

(Decision No. C93-1192)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED RULES )	
RELATING TO THE GAS PIPELINE )	DOCKET NO. 93R-548G
SAFETY PROGRAM, AMENDMENTS TO )	
4 CCR 723-11. )	NOTICE OF PROPOSED RULEMAKING

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Mailed Date: September 30, 1993  
Adopted Date: September 29, 1993  
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STATEMENT

BY THE COMMISSION:

The Colorado Public Utilities Commission hereby gives notice of proposed rulemaking regarding amendments to the Rules Of The Colorado Public Utilities Commission Concerning The Federal Pipeline Safety Program, 4 CCR 723-11. The intent of the proposed rules is to amend existing rules concerning Commission enforcement of the Federal Pipeline Safety Program, 49 CFR 190. Existing rules, found at 4 CCR 723-11, were adopted to comply with the mandates promulgated by the United States Department Of Transportation ("DOT") which require state agencies certified as federal agents to the Federal Pipeline Safety Program to adopt and enforce DOT rules. The proposed amendments to 4 CCR 723-1 incorporate federal rules, but make non-substantive modifications to reflect Commission-specific terminology. The proposals are also intended to comply with recent amendments to sections 40-2-115, C.R.S. (Commission enforcement of the Natural Gas Pipeline Safety Act of 1968 as amended), and 40-7-117, C.R.S. (penalty assessments).

3060  
CR16-3105

A copy of the proposed rules is attached to this notice of proposed rulemaking. Sections 40-2-108, 40-2-115, and 40-3-102, C.R.S. supply the statutory authority for the proposed rules. The Commission will conduct a hearing on the proposed rules and related issues beginning at 9:00 a.m. on November 19, 1993. The hearing will be conducted by an administrative law judge in Hearing Room A, Office Level (OL) 2, 1580 Logan Street, Denver, Colorado. Interested persons may submit written comments on the rules and present these orally at hearing, unless the Commission deems oral presentations unnecessary. Interested persons may also file written comments before the hearing. All submissions will be considered by the Commission.

THEREFORE THE COMMISSION ORDERS THAT:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the October 10, 1993 edition of The Colorado Register. At the time of filing with the Secretary of State, this notice shall also be filed with the Office of Regulatory Reform.

2. Hearing on the proposed rules and related matters shall be held beginning at 9:00 a.m. on November 19, 1993 in Hearing Room A, OL 2, 1580 Logan Street, Denver, Colorado. At the time set for hearing, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

3. Interested persons may file written comments in this docket before hearing. All submissions, whether oral or written, will be considered.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING September 29, 1993.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

Robert E. Temmer

Christine E. M. Alvarez

Vincent Majkowski

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith  
Director

4 CCR 723-11 REVISED  
RULES GOVERNING THE ENFORCEMENT  
OF GAS PIPELINE SAFETY

AUGUST 3, 1993  
formerly Part 190

RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY  
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Authority: , 49 CFR 190, § 40-2-115 C.R.S, § 40-2-108 C.R.S., §  
40-6-101(1), Article 4 of Title 24, C.R.S.

1     RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY

2     Rule 1.     Statement of Basis and Purposes.

3     These rules prescribe enforcement procedures utilized by the  
4     Pipeline Safety Group, Safety and Enforcement Section of the  
5     Colorado Public Utilities Commission ("Commission"), acting as  
6     agent for the United States Department of Transportation by virtue  
7     of the annual submission for certification under Section 5(a) of  
8     the Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C.  
9     §§ 1671, et seq., ("NGPSA"). Under this agreement, the State of  
10    Colorado enforces the provisions of the NGPSA with respect to the  
11    intrastate pipeline transportation of gas over which it has  
12    jurisdiction under state law. Gas facilities include gas  
13    gathering, distribution, transmission, master meter and direct  
14    sales systems. The Commission has authority under Section 40-2-  
15    115, C.R.S. to enter into cooperative agreements with any agency of  
16    the United States government and to adopt rules and regulations to  
17    administer and enforce the safety laws and regulations of the  
18    United States under the NGPSA. The Commission has authority under  
19    Section 40-2-108, C.R.S. to adopt rules and regulations as are  
20    necessary for the proper administration and enforcement of Title 40  
21    of the Colorado Revised Statutes.

22           **Rule 2.    Definitions.**

23           As used in this part:

24       (a)   **"The NGPSA"** means the Natural Gas Pipeline Safety Act of 1968,  
25           as amended, 49 U.S.C. §1671 et. seq., as it existed on the  
26           date these rules became effective.

27       (b)   **"OPS"** means the Office of Pipeline Safety, which is part of  
28           the Research and Special Programs Administration, U.S.  
29           Department of Transportation.

30       (c)   **"Presiding Official"** means the chairman or senior commissioner  
31           in a hearing conducted before the Commission en blanc, or  
32           individual commissioner or administrative law judge in a  
33           hearing conducted by a single commissioner or administrative  
34           law judge.

35       (d)   **"Person"** means any individual, firm, joint venture,  
36           partnership, corporation, association, municipality,  
37           cooperative association, or joint stock association, and  
38           includes any trustee, receiver, assignee, or personal  
39           representative thereof.

- 40 (e) "Respondent" means a person upon whom a compliance directive,  
41 notice of probable violation, consent stipulation, or order to  
42 show cause has been served.
- 43 (f) "State" means the State of Colorado.
- 44 (g) "Hearing" means any hearing provided in Rule 9 of these rules.
- 45 (h) "Direct Sales Pipeline" means a pipeline from an interstate or  
46 intrastate gas pipeline to a direct sales meter or the  
47 connection to a direct sales customer's piping, whichever is  
48 farther downstream. A direct sales meter is the meter that  
49 measures the transfer of gas to a direct sales consumer  
50 purchasing gas for its own consumption, and does not include  
51 small-volume users, such as farm taps.
- 52 (i) "Chief" means the head of the Safety and Enforcement Section  
53 of the Public Utilities Commission of the State of Colorado.
- 54 (j) "Staff" means the staff of the Gas Pipeline Safety Group, a  
55 unit of the Safety and Enforcement Section of the Public  
56 Utilities Commission of the State of Colorado.
- 57 (k) "Commission" means the Public Utilities Commission of the  
58 State of Colorado.



59 (l) "Director" means the Director of the Commission.

60 (m) "Intrastate pipeline transportation" means pipeline facilities  
61 and transportation of gas within the State of Colorado which  
62 are not subject to the jurisdiction of the Federal Energy  
63 Regulatory Commission under the Natural Gas Act.

64 Rule 3. Service.

65 (a) Each order, notice, or other document required to be served  
66 under these rules shall be served personally or by registered  
67 or certified mail.

68 (b) Service upon a person's duly authorized representative or  
69 agent constitutes service upon that person.

70 (c) Service by registered or certified mail is complete upon  
71 mailing. An official U.S. Postal Service receipt evidencing  
72 a registered or certified mailing constitutes prima facie  
73 evidence of service.

74     **Rule 4.     Subpoenas.**

75     (a) The Commission, any commissioner, any administrative law  
76         judge, or the Director of the Commission, may issue a subpoena  
77         in accordance with the provisions of § 40-6-103(1), C.R.S.

78     (b) Subpoena practice before the Commission shall be governed by  
79         Rule 45 of the Colorado Rules of Civil Procedure, except as  
80         provided in this rule and §§ 40-6-102 and 103, C.R.S. When  
81         Rule 45 is applied to Commission subpoena practice, the word  
82         "court" in Rule 45 means the Commission, a hearings  
83         commissioner, an administrative law judge, or the Director of  
84         the Commission.

85     (c) Enforcement of any subpoena issued under this rule shall be in  
86         the district court, as provided in § 40-6-103(2), C.R.S.

87     **Rule 5.     Inspections.**

88     (a) Staff employees authorized by the Chief, upon presenting  
89         appropriate credentials are authorized to enter upon, inspect,  
90         and examine, at reasonable times and in a reasonable manner,  
91         the records and properties of persons subject to the NGPSA and  
92         these rules to the extent such records and properties are

93 relevant to determining the compliance of such persons with  
94 the NGPSA, or state law, rules, regulations, or orders issued  
95 thereunder.

96 (b) Inspections are ordinarily conducted pursuant to one of the  
97 following:

- 98 (1) Routine scheduling by the Chief;
- 99 (2) A complaint received from a member of the public;
- 100 (3) Information obtained from a previous inspection;
- 101 (4) Pipeline accident or incident; or
- 102 (5) Whenever deemed appropriate by the Chief.
- 103 (6) At the request of the Western Region Director, OPS,  
104 United States Department of Transportation.

105 (c) If, after an inspection, the Staff believes that further  
106 information is needed to determine appropriate action, the  
107 Staff may send the owner or operator a "Request for Specific  
108 Information" to be answered within 30 days after receipt of  
109 the letter.

110 (d) To the extent necessary to carry out the responsibilities of  
111 the Commission under the NGPSA, and/or state rules and  
112 regulations, the Staff may require testing of portions of  
113 pipeline facilities subject to the NGSPA or state  
114 regulations which have been involved in or affected by an  
115 accident. However, before exercising such authority, the Staff

116 shall make every effort to negotiate a mutually acceptable  
117 plan with the owner of such facilities for performing such  
118 testing.

119 (e) When the information obtained from an inspection or from other  
120 appropriate sources indicates that further action is  
121 warranted, the Chief may issue a warning letter under Rule 6  
122 of these rules, or may initiate one or more enforcement  
123 proceedings prescribed in these rules.

124 **Rule 6. Warning letters.**

125 Upon determining that a probable violation of the NGPSA, or  
126 any State rule, regulation or order issued thereunder has  
127 occurred, the Chief may issue a Warning Letter notifying the owner  
128 or operator of the probable violation and advising him to correct  
129 it or be subject to enforcement action under these rules.

130 **Rule 7. Notice of probable violation.**

131 (a) Except as otherwise provided by these rules, the Chief may  
132 commence an enforcement proceeding by serving a notice of  
133 probable violation on a person subject to the NGPSA or State  
134 rules and regulations adopted by the Commission under the

135 NGPSA charging him with a probable violation of the NGPSA, or  
136 any State rule and regulation, or order issued thereunder.

137 (b) A notice of probable violation issued under this rule shall  
138 include:

- 139 (1) A statement of the provisions of the law, rules,  
140 regulations or orders which the respondent is  
141 alleged to have violated and a statement of the  
142 facts upon which the allegations are based;
- 143 (2) A notice of response options available to the  
144 respondent under Rule 8;
- 145 (3) If a civil penalty is proposed under Rule 12, the  
146 amount of the proposed civil penalty and the  
147 maximum civil penalty for which respondent may be  
148 liable under law; and
- 149 (4) If a compliance directive is proposed under Rule  
150 10, a statement of the remedial action being sought  
151 in the form of a proposed compliance directive.

152 (c) The Chief may amend a notice of probable violation at any time  
153 prior to the commencement of a hearing under Rule 9, or with  
154 leave of the presiding official after commencement of the  
155 hearing. If an amendment includes any new material  
156 allegations of fact or proposes an increased civil penalty  
157 amount, the respondent shall have the opportunity to respond  
158 as provided in Rule 8.

159 Rule 8. Response options.

160 Within 30 days after his receipt of a notice of probable  
161 violation the respondent shall respond to the Chief in any the  
162 following ways:

163 (a) When the notice of probable violation contains a proposed  
164 civil penalty,

165 (1) the respondent may pay the proposed civil penalty  
166 as provided in Rule 14 and the Staff will close the  
167 case with prejudice;

168 (2) the respondent may submit an offer in compromise of  
169 the proposed civil penalty under paragraph (c) of  
170 this rule and paragraph (a) of Rule 14;

171 (3) the respondent may submit written explanations,  
172 information or other materials in answer to the  
173 allegations or in mitigation of the proposed civil  
174 penalty; or

175 (4) the respondent may request a hearing under Rule 9.

176 (b) When the notice of probable violation contains a proposed  
177 compliance directive,

178 (1) the respondent may agree to the proposed compliance  
179 directive;

- 180           (2) the respondent may request the execution of a  
181           consent stipulation under Rule 11;  
182           (3) the respondent may object to the proposed  
183           compliance directive and submit written  
184           explanations, information or other materials in  
185           answer to the allegations in the notice of probable  
186           violation; or  
187           (4) the respondent may request a hearing under Rule 9.

188   (c) An offer in compromise under paragraph (a)(2) of this rule  
189   shall be made by the respondent submitting a check or money  
190   order for the amount offered. If the offer in compromise is  
191   accepted by the Chief, the respondent will be notified in  
192   writing that the acceptance is in full settlement of the  
193   proposed civil penalty . If an offer in compromise submitted  
194   under paragraph (a)(2) of this rule is rejected by the Chief,  
195   it shall be returned to the respondent with written  
196   notification. Within 10 days of his receipt of such  
197   notification, the respondent shall again respond to the Chief  
198   in one or more of the ways provided in paragraph (a) of this  
199   rule.

200   (d) If the respondent fails to respond in accordance with this  
201   rule, the Notice of Probable Violation shall be set for  
202   hearing at a time and place convenient to the Commission.

203

204 **Rule 9. Hearing.**

205 (a) A request for a hearing in response to a notice of probable  
206 violation issued under Rule 7 shall be accompanied by a  
207 statement of the issues which the respondent intends to raise  
208 at the hearing. The issues may relate to the alleged  
209 violations, new information or to the proposed compliance  
210 directive or proposed civil penalty amount. A respondent's  
211 failure to specify an issue may result in waiver of his right  
212 to raise that issue at the hearing.

213 (b) The hearing shall be held in accordance with the Rules of  
214 Practice and Procedure of the Commission, 4 CCR 723-1 and  
215 article 6 of Title 40, Colorado Revised Statutes.

216 **Rule 10. Compliance directives.**

217 When the Staff or OPS has reason to believe that a person is  
218 engaging in conduct which involves a violation of the NGPSA, or any  
219 State rule, regulation or order issued thereunder, and if the  
220 nature of the violation and public safety warrant, the Staff may  
221 conduct an investigation to determine the nature and extent of the  
222 violation and the Chief may issue a letter directing compliance.



223 Rule 11. Consent stipulations.

224 (a) At any time before the issuance of a compliance directive  
225 under Rule 10, the Chief and the respondent may agree to  
226 dispose of the case by joint execution of a consent  
227 stipulation.

228 (b) A consent stipulation executed under paragraph (a) of this  
229 rule shall include:

230 (1) An admission by the respondent of all  
231 jurisdictional facts;

232 (2) An express waiver by the respondent of further  
233 procedural steps, including his right to a hearing  
234 under Rule 9, his right to seek judicial review or  
235 otherwise challenge or contest the validity of the  
236 stipulation;

237 (3) An acknowledgement by the respondent that the  
238 notice of probable violation may be used to  
239 construe the terms of the consent stipulation; and

240 (4) A statement of the actions required of the  
241 respondent and the time by which such actions shall  
242 be accomplished.

243 Rule 12. Civil penalties.

244 (a) As provided in Section 40-7-117, C.R.S., any person who is  
245 determined to have violated a provision of the NGPSA or any  
246 state rule, regulation or order issued thereunder, is subject  
247 to a civil penalty not to exceed \$10,000 for each violation  
248 for each day the violation continues, except that the maximum  
249 civil penalty shall not exceed \$500,000 for any related series  
250 of violations.

251 (b) No person shall be subject to a second civil penalty for the  
252 violation of any provision of the NGPSA, or any State rule or  
253 regulation adopted thereunder, or any order issued pursuant to  
254 Rules 10, 11, or 15, if both violations are based on the same  
255 act.

256 Rule 13. Civil penalty considerations.

257 The presiding official may impose a civil penalty under these  
258 rules only after considering:

259 (a) The nature, circumstances and gravity of the violation;

260 (b) The degree of the respondent's culpability;

- 261 (c) The respondent's history of prior offenses;
- 262 (d) The respondent's ability to pay;
- 263 (e) Any good faith by the respondent in attempting to achieve  
264 compliance;
- 265 (f) The effect on the respondent's ability to continue in  
266 business; and
- 267 (g) Such other matters as equity and fairness may require.

268 Rule 14. Payment of penalty.

- 269 (a) Payment of a civil penalty under these rules shall be by  
270 check or money order payable to the "Public Utilities  
271 Commission of the State of Colorado".
- 272 (b) If a respondent fails to pay the full amount of a civil  
273 penalty assessed under these rules or fails to make an offer  
274 in compromise as provided by paragraph (c) of this rule  
275 within 20 days after service of a final decision, the  
276 Commission may refer the case to the Attorney General's Office  
277 with a request that an action be commenced in court to collect  
278 the civil penalty.

279 (c) Within 20 days after service of a final decision assessing a  
280 civil penalty under these rules, the respondent may offer to  
281 compromise the assessed penalty by submitting, in the manner  
282 required by paragraph (a) of this rule, payment in the amount  
283 offered. The Chief may accept or reject the compromise offer  
284 on behalf of the Commission. If the Chief accepts the  
285 compromise, the respondent shall be notified in writing that  
286 the acceptance is in full settlement of the civil penalty  
287 action. If the compromise offer is rejected it shall be  
288 returned to the respondent with written notification. Payment  
289 of the full amount of the civil penalty assessed shall become  
290 due 20 days after service of the notice rejecting the  
291 compromise. If the respondent fails to pay the full penalty  
292 assessed within 20 days after service, the Commission may  
293 request that the Attorney General commence a civil action as  
294 provided in paragraph (b) of this rule.

295 (d) If a respondent elects to make an offer in compromise of a  
296 civil penalty proposed in a notice of probable violation  
297 issued under Rule 7, he shall do so in accordance with the  
298 procedures set forth in Rule 8.

299 Rule 15. Hazardous facility orders.

300 (a) Except as provided in paragraph (b) of this rule, if the  
301 Commission finds, after reasonable notice and opportunity for  
302 hearing in accordance with paragraph (c) of this rule, a  
303 particular pipeline facility to be hazardous to life or  
304 property, it shall issue an order pursuant to this rule  
305 requiring the owner or operator of the facility to take  
306 corrective action. Corrective action may include suspending  
307 or restricting the use of the facility, physical inspection,  
308 testing, repair, replacement, or other action, as appropriate.

309 (b) The Commission may waive the requirement for notice and  
310 hearing under paragraph (a) of this rule before issuing an  
311 order pursuant to this rule when it determines that notice and  
312 hearing may result in the likelihood of serious harm to life  
313 or property. However, the Commission shall include with the  
314 order a notice informing the owner or operator of his right  
315 to a hearing upon request as soon as practicable after  
316 issuance of the order. The provisions of paragraph (c)(2) of  
317 this rule apply to an owner or operator's decision to exercise  
318 his right to a hearing. The purpose of such a post-order  
319 hearing is for the Commission to determine whether the order  
320 should remain in effect or be amended, rescinded or suspended  
321 in accord with paragraph (g) of this rule.

322 (c) Notice and hearing:

323 (1) An order to show cause and notice of hearing under  
324 this rule shall be served in accordance with Rule  
325 3, upon the owner or operator of an alleged  
326 hazardous facility. The order to show cause shall  
327 allege the existence of a hazardous facility,  
328 stating the facts and circumstances supporting the  
329 issuance of a "hazardous facility order", and  
330 providing the owner or operator an opportunity for  
331 a hearing, identifying the date, time and location  
332 of the hearing.

333 (2) A hearing under this rule shall be presided over by  
334 a presiding official from the Commission. The  
335 hearing shall be conducted in accordance with the  
336 Rules of Practice and Procedure of the Commission  
337 and article 6 of Title 40, C.R.S.

338 (3) Within 48 hours after conclusion of a hearing under  
339 this rule, the presiding official shall issue a  
340 recommended decision to the Commission. If the  
341 presiding official finds the facility to be  
342 hazardous to life or property he shall issue an  
343 order in accordance with this rule. If he does not  
344 find the facility to be hazardous to life or  
345 property, he shall discharge the order to show  
346 cause.

347 (d) The presiding official may find a pipeline facility to be  
348 hazardous to life or property under paragraph (a) of this  
349 rule:

350 (1) If under the facts and circumstances he determines  
351 the particular facility is hazardous to life or  
352 property; or

353 (2) If the pipeline facility or a component thereof has  
354 been constructed or operated with any equipment,  
355 material, or technique which he determines is  
356 hazardous to life or property.

357 (e) In making a determination under paragraph (d) of this rule,  
358 the presiding official shall consider, if relevant:

359 (1) The characteristics of the pipe and other equipment  
360 used in the pipeline facility involved, including  
361 its age, manufacturer, physical properties  
362 including its age, manufacturer, physical  
363 properties (including its resistance to corrosion  
364 and deterioration), and the method of its  
365 manufacture, construction or assembly;

366 (2) The nature of the materials transported by such  
367 facility (including their corrosive and  
368 deteriorative qualities), the sequence in which  
369 such materials are transported, and the pressure  
370 required for such transportation;

371 (3) The aspects of the areas in which the pipeline  
372 facility is located, in particular the climatic and  
373 geologic conditions (including soil  
374 characteristics) associated with such areas, and  
375 the population density and population and growth  
376 patterns of such areas;

377 (4) Any recommendation of the National Transportation  
378 Safety Board issued in connection with any  
379 investigation conducted by the Board; and

380 (5) Such other factors as the presiding official may  
381 consider appropriate.

382 (f) A recommended decision finding a facility to be hazardous  
383 shall contain the following :

384 (1) A finding that the pipeline facility is hazardous  
385 to life or property.

386 (2) The relevant facts which form the basis for that  
387 finding.

388 (3) The legal basis for the recommended decision and  
389 order.

390 (4) The nature and description of particular corrective  
391 action required of the respondent.

392 (5) The date by which the required action must be  
393 taken, or completed and, where appropriate, the  
394 duration of the order.



(g) The Commission shall rescind or suspend a "hazardous facility order" whenever it is shown to the Commission's satisfaction that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under Rule 7 of these rules.

(h) At any time after a hazardous facility order issued under this rule has become effective, the Commission may request the Attorney General to bring an action in court to enforce the order as provided in article 7 of Title 40, C.R.S.

**Rule 16. Injunctive action.**

Whenever it appears to the Commission that a person has engaged, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of the NGPSA, or State rules, regulations or orders issued under the NGPSA, the Commission may request the Attorney General to bring an action in the appropriate district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and monetary penalties as provided in article 7 of Title 40 of the C.R.S.

415 ~~1110~~ revised 8/03/93jb