proposed change is not expected to have an impact on the regulated community in excess of \$50,000.

**Case No. RC-22-28 - Section 69-05.2-05-06, Chapter 69-05.2-16 index, Section 69-05.2-16-03, Section 69-05.2-16-20, and Section 69-05.2-20-01. – Surface Coal Mining and Reclamation Operations**

The purpose of this amendment is to change all State Engineer and Water Commission references to the Department of Water Resources and to change one state Department of Health reference to the Department of Environmental Quality.

The proposed rulemaking implements House Bill 1353 enacted by the 67<sup>th</sup> Legislative Session, relating to the establishment of the Department of Water Resources, and the powers and duties of the Department of Water Resources and the State Engineer, and implements Senate Bill 2327 enacted by the 65<sup>th</sup> Legislative Session relating to the creation of the Department of Environmental Quality, the transfer of duties and responsibilities of the state Department of Health relating to environmental quality to the Department of Environmental Quality, and biennial reports of the Department of Environmental Quality.

**Public Hearing and Comments**

The Commission reviewed and considered all comments. The written and oral comments that were received are summarized and discussed below by case number.

**Case No. GS-21-442 - Section 69-09-03-02 – Pipeline Safety**

Caleb Simburger, the Program Manager of the Public Service Commission's Gas Pipeline Safety Program provided testimony on behalf of staff to the effect of this amendment. No other comments or testimony were received.

**Case No. RC-22-28 - Section 69-05.2-05-06, Chapter 69-05.2-16 index, Section 69-05.2-16-03, Section 69-05.2-16-20, and Section 69-05.2-20-01. – Surface Coal Mining and Reclamation Operations**

Zanna Brinkman, Director of the Reclamation Division provided testimony on behalf of staff to the effect of this amendment. No other comments were received in writing or at the hearing.

After the hearing, the commission found an error in the drafted rules. The proposed chapter 69-05.2-16 is corrected from the Department of Water Quality to the Department of Environmental Quality.

**Discussion**

Having reviewed the proposed rules, and considered the testimony and comments received, the Commission finds good cause for submitting the proposed rule in Case No. GS-21-442 and the proposed rules in Case No. RC-22-28 as revised after comment, attached to, and made a part of this order, to the Attorney General for an opinion as to legality.

**ORDER**

The Commission orders that the proposed rules in Case No. GS-21-442, attached to, and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

The Commission orders that the proposed rules as revised in Case No. RC-22-28, attached to, and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Sheri Haugen-Hoffart  
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

CHAPTER 69-09-03  
PIPELINE SAFETY

Section

69-09-03-01 Safety

69-09-03-02 Adoption of Regulations

**69-09-03-01. Safety.**

Pipeline facilities used for the intrastate distribution and transmission of natural and other gas, liquefied natural gas, or hazardous liquids shall be designed, constructed, and operated to meet the safety standards set forth in regulations of the United States department of transportation adopted in section 69-09-03-02. The commission may require such proof of compliance as it deems necessary.

**History:** Amended effective July 1, 1986; January 1, 1988; April 1, 2015; \_\_\_\_\_.

**General Authority:** NDCC 28-32-02, 49-02-04

**Law Implemented:** NDCC 49-02-01.2, 49-02-04

**69-09-03-02. Adoption of regulations.**

The following parts of title 49, Code of Federal Regulations in effect as of ~~August 20, 2020~~ December 1, 2021, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 193 - Liquefied Natural Gas Facilities: Federal Safety Standards.
5. Part 194 - Response Plans for Onshore Oil Pipelines.
6. Part 195 - Transportation of Hazardous Liquids by Pipeline.

7. Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0480

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016; July 1, 2018; July 1, 2020;\_\_\_\_\_.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-02-01.2

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

**Public Service Commission**  
**Surface Coal Mining and Reclamation Operations**  
**Rulemaking**

**Case No. RC-22-28**

**Proposed Rules (as revised)**

**April 13, 2022**

**69-05.2-05-06. Permit applications - Coordination with requirements under other laws.**

The commission will, to avoid duplication, coordinate permit review and issuance with:

1. Any other applicable state permit process including permits required by the:
  - a. Air Pollution Control Act (North Dakota Century Code chapter 23-25).
  - b. Solid Waste Management and Land Protection Act (North Dakota Century Code chapter 23-29).
  - c. Control, prevention, and abatement of pollution of surface waters (North Dakota Century Code chapter 61-28).
  - d. ~~State engineer, state water commission,~~ Department of Water Resources and water resource districts (North Dakota Century Code chapters 61-01, 61-02, 61-03, 61-04, 61-15, 61-16.1, 61-16.2, 61-31, and 61-32).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-42

**CHAPTER 69-05.2-16**  
**PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - GENERAL REQUIREMENTS**

Section	
69-05.2-16-01	Performance Standards - Hydrologic Balance - General Requirements
69-05.2-16-02	Performance Standards - Hydrologic Balance - Compliance With State Department of Health Standards <u>Environmental Quality Standards</u>
69-05.2-16-03	Performance Standards - Hydrologic Balance - Compliance With the Requirements of the State Engineer <u>Department of Water Resources</u> and Water Resource District
69-05.2-16-04	Performance Standards - Hydrologic Balance - Water Quality Standards and Effluent Limitations
69-05.2-16-05	Performance Standards - Hydrologic Balance - Surface Water Monitoring
69-05.2-16-06	Performance Standards - Hydrologic Balance - Diversion of Overland Flow
69-05.2-16-07	Performance Standards - Hydrologic Balance - Stream Channel Diversions
69-05.2-16-08	Performance Standards - Hydrologic Balance - Sediment Control Measures
69-05.2-16-09	Performance Standards - Hydrologic Balance - Sedimentation Ponds Performance
69-05.2-16-10	Standards - Hydrologic Balance - Discharge Structures Performance Standards -
69-05.2-16-11	Hydrologic Balance - Toxic Mine Drainage
69-05.2-16-12	Performance Standards - Hydrologic Balance - Permanent and Temporary Impoundments
69-05.2-16-13	Performance Standards - Hydrologic Balance - Ground Water Protection Performance
69-05.2-16-14	Standards - Hydrologic Balance - Ground Water Monitoring
69-05.2-16-15	Performance Standards - Hydrologic Balance - Protection of Ground Water Recharge Capacity
69-05.2-16-16	Performance Standards - Hydrologic Balance - Transfer of Wells
69-05.2-16-17	Performance Standards - Hydrologic Balance - Water Rights and Replacement
69-05.2-16-18	Performance Standards - Hydrologic Balance - Discharge of Waters Into an Underground Mine
69-05.2-16-19	Performance Standards - Hydrologic Balance - Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
69-05.2-16-20	Performance Standards - Hydrologic Balance - Stream Buffer Zones

**69-05.2-16-03. Performance standards - Hydrologic balance - Compliance with the requirements of the ~~state engineer~~ Department of Water Resources and water resource district.**

Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan must be constructed to meet the requirements of the North Dakota ~~state engineer~~ Department of Water Resources and the appropriate water resource district, as well as those of this article. The commission will not issue or revise a mining permit until the ~~state engineer~~ Department of Water Resources and the water resource district have had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary ~~state engineer~~ Department of Water Resources and water resource district permits are obtained.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03, 38-14.1-42

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-42

**69-05.2-16-20. Performance standards - Hydrologic balance - Stream buffer zones.**

1. The operator may not disturb land within one hundred feet [30.48 meters) of an intermittent or perennial stream unless the commission, after consulting the ~~state engineer~~ Department of Water Resources and the department of environmental quality, specifically authorizes surface mining activities closer to, or through, the stream, after finding that:
  - a. Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
  - b. If there will be a temporary or permanent stream channel diversion, it will comply with section 69-05.2-16-07.
2. Areas not to be disturbed must be designated buffer zones and marked according to section 69-05.2-13-04.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-20-01. Performance standards - Dams and embankments constructed of or impounding coal processing waste - General requirements.**

Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method must comply with this chapter and permanent disposal of the waste must comply with section 69-05.2-19-02. Waste may not be used to construct the dams and embankments unless it has been demonstrated to the commission that the stability of the structure conforms to the requirements of subsection 1 of section 69-05.2-20-03. It must also be demonstrated that the use of waste material will not have a detrimental effect on downstream water quality or the environment due to toxic seepage through the dam or embankment. All demonstrations must be approved by the commission. Prior to commission approval, the ~~state engineer~~ Department of Water Resources will have an opportunity to review the plans and design of the structures.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-25



STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL  
www.attorneygeneral.nd.gov  
(701) 328-2210

Drew H. Wrigley  
ATTORNEY GENERAL

OPINION

April 29, 2022

Mr. John Schuh  
Public Service Commission  
600 E. Boulevard Ave Dept 408  
Bismarck, ND 58505

Dear Mr. Schuh,

The Office of Attorney General has examined the proposed amendments to N.D.A.C. §§ 69-09-03-02, 69-05.2-05-06, 69-05.2-16-03, 06-05.2-16-20, 69-05.2-20-01, and ch. 69-05.2-16, concerning pipeline safety and surface coal mining and reclamation operations, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley".

Drew H. Wrigley  
Attorney General

amj  
copy Jill Grossman, Legislative Council

- 23 RC-22-28 Filed 04/29/2022 Pages: 1  
Opinion - Rules are in Compliance and Approved as to Legality  
North Dakota Attorney General  
The Honorable Drew Wrigley
- 20 GS-21-442 Filed 04/29/2022 Pages: 1  
Opinion - Rules are in Compliance and Approved as to Legality  
North Dakota Attorney General  
The Honorable Drew Wrigley

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-21-442**

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

**January 18, 2022**

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 August 20, 2020, current to December 1, 2021. 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 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 proposed rules should not limit the use of private property so a takings assessment is not required.

PHMSA latest rulemakings effective date after August 20, 2020  
 Summary as of December 1, 2021

Part affected	Amendment No.	Federal Register	Description	Effective date after August 20, 2020
190	No Number	86 FR 1745	Revisions To Civil Penalty Amounts	01/11/2021
191	29	86 FR 2210	Gas Pipeline Regulatory Reform	03/12/21
191	30	86 FR 63266	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments	05/16/2022
192	128	86 FR 2210	Gas Pipeline Regulatory Reform	03/12/21
192	129	86 FR 63266	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments	05/16/22
195	103	85 FR 8104	Safety of Underground Natural Gas Storage Facilities	03/13/20

**Part 190, Amendment #No Number, 86 FR 1745: REVISIONS TO CIVIL PENALTY AMOUNTS**

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2020 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this final rule makes conforming revisions to Federal Motor Carrier Safety Administration regulations to reflect inflationary adjustments to the statutorily-mandated civil penalties for violations of Federal law.

**Part 191, Amendment #29, 86 FR 2210: GAS PIPELINE REGULATORY REFORM**

PHMSA is amending the Federal Pipeline Safety Regulations to ease regulatory burdens on the construction, maintenance, and operation of gas transmission, distribution, and gathering pipeline systems without adversely affecting safety. The amendments in this rule are based on rulemaking petitions from stakeholders, and DOT and PHMSA initiatives to identify appropriate areas where regulations might be repealed, replaced, or modified, and PHMSA's review of public comments. PHMSA also, as of the effective date of this final rule, withdraws the March 29, 2019 "Exercise of

Enforcement Discretion Regarding Farm Taps" and the unpublished October 27, 2015 letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels.

**Part 191, Amendment #30, 86 FR 63266: SAFETY OF GAS GATHERING PIPELINES: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS**

PHMSA is amending the Federal Pipeline Safety Regulations to ease regulatory burdens on the construction, maintenance, and operation of gas transmission, distribution, and gathering pipeline systems without adversely affecting safety. The amendments in this rule are based on rulemaking petitions from stakeholders, and DOT and PHMSA initiatives to identify appropriate areas where regulations might be repealed, replaced, or modified, and PHMSA's review of public comments. PHMSA also, as of the effective date of this final rule, withdraws the March 29, 2019 "Exercise of Enforcement Discretion Regarding Farm Taps" and the unpublished October 27, 2015 letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels.

**Part 192, Amendment #128, 86 FR 2210: GAS PIPELINE REGULATORY REFORM**

PHMSA is amending the Federal Pipeline Safety Regulations to ease regulatory burdens on the construction, maintenance, and operation of gas transmission, distribution, and gathering pipeline systems without adversely affecting safety. The amendments in this rule are based on rulemaking petitions from stakeholders, and DOT and PHMSA initiatives to identify appropriate areas where regulations might be repealed, replaced, or modified, and PHMSA's review of public comments. PHMSA also, as of the effective date of this final rule, withdraws the March 29, 2019 "Exercise of Enforcement Discretion Regarding Farm Taps" and the unpublished October 27, 2015 letter to the Interstate Natural Gas Association of America announcing a stay of enforcement pertaining to certain pressure vessels.

**Part 192, Amendment #129, 86 FR 63266: Safety of Gas Gathering Pipelines: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS**

PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas gathering pipelines. This final rule addresses Congressional mandates, Government Accountability Office recommendations, and public input received as part of the rulemaking process. The amendments in this final rule extend reporting requirements to all gas gathering operators and apply a set of minimum safety requirements to certain gas gathering pipelines with large diameters and high operating pressures. The rule does not affect offshore gas gathering pipelines.

**Part 195, Amendment #103, 85 FR 8104: SAFETY OF UNDERGROUND NATURAL GAS STORAGE FACILITIES**

The Pipeline and Hazardous Materials Safety Administration is publishing this final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR)

establishing regulations in response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, "Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement would apply as a "shall") unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA has determined that the RPs, as originally published, will provide PHMSA with a stronger basis upon which to base enforcement than the IFR. This final rule also addresses recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt caverns.

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-21-442**

**Public Service Commission  
Surface Coal Mining and Reclamation Operations  
Rulemaking**

**Case No. RC-22-28**

**FISCAL NOTE**

**March 30, 2022**

Adoption of the proposed rules in the captioned two cases are not expected to have any impact on State expenditures or revenues.

**APPROVED**

DATE: 05/25/2022  
PJT

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-21-442

**MOTION**

**May 25, 2022**

Having been approved by the Attorney General, I move the Commission adopt the proposed amendment to Section 69-09-03-02 of the North Dakota Administrative Code, and forward the rule to the Legislative Council, in Case No. GS-21-442.

## Hamre, John G.

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**From:** Grossman, Jill A. <jillgrossman@ndlegis.gov>  
**Sent:** Wednesday, May 25, 2022 1:49 PM  
**To:** Hamre, John G.; Grossman, Jill A.  
**Cc:** Schuh, John M.  
**Subject:** RE: Letter to Legislative Council enclosing proposed rules and attachments

\*\*\*\*\* **CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. \*\*\*\*\*

Good Afternoon,

I received the rules and they will be included in the packet for the September 2022 meeting of the Administrative Rules Committee. The meeting has been tentatively scheduled for Monday, September 12, 2022. The start time of the meeting has not been confirmed as we typically wait to schedule the meeting time until after the submission deadline has passed so we have an approximate idea of how long the meeting will last. Our office will send an email in mid-August with more information regarding the meeting and what testimony to have prepared for the committee.

Thanks!

*Jill Grossman*  
Counsel  
Legislative Council  
600 East Boulevard Ave  
Bismarck, ND 58505  
(701)328-2916  
[jillgrossman@ndlegis.gov](mailto:jillgrossman@ndlegis.gov)

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**From:** Hamre, John G. <jghamre@nd.gov>  
**Sent:** Wednesday, May 25, 2022 1:40 PM  
**To:** Grossman, Jill A. <jillgrossman@nd.gov>; Grossman, Jill A. <jillgrossman@ndlegis.gov>  
**Cc:** Schuh, John M. <jschuh@nd.gov>  
**Subject:** Letter to Legislative Council enclosing proposed rules and attachments

Hi Jill,

Please see attached letter with attachments regarding our proposed Rules.

And if you would, please acknowledge receipt for our records.

Thanks!  
John

John G. Hamre  
Administrative Services  
North Dakota Public Service Commission  
600 E. Blvd. Ave.  
Dept. 408  
Bismarck, ND 58505-0480

701-328-4279  
[jghamre@nd.gov](mailto:jghamre@nd.gov)

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