

**Thompson, Pamela J.**

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**From:** Fordahl, Liz <lfordahl@ndlegis.gov>  
**Sent:** Friday, February 2, 2024 11:30 AM  
**To:** Johnson, Brian L.  
**Cc:** Thompson, Pamela J.  
**Subject:** RE: Admin Rules

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Mr. Johnson,

Good morning! Our office did receive your final submission for Administrative Rules Chapters 69-09-03 and 69-09-12. In the future, you can send those documents by e-mail if it is more convenient.

Thank you,



***Liz Fordahl***

Counsel

State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505-0160

701-328-2946  
[lfordahl@ndlegis.gov](mailto:lfordahl@ndlegis.gov)

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**From:** Johnson, Brian L. <brljohanson@nd.gov>  
**Sent:** Thursday, February 1, 2024 3:03 PM  
**To:** Fordahl, Liz <lfordahl@ndlegis.gov>  
**Cc:** Thompson, Pamela J. <pthompson@nd.gov>  
**Subject:** Admin Rules

Ms. Fordahl,

Just checking to confirm that you received the Admin Rules packet that I hand delivered yesterday.

If you could please let me know if you received it, I would be appreciative of that.

Thanks,

Brian Johnson  
Special Assistant Attorney General  
**NORTH DAKOTA PUBLIC SERVICE COMMISSION**

600 E Boulevard Ave. Dept 408 | Bismarck, ND 58505-0480  
p: 701-328-2407 | <https://www.psc.nd.gov>

30 PU-23-264 Filed 01/31/2024 Pages: 31  
Letter to Legislative Council Enclosing Rules  
(as Amended) and Other Attachments  
Public Service Commission  
Brian Johnson, Legal Counsel  
29 GS-23-289 Filed 01/31/2024 Pages: 31  
Letter to Legislative Council Enclosing Rules  
(as Amended) and Other Attachments  
Public Service Commission  
Brian Johnson, Legal Counsel

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# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

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31 January 2024

Ms. Liz Fordahl  
Assistant Code Revisor  
Legislative Council  
600 East Boulevard, 2nd Floor  
Bismarck, ND 58505-0360

Dear Ms. Fordahl:

Enclosed please find the proposed Rules to the North Dakota Administrative Code by the North Dakota Public Service Commission, proposing amendments to Chapter 69-09-03 Pipeline Safety, and Chapter 69-09-12, Resource Plans and Cyber Security. In support of this filing, enclosed please find copies of:

1. The 31 January 2024 Attorney General Opinion stating that Rules are in compliance and approved as to legality *with attached Rules as Amended*;
2. No staff testimony was given, and no written or oral comments were received;
3. The Commission's 16 January 2024 *Order Submitting Rules to Attorney General*, and to Legislative Council upon approval, with attached Rules as originally proposed, and as amended in PU-23-264;
4. Statements on Regulatory Analysis, Small Entity Analysis, Small Entity Economic Impact Statement, and Takings Assessment;
5. A Fiscal Note.

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

Best regards,

A handwritten signature in blue ink, appearing to read "Brian Johnson".

Brian Johnson  
Special Assistant Attorney General

Enclosures



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

Drew H. Wrigley  
ATTORNEY GENERAL

January 31, 2024

Mr. Brian Johnson, Special Assistant Attorney General  
Public Service Commission  
600 E. Boulevard Ave, Dept. 408  
Bismarck, ND 58504-0480

Dear Mr. Johnson,

The Office of Attorney General has examined the proposed amendments to N.D. Admin. Code chs. 69-09-03 and 69-09-12 concerning Pipeline Safety and Resource Plans and Security, 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 not made because there were no comments, 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 substantial compliance<sup>1</sup> 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

copy Liz Fordahl, Legislative Council

<sup>1</sup> The Public Service Commission requested publication of an abbreviated Notice of Intent to Adopt Administrative Rules and Notice of Public Hearing (Notice) in each official county newspaper in a timely manner. However, publication of the hearing notice in the Center Republican and the Williston Herald did not allow 20 days between the date of publication and the hearing. The Commission republished the notice in these newspapers and left the comment period open for an additional 10 days. All other hearing notices allowed at least 20 days between the publication date and the hearing date.

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

**Public Service Commission**  
**Pipeline Safety**  
**Rulemaking**

**Case No. GS-23-289**

**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 ~~December 1, 2021~~ September 6, 2023, 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; January 1, 2021; October 1, 2022; \_\_\_\_\_.

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

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

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

**Public Service Commission**  
**Emerging Threats**  
**Rulemaking**

**Case No. PU-23-264**

CHAPTER 69-09-12

RESOURCE PLANS AND ~~CYBERSECURITY~~SECURITY

Section

69-09-12-01 Definitions

69-09-12-02 Resource Plan Procedure

69-09-12-03 Resource Plan Attributes

69-09-12-04 Filing Requirements

69-09-12-05 Security

69-09-12-01. Definitions.

1. "Resource plan" means a set of resource options an electric public utility plans to use to meet

the electric capacity and energy requirements of the utility's customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.

2. "Externality" means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

3. "Renewable integration cost" means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.

4. "Unserved energy" means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.

5. "Security" means physical security and cybersecurity.

History: Effective January 1, 2023; amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-05. Security.

1. An electric public utility shall meet with the commission annually to report on cybersecuritysecurity preparedness.

2. The report must provide:

a. Information on the policies, procedure, and process used to inform the management of cybersecuritysecurity risk;

b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;

c. An assessment of emerging threats and efforts taken by the electric public utility to implement cybersecuritysecurity measures;

d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;

e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;

f. Information on activities to monitor, detect, and analyze information related to cybersecuritysecurity threats;

g. Information on the systems used for collaboration and communication of information and intelligence sharing;

h. Information on activities used to address a detected cybersecuritysecurity incident, contain impacts, limit potential damage, and manage consequences of a cybersecuritysecurity incident;

i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident;

j. Information or plans for asset sharing with other electric public utilities and electrical cooperatives to maintain services in the event of a security incident;

k. Information on tabletop and field training exercises regarding security;

3. The commission may close the meeting to discuss the cybersecuritysecurity report, unless the commission orders otherwise.

History: Effective January 1, 2023: amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-23-289**

**Public Service Commission  
Emerging Threats  
Rulemaking**

**Case No. PU-23-264**

**ORDER SUBMITTING RULES TO ATTORNEY GENERAL**

**January 16, 2024**

**Appearances**

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

**Preliminary Statement**

On September 6, 2023, 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 create a proposed amendment to Article 69-09-03, and 69-09-12 of the North Dakota Administrative Code.

On September 6, 2023, the Commission forwarded the notices to the North Dakota Newspaper Association for publication at least 20 days in advance of the hearing.

On September 13, 2023, the notices, the commission motion, proposed rules and full motion were sent to Legislative Council.

The Abbreviated Notice was published in each of the official county newspapers in the state during the weeks of September 11 through September 28, 2023. The Williston Herald and the Center Republican failed to publish the administrative rules as described. The Williston Herald published originally on September 28, 2023, and the Center Republican on September 28, 2023. The Willison Herald republished on November 15, 2023, and the Center Republican republished on December 7, 2023, with comments to remain open until 10 days after publication.

On October 10, 2023, 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.

No comments were received on the proposed rules, however commission staff noted there was a cybersecurity that was not changed to security. The rules were amended to correct this for continuity.

The proposed rules and amendments are summarized as follows:

**Case No. GS-23-289 - Section 69-09-03-01 and 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 December 1, 2021, current to September 6, 2023.

**Case No. PU-23-264 - Section 69-09-12-01 and Section 69-09-12-05 – Resource Plans and Cyber Security**

The purpose of this amendment is to change cybersecurity to security, which means physical and cyber security.

**Public Hearing and Comments**

No comments were made by industry or the public in either case during the hearing or during the following comment period.

Amendments to PU-23-264 were made after staff addressed a missed change of cyber security to security.

The Commission adopts N.D. Admin. Code § 69-09-03 and § 69-09-12 as amended.

**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-23-289 and PU-23-264 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 and amendments in Case No. GS-23-289 and PU-23-264, attached and made part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to their legality, and upon approval from the Attorney General's office staff shall submit the rules as approved to Legislative Counsel.

**PUBLIC SERVICE COMMISSION**

  
Sheri Haugen-Hoffart  
Commissioner

  
Randy Christmann  
Chair

  
Julie Fedorchak  
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Pipeline Safety  
Rulemaking

Case No. GS-23-289

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 ~~December 1, 2021~~ September 6, 2023, 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; January 1, 2021; October 1, 2022; \_\_\_\_\_.

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

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

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

**Public Service Commission**  
**Emerging Threats**  
**Rulemaking**

**Case No. PU-23-264**

CHAPTER 69-09-12

RESOURCE PLANS AND ~~CYBERSECURITY~~SECURITY

Section

- 69-09-12-01 Definitions
- 69-09-12-02 Resource Plan Procedure
- 69-09-12-03 Resource Plan Attributes
- 69-09-12-04 Filing Requirements
- 69-09-12-05 Security

69-09-12-01. Definitions.

1. "Resource plan" means a set of resource options an electric public utility plans to use to meet

the electric capacity and energy requirements of the utility's customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.

2. "Externality" means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

3. "Renewable integration cost" means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.

4. "Unserved energy" means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.

5. "Security" means physical security and cybersecurity.

History: Effective January 1, 2023; amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-05. Security.

1. An electric public utility shall meet with the commission annually to report on cybersecuritysecurity preparedness.

2. The report must provide:

a. Information on the policies, procedure, and process used to inform the management of cybersecuritysecurity risk;

b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;

c. An assessment of emerging threats and efforts taken by the electric public utility to implement cybersecuritysecurity measures;

d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;

e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;

f. Information on activities to monitor, detect, and analyze information related to cybersecuritysecurity threats;

g. Information on the systems used for collaboration and communication of information and intelligence sharing;

h. Information on activities used to address a detected cybersecuritysecurity incident, contain impacts, limit potential damage, and manage consequences of a cybersecuritysecurity incident;

i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident;

j. Information or plans for asset sharing with other electric public utilities and electrical cooperatives to maintain services in the event of a security incident;

k. Information on tabletop and field training exercises regarding security;

3. The commission may close the meeting to discuss the cybersecurity report, unless the commission orders otherwise.

History: Effective January 1, 2023: amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Public Service Commission  
Emerging Threats  
Rulemaking

Case No. PU-23-264

CHAPTER 69-09-12

RESOURCE PLANS AND ~~CYBERSECURITY~~SECURITY

Section

69-09-12-01 Definitions

69-09-12-02 Resource Plan Procedure

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69-09-12-05 Security

69-09-12-01. Definitions.

1. "Resource plan" means a set of resource options an electric public utility plans to use to meet

the electric capacity and energy requirements of the utility's customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.

2. "Externality" means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

3. "Renewable integration cost" means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.

4. "Unserved energy" means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.

5. "Security" means physical security and cybersecurity.

History: Effective January 1, 2023; amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-05. Security.

1. An electric public utility shall meet with the commission annually to report on ~~cybersecurity~~security preparedness.

2. The report must provide:

a. Information on the policies, procedure, and process used to inform the management of ~~cybersecurity~~security risk;

b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;

c. An assessment of emerging threats and efforts taken by the electric public utility to implement ~~cybersecurity~~security measures;

d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;

e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;

f. Information on activities to monitor, detect, and analyze information related to ~~cybersecurity~~security threats;

g. Information on the systems used for collaboration and communication of information and intelligence sharing;

h. Information on activities used to address a detected ~~cybersecurity~~security incident, contain impacts, limit potential damage, and manage consequences of a ~~cybersecurity~~security incident;

i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident;

j. Information or plans for asset sharing with other electric public utilities and electrical cooperatives to maintain services in the event of a security incident;

k. Information on tabletop and field training exercises regarding security;

3. The commission may close the meeting to discuss the ~~cybersecurity~~security report, unless the commission orders otherwise.

History: Effective January 1, 2023: amended effective \_\_\_\_\_.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

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

**Public Service Commission  
Pipeline Safety  
Rulemaking**

**Case No. GS-23-289**

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

**October 10, 2023**

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 1, 2021, current to September 6, 2023. 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 December 1, 2021  
 Summary as of September 6, 2023

Part affected	Amendment No.	Federal Register	Description	Effective date after December 1, 2021
190	No Number	86 FR 23241	Revisions To Civil Penalty Amounts	05/03/2021
190	No Number	87 FR 15839	Revisions To Civil Penalty Amounts	03/21/2022
190	No Number	87 FR 28779	Criminal Referrals	05/11/2022
190	No Number	88 FR 1114	Revisions To Civil Penalty Amounts	01/06/2023
191	31	87 FR 26296	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Response to a Petition for Reconsideration; Technical Corrections; Issuance of Limited Enforcement Discretion	05/16/2022
191	32	87 FR 35675	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Technical Corrections	06/13/2022
192	130	87 FR 20940	Requirement of Valve Installation and Minimum Rupture Detection Standards	10/05/2022
192	131	87 FR 26296	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Response to a Petition for Reconsideration; Technical Corrections; Issuance of Limited Enforcement Discretion	05/16/2022

192	132	87 FR 52224	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	08/24/2022
192	132c	87 FR 64384	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	05/24/2023
192	133	88 FR 24708	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments: Technical Corrections; Response to Petitions for Reconsideration	05/24/2023
192	134	88 FR 50056	Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards: Technical Corrections	08/01/2023
195	104	86 FR 73173	Unusually Sensitive Areas For The Great Lakes, Coastal Beaches, And Certain Coastal Waters	02/25/2022
195	105	87 FR 20940	Requirement Of Valve Installation And Minimum Rupture Detection Standards	10/05/2022
195	106	88 FR 50056	Requirement Of Valve Installation And Minimum Rupture Detection Standards: Technical Corrections	08/01/2023

**Part 190, Amendment #No Number, 86 FR 23241: REVISIONS TO CIVIL PENALTY AMOUNTS**

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this

rule amends the Federal Aviation Administration regulations to set forth the new civil penalties established in Division V, Title I of the Consolidated Appropriations Act, 2021. The rule also corrects a rounding error in an FAA penalty.

**Part 190, Amendment #No Number, 87 FR 15839: REVISIONS TO CIVIL PENALTY AMOUNTS**

This final rule provides the statutorily-prescribed 2022 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this rule notes new DOT civil penalties authority provided in the Bipartisan Infrastructure Law (BIL, enacted as the Infrastructure Investment and Jobs Act).

**Part 190, Amendment #No Number, 87 FR 28779: CRIMINAL REFERRALS**

PHMSA is incorporating within its regulations language noting its employees' ability to refer actual or possible criminal activity in connection with PHMSA's jurisdictional statutes directly to the DOT Office of Inspector General (OIG).

**Part 190, Amendment #No Number, 88 FR 1114: REVISIONS TO CIVIL PENALTY AMOUNTS**

This final rule provides the statutorily-prescribed 2023 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

**Part 191, Amendment #31, 87 FR 26296: SAFETY OF GAS GATHERING PIPELINES: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS: RESPONSE TO A PETITION FOR RECONSIDERATION; TECHNICAL CORRECTIONS; ISSUANCE OF LIMITED ENFORCEMENT DISCRETION**

PHMSA is alerting the public to its April 1, 2022, response denying a petition for reconsideration of the final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments." This final rule also makes clarifications and two technical corrections to that rulemaking. Lastly, this final rule memorializes a limited enforcement discretion in connection with that rulemaking's amendment of the regulatory definition of "incidental gathering."

**Part 191, Amendment #32, 87 FR 35675: SAFETY OF GAS GATHERING PIPELINES: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS: TECHNICAL CORRECTIONS**

PHMSA is issuing corrections of certain changes to incident and annual reporting requirements for offshore gathering pipelines in its November 15, 2021, final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments."

**Part 192, Amendment #130, 87 FR 20940: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS**

PHMSA is revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and hazardous liquid pipelines with diameters of 6 inches or greater. In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote-control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures. This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 9- 1-1 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews. Operators must also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications. PHMSA is promulgating these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

**Part 192, Amendment #131, 87 FR 26296: SAFETY OF GAS GATHERING PIPELINES: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS: RESPONSE TO A PETITION FOR RECONSIDERATION; TECHNICAL CORRECTIONS; ISSUANCE OF LIMITED ENFORCEMENT DISCRETION**

PHMSA is alerting the public to its April 1, 2022, response denying a petition for reconsideration of the final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments." This final rule also makes clarifications and two technical corrections to that rulemaking. Lastly, this final rule memorializes a limited enforcement discretion in connection with that rulemaking's amendment of the regulatory definition of "incidental gathering."

**Part 192, Amendment #132, 87 FR 52224: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, AND OTHER RELATED AMENDMENTS**

PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas transmission pipelines. This final rule addresses several lessons learned following the Pacific Gas and Electric Company incident that occurred in San Bruno, CA, on September 9, 2010, and responds to public input received as part of the rulemaking process. The amendments in this final rule clarify certain integrity management provisions, codify a management of change process, update and bolster gas transmission pipeline corrosion control requirements, require operators to inspect pipelines following extreme weather events, strengthen integrity management assessment requirements, adjust the repair criteria for high-consequence areas, create

new repair criteria for non-high consequence areas, and revise or create specific definitions related to the above amendments.

**Part 192, Amendment #132c, 87 FR 64384: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, AND OTHER RELATED AMENDMENTS**

Correction: In Rule Document 2022-17031, appearing on pages 52224-52279, in the issue of Wednesday, August 24, 2022, a correction is made: On page 52267, in the third column, paragraph "(2)(i)" (of Sec. 192.3 Definitions.) is corrected.

**Part 192, Amendment #133, 88 FR 24708: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, AND OTHER RELATED AMENDMENTS: TECHNICAL CORRECTIONS; RESPONSE TO PETITIONS FOR RECONSIDERATION**

PHMSA is making necessary technical corrections to ensure consistency within, and the intended effect of, a recently issued final rule titled "Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments." PHMSA also alerts the public to its November 18, 2022, and April 19, 2023, responses to petitions for reconsideration of this final rule.

**Part 192, Amendment #134, 88 FR 50056: PIPELINE SAFETY: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS: TECHNICAL CORRECTIONS**

PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.

**Part 195, Amendment #104, 86 FR 73173: UNUSUALLY SENSITIVE AREAS FOR THE GREAT LAKES, COASTAL BEACHES, AND CERTAIN COASTAL WATERS**  
PHMSA is amending the pipeline safety regulations to explicitly state that certain coastal waters, the Great Lakes, and coastal beaches are classified as unusually sensitive areas for the purpose of compliance with the hazardous liquid integrity management regulations. This amendment implements mandates contained in the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, as amended by the PIPES Act of 2020. A hazardous liquid pipeline that could affect these newly designated areas must be included in an operator's integrity management program.

**Part 195, Amendment #105, 87 FR 20940: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS**

PHMSA is revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and

hazardous liquid pipelines with diameters of 6 inches or greater. In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote-control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures. This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 9- 1-1 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews. Operators must also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications. PHMSA is promulgating these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

**Part 195, Amendment #106, 88 FR 50056: REQUIREMENT OF VALVE  
INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS: TECHNICAL  
CORRECTIONS**

PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.

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

**Public Service Commission**  
**Pipeline Safety**  
**Rulemaking**

**Case No. GS-23-289**

Fiscal Note

October 27, 2023

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

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

**Public Service Commission  
Emerging Threats  
Rulemaking**

**Case No. PU-23-264**

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

**August 28, 2023**

The Commission is proposing amendments to Article 69-09-12 of the North Dakota Administrative Code, Public Utility Division, Resource Plans and Cybersecurity. The purpose of the proposed amendments is to address emerging threats and address physical as well as cyber security.

The proposed rule is the result of new legislation and is not pursuant to emergency rulemaking.

**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:

1. 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 or commission 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 or commission and the reasons why the methods were rejected in favor of the proposed rule.

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). The proposed rule amending cyber security to include physical security is not expected to add any additional costs. If any costs are added, the costs should not be over \$50,000 as most of the data required to be reported is already collected and reported by the Electric Public Utilities.

- a. The class that would be affected is Electric Public Utilities.

The class to benefit from this is the general public.

- b. The proposed rule would require data to be submitted in an annual report from data already collected by the public utility.
- c. There are no perceived costs to the agency or commission of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.
- d. No alternatives were considered or rejected.

### **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 amendments are not anticipated to limit the use of private property.

### **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.

The proposed rules impact three investor-owned utilities, Montana-Dakota Utilities Company, Otter Tail Power Company, and Northern States Power Company. No small businesses, organizations, or political subdivisions are impacted by the proposed rules.

#### **Small Entity Economic Impact Statement**

The adoptions of these rules will not have an adverse impact on small entities. None of the rule changes would negatively impact them in a way that would require the commission to establish less stringent requirements, consolidation or simplification of reporting, establishing separate performance standards or exemptions from the proposed rule.

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Emerging Threats  
Rulemaking**

**Case No. PU-23-264**

**FISCAL NOTE**

**October 27, 2023**

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