

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22R-0491GPS

IN THE MATTER OF THE PROPOSED RULES REGULATING PIPELINE OPERATORS
AND GAS PIPELINE SAFETY, 4 CODE OF COLORADO REGULATIONS 723-11.

COMMISSION NOTICE OF PROPOSED RULEMAKING

Mailed Date: November 9, 2022

Adopted Date: November 2, 2022

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Background.....	3
C. Proposed Pipeline Safety Rules.....	5
1. Typographical Errors	5
2. Section 11001 Definitions.....	5
3. Section 11008 Incorporation by Reference.....	7
4. Section 11013 Inspections and Investigations	7
5. Section 11100 Submission of Report and Notices – General	7
6. Section 11103 Submission of Annual Reports	10
7. Section 11201 Pipeline Excavation Damage Prevention	11
8. Section 11203 Small Operator Systems	11
9. Section 11501 Violations – Civil Penalties.....	11
10. Sections 11503 Compliance Action – Warning Notice and 11504 Notice of Probable Violation (NPV).....	12
D. Conclusion	12

II. ORDER.....	13
A. The Commission Orders That:	13
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING November 2, 2022.	14

I. **BY THE COMMISSION**

A. **Statement**

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety (Pipeline Safety Rules) to: (1) address the legislative declaration and rule changes outlined in Senate Bill 21-108 (SB21-108), which strengthen and streamline Colorado's laws governing gas pipeline safety to meet emerging challenges in Colorado; (2) to update rules to incorporate the May 16, 2022 and October 5, 2022 effective changes in 49 C.F.R Parts 190-199; and (3) to incorporate the changes in § 9-1.5-105, C.R.S., the update of Utility Notification Center Of Colorado (UNCC/Colorado 811) membership requirements. In addition, the proposed rules revise typographic and inadvertent errors.

2. This NOPR proposes changes to the Pipeline Safety Rules enacted in 2019,¹ as described in this Decision and its attachments. Proposed rules intend on allowing innovations in technology, improving the rules in recognition of an aging infrastructure system, a growing population that increasingly encounters gas infrastructure, and climate change policy. We also recognize within these rules that we share the responsibility for pipeline safety oversight with other federal and state agencies, commissions, and regulatory bodies.

¹ See Proceeding No. 19R-0703GPS.

3. We welcome the submission of alternative proposed rules, including both individual proposals and consensus proposals joined by multiple stakeholders. Participants are encouraged to provide redlines of specific proposed rule changes for comment and consideration.

4. The Commission refers this matter to an Administrative Law Judge (ALJ), who will hold a hearing on the proposed rules at the below-stated time and place. In addition to submitting written comments, participants will be able to present comments orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission will consider all comments, whether oral or written.

B. Background

5. The statutory authority for the rules proposed here is found at §§ 24-4-101 *et seq.*, 40-1-103, 40-2-108, 40-2-112, 40-2-115, 40-3-110, 40-4-109, 40-6-108, and 40-7-117, C.R.S.

6. This Commission conducts its Pipeline Safety Program (PSP) activities primarily under §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S. In particular, § 40-2-115, C.R.S., provides authority permitting the Commission to enter into cooperative agreements with federal agencies, directs the Commission to coordinate with state and federal agencies, and authorizes the Commission to adopt and create rules to administer and enforce the Natural Gas Pipeline Act found at 49 U.S.C. §§ 60101, *et seq.*

7. SB21-108 makes changes to §§ 40-2-115 and 40-7-117, C.R.S. The statutes allow the Commission to submit certification to or enter into an agreement with the United States Secretary of Transportation under 49 U.S.C. Sec. 60105 or 60106 that allows the Commission to enforce rules of the United States Department of Transportation Pipeline Hazardous Materials Safety Administration (PHMSA) and to adopt such rules as are necessary and proper to comply with federal requirements. The rules adopted under SB21-108 apply to all persons and entities

constituting the intrastate pipeline system to the maximum extend permissible under Federal Law and the Colorado Constitution. § 40-2-115(1)(c), C.R.S. Updates provided under SB21-108 further defines the specific types of hazardous materials and pipeline systems to be regulated by the Commission, and require that the Commission rules address mapping, reduction of risks posed by abandoned gas pipelines, mapping of all pipelines within the Commission's jurisdiction, and increased frequency of inspections, use of advanced lead detection technology, and expansion of annual reporting requirements, among other requirements. *See* § 40-2-115(1)(d)(II)(A) through (G), C.R.S.

8. Changes made to statute through SB21-108 also increase the maximum of penalties issued from one million dollars to two million dollars. § 40-7-117, C.R.S.

9. Current Pipeline Safety Rules were last updated in 2019, moving the Pipeline Safety Rules from their previous location within the Gas Utilities and Pipeline Operator Rules at 4 CCR, 723-4, to a new, standalone Part 11, 4 CCR, 723-11.² The technical updates and rule revisions were made for clarity and consistency, which provided for a more public, clear, and transparent processes concerning the Commission's Pipeline Safety Program.

10. As part of the Commission's review process to implement the requirements of SB21-108, in 2022 Staff of the Colorado Public Utilities Commission (Staff), including the Commission's Pipeline Safety Program Chief, conducted outreach to stakeholders regarding the Commission's Pipeline Safety Program processes and rules. Considerations were aimed at improvements to reinforce pipeline safety throughout Colorado, and specifically, statutory revisions required by SB21-108. We continue to invite stakeholders to raise both rule and statutory considerations within their comments.

² *See* Proceeding No. 19R-0703GPS.

11. Overall, we propose rule revisions that significantly alter and aim to improve upon pipeline safety oversight at the Commission. The proposed rules also continue our commitment to added transparency, while maintaining regulatory efficiencies and continued improvement of the pipeline safety practices of the Commission's Pipeline Safety Program. The proposed rule changes also maintain compliance with recent changes to 49 C.F.R. 190-199.

12. We find that referral to an Administrative Law Judge (ALJ) for issuance of a recommended decision is appropriate and that an ALJ is well suited to address complex technical, procedural and policy goals of this Commission related to pipeline safety such that the ALJ can provide recommended rules to this Commission. As discussed below, we describe our objectives in issuing the attached proposed rules for ALJ and stakeholder consideration.

C. Proposed Pipeline Safety Rules

1. Typographical Errors

13. Typographical errors are found throughout the Part 11 Rule, which includes misspellings, grammatical errors, and reference updates.³ The rules this affects include: 11000(a), 11010(c), 11011(d), 11012(b), 11101(d), 11500(b), and 11507(a) and (c).

14. We do not seek comment on the typographical changes included in these sections because the content, intent, and function will not change.

2. Section 11001 Definitions

15. We propose the addition of four new definitions to Part 11, updates to two definitions, and the removal of one definition. Each definition is added to support a specific

³ Through previously adopted rules, Rule 11000 inadvertently stated scope and applicability to "interstate" commerce, which has been updated to "intrastate" in correlation with state law and authority.

section as required in SB21-108 and the changes defined in Amendment 192-129, effective May 16, 2022.

16. "Advanced Leak Detection Technology" is included in the definition of "New and novel technologies,"⁴ which means any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in 49 CFR parts 192, 193, or 195, due to technology or design advances and innovation for new construction. Technologies that are addressed in consensus standards that are incorporated by reference into Parts 192, 193, and 195 are not "new or novel technologies."

17. "Geographic Information Systems (GIS)" and "Inactive/Idle" are added in support of changes to § 40-2-115 (1)(d)(II)(C), C.R.S. These proposed rules are needed to support the proposed GIS mapping changes required by SB21-108.

18. "Rural gathering pipeline" definition was removed in lieu of the Type R definition in 49 CFR 191.3, which is incorporated by reference.

19. "Records" is added as defined in 44 U.S.C. §3301 in support of the requirement for § 40-2-115(1)(d)(II)(A), C.R.S. This requirement requires increased availability of records for Pipeline Safety Program inspectors in the field for all field activities.

20. We add the definition for "Inactive/Idle" as found in 49 U.S.C. §60143 for ease of reference.

21. We add a definition for "U.S.C." for clarification.

⁴ The definition intends to include, as a baseline, "new and novel technologies" but also allow for additional technologies to be included in the state-defined "advanced leak detection technologies." Commenters are invited to consider revisions that make clear the advanced technologies included in the definition, but at the same time, allow for ongoing improvements that can be identified through reporting that explains the specific technologies used.

22. Finally, we make updates to the definitions of “Petroleum gas” and “Transportation of gas.”

3. Section 11008 Incorporation by Reference

23. The rules are also updated to reflect recent changes in federal law and for general clarity. The most recent change in 49 CFR 191 and 192 occurred on May 16, 2022, which clarified the regulation of gathering lines. 49 CFR 192 will be changed and effective on October 5, 2022, which updated the regulation of valves for gas pipelines. Proposed rules include incorporations by reference of the most recent effective federal updates, and commenters are encouraged through the process of this rulemaking to include whether any updates regarding the regulation of valves for gas pipelines should be included in these rules.

24. We have also added an incorporation by reference of the NPMS Operator Standards Manual, updated October 2017 to outline standards that will apply to the mapping efforts required by SB21-108.

4. Section 11013 Inspections and Investigations

25. Proposed Rule 11013(b) is updated to include the requirement in SB21-108 giving the Pipeline Safety Program the authority to require personnel engaged in pipeline construction, inspection, and repair activities to provide verifiable credentials, on site, when requested by a Pipeline Safety Program Inspector.

5. Section 11100 Submission of Report and Notices – General

26. Proposed Rule 11100(c) provides for the development of GIS data within the context of the Pipeline Safety Program. Data type is listed, along with submission requirements. The use of this data will be used to develop a risk-based inspection program, so that Pipeline Safety Program can perform more targeted and efficient inspections throughout Colorado.

27. Through the proposed rules, we propose annual reporting can be provided through completion of a form that is provided on the Commission's website. While use of the form would not be required, it will allow each operator to submit data consistently and in a standard format. Whether annual filings are provided through the Commission-provided form or separately in an appropriate filing, operators shall ensure that all information required is included in any submitted report filings.

28. The data proposed to be collected includes: maximum allowable operating pressure, testing pressure, pipe description, description of corrosion protection, pipeline class identification (High/Moderate Consequence Areas) as applicable, and abandoned, inactive, or idle pipeline status. Pipeline status, specifically abandoned, inactive, or idle, are being tracked to ensure compliant abandonment procedures and to track if a gas pipeline is abandoned in place or removed. This data will be used in the Pipeline Safety Program's risk model assessment for inspections.

29. The proposed rule includes language consistent with the GIS rules within the current Colorado Oil and Gas Conservation Commission (COGCC) rule 2 CCR 404-1, Rule 1101.e. For efficiencies between agencies, PSP hopes to merge its data with that of the COGCC. Specifically, § 40-2-115(1)(d)(II)(C), C.R.S., includes that the commission "may incorporate information from any existing flowline maps or other maps prepared by [COGCC] and showing pipelines subject to the jurisdiction of that agency." The security rules included in this section have been adjusted to apply to the jurisdictional pipelines the Pipeline Safety Program regulates and to the data this Commission collects. We ask stakeholders to comment that the similar language, based on COGCC's rules, is an efficient and effective way to create efficiencies and consistencies between agencies and protect sensitive information.

30. We propose an explicit statement indicating that the GIS data is not to be used in lieu of Colorado 811 locates.

31. Proposed Rule 11100(d) requires that a list and description of all advanced leak detection technologies being used by gas pipeline operators be provided to the Pipeline Safety Program. Under § 40-2-115(1)(d)(II)(E), C.R.S., the Commission's rules must address the use of advanced leak detection technology to meet the need for pipeline safety and protection of the environment. By requiring a list and description of all advanced leak detection technology, the Commission can better assess whether and how such detection technology is being applied and enable PSP staff to take appropriate action if improvements can be made.

32. Commenters are encouraged to include any additional rule revisions or suggestions regarding the use of advanced leak technology that can meet Colorado's needs for pipeline safety and protection of the environment, including if Commission fining or other authority could best enable these needs are met through Commission processes and rule updates. For example, commenters should consider if operators should identify in annual reporting minimum advanced leak technologies used and, if advanced leak technologies are not identified and used, if the operator should be subject to violation of Commission rules and penalties as noted in Rules 11501 and 11503.

33. The proposed rule's inclusion of annual filing forms as either required or optional formats are intended to better ensure consistency and assist operators in completeness of reporting. Commenters are requested to provide input on how best the Commission, or its Staff can update the Commission-provided form periodically for clarity to assist in better ensuring completed annual filings.

34. Through Rule 11100 the Commission provides useful information on processes currently before PHMSA. Commenters are encouraged to address whether this information is best provided through rule or in the Commission-provided form or website. Particularly as this rule implicates processes before PHMSA, directing operators and the public to the process through informational documents on the Commission's website or otherwise may avoid inconsistencies should PHMSA revise its processes.

6. Section 11103 Submission of Annual Reports

35. We propose a wording change to the list of annual reporting requirements for each type of operator for brevity and clarity.

36. We propose renaming the Small Operator Annual report to clarify applicability to master meter and liquid petroleum gas operators.

37. Through the proposed rules, we further propose including a state supplemental report, through the proposed form provided on the Commission's website in proposed Rule 11100, to submit GIS data during the annual reporting period.

38. Given updates proposed in these rules, including for submission of GIS data in accordance with proposed Rule 11100(c), commenters should include whether annual filing deadlines for 2023 should be set for a date certain other than March 15 once rules are effective, and for March 15 for the following years.⁵

39. We propose including a state supplemental report, through the proposed state provided form in Section 11100, to submit the list and descriptions of the advanced leak detection technologies utilized during the annual reporting period.

⁵ Rules may be effective sufficiently in advance of March 15, 2023, to ensure operators can gather and provide the necessary information, consistent with any final adopted rules. However, through the course of this proceeding we encourage the assigned ALJ and commenters to consider if that date should be slightly later than March 15 for the first year the updated rules and annual reporting requirements are effective.

7. Section 11201 Pipeline Excavation Damage Prevention

40. We propose the update of UNCC/Colorado 811 membership, based on the change in statute from § 9-1.5-105, C.R.S.

41. We propose the requirement of documentation of all abandoned pipelines, as defined in 49 CFR 192.3, be submitted through the annual mapping data report state form. This proposed rule is aimed at the requirements in § 40-2-115(1)(d)(II)(B), C.R.S. to reduce the risks posed by abandoned gas pipelines. Operator's provision of abandoned pipeline information will on one hand better inform the Commission of areas with abandoned pipelines, and on the other hand further the development of the risk-based inspection program within PSP.⁶ Commenters are encouraged to include rule revisions and suggestions that address abandoned gas pipeline safety considerations and implementation in Commission rule.

8. Section 11203 Small Operator Systems

42. We propose the removal of distribution integrity management plans (DIMP) exemptions because there was no guidance for major MMO/LPG systems that have 100 to 999 customers. Master Meter Operator (MMO) systems are exempt from DIMP requirements as per 49 CFR 192.1003 and Liquid Petroleum Gas (LPG) systems are subject to DIMP requirements as per 49 CFR 192.1015.

9. Section 11501 Violations – Civil Penalties

43. We propose an increase in civil penalty not to exceed amounts, both for individual instance of violation and group or series of related violations, from \$100,000 per instance of violation not to exceed \$1,000,000 in aggregate, to \$200,000 per instance of violation, not to

⁶ Knowing these details could inform future actions, including construction over an abandoned line that was not fully sealed.

exceed \$2,000,000 in aggregate, consistent with updates in § 40-7-117, C.R.S., made through SB21-108, and in compliance with 49 CFR 190.223.

44. Notably, 49 CFR 190.223 is adjusted annually to meet requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Commenters are encouraged to address whether changes to this increase given the rising annual federal amounts warrant any further revisions, including if commenters suggest further statutory changes to mirror rising federal penalty limits.

**10. Sections 11503 Compliance Action – Warning Notice and 11504
Notice of Probable Violation (NPV)**

45. We propose the availability of a penalty reduction based on the listed factors and metrics, as part of a requirement for §§ 40-7-117(2)(a) through (c), C.R.S. An operator receiving a NPV should never be caught off guard, except in exceptional circumstances (*e.g.*, flagrant violations, deaths, or other negligent actions), because the operator will have already received a Warning Notice Compliance Action from the Pipeline Safety Program.

46. We propose a clarification to the NPV process through a court of law as required in § 40-7-117(3) and (4), C.R.S.

D. Conclusion

47. The Commission invites comments from interested persons on these proposed revisions to the Pipeline Safety Rules. The Commission prefers and encourages that comments be filed in this Proceeding through the Commission's Electronic Filings (E-Filings) System at:

<https://www.dora.state.co.us/pls/efi/EFI.homepage>.

48. We have included the Gas Utilities and Pipeline Operator Rules at 4 CCR 723-11 in legislative (*i.e.*, ~~strikeout~~/underline) format to remove pertinent rules (Attachment A). A full

final format version of the newly proposed Pipeline Safety Rules is attached (Attachment B). The attachments are available through the Commission's E-Filings System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22R-0491GPS

49. Written comments, including redlines to the proposed rules, are requested by December 12, 2022, with responsive comments requested on or before January 3, 2023.

50. This Commission refers this Proceeding to an ALJ, who will hold a hearing on the proposed rules at the stated time and place. Interested persons may provide oral comments at the public hearing unless the ALJ deems oral presentations unnecessary.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the November 25, 2022, edition of *The Colorado Register*.

2. Comments from interested persons on the proposed amendments to the Rules are requested by December 12, 2022 and reply comments are requested no later than January 3, 2023.

3. The hearing on the proposed rules and related matters shall be held before an Administrative Law Judge (ALJ) as follows:

DATE: January 19, 2023

TIME: 9:00 a.m.

LOCATION By video conference using Zoom at a link in the calendar of events on the Commission's website, available at:
<https://puc.colorado.gov/>

The ALJ may set additional hearings, if necessary.

4. At the time set for hearing, interested persons may submit written comments and may present these orally unless the ALJ deems oral comments unnecessary.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 2, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners