



STATE OF INDIANA

Michael R. Pence
Governor

STATE BUDGET AGENCY
212 State House
Indianapolis, Indiana 46204-2796
317-232-5610

Brian E. Bailey
Director

2016
January 4, 2015

DeAnna Poon
Assistant General Counsel
Indiana Utility Regulatory Commission
101 W Washington St Ste 1500E
Indianapolis, IN 46204

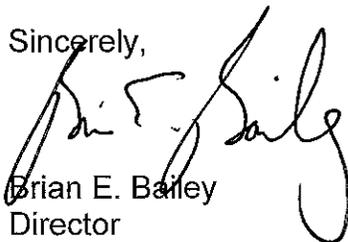
Dear Ms. Poon,

Pursuant to the provisions of Executive Order 2-89 and Budget Agency Financial Management Circular 2010-4, the State Budget Agency has reviewed the proposed rule to amend IC 170 IAC 5-3-0.5 through 170 IAC 5-3-5 (LSA #15-424), which you submitted to the State Budget Agency on December 3, 2015. After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.

Furthermore, the statement and analysis (attached hereto) provided by the Indiana Utility Regulatory Commission is hereby adopted as the Office of Management and Budget's own Fiscal Impact Statement for the purpose of satisfying the requirements under IC 4-22-2-28(d). Also, it is adopted as the Office of Management and Budget's cost benefit analysis under IC 4-3-22-13(a).

If you have questions concerning this action, please contact your budget analyst or SBA at 232-5610.

Sincerely,



Brian E. Bailey
Director

BEB/lrq

STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION
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December 3, 2015

Mr. Micah Vincent
Indiana Office of Management and Budget
200 West Washington Street, Room 212
Indianapolis, Indiana 46204

VIA ELECTRONIC MAIL

RE: LSA Document #15-424 - Minimum Safety Standards for the Transportation of Gas, Hazardous Liquids, Carbon Dioxide Fluids, and Related Pipeline Facilities.

Dear Mr. Vincent:

The Indiana Utility Regulatory Commission ("IURC") hereby submits its draft Proposed Rule to amend the rule relating to the minimum safety standards for the transportation of gas, hazardous liquids, carbon dioxide fluids, and related pipeline facilities for review and approval by the State Budget Agency ("SBA").

The IURC's draft Proposed Rule updates current language to match the federally mandated Pipeline Safety regulations promulgated by 49 U.S.C. §178 *et seq.* The purpose of the Proposed Rule is to increase public safety and, in particular, to reduce the risk of gas leaks and explosions causing property damage, injuries, and loss of life. The IURC has received your letter dated November 30, 2015, which states, "the request [to proceed with this rulemaking] qualifies for an exception under paragraph 6(c) and 6(g) of Executive Order 13-03. Therefore, the IURC may proceed with the rule proposed in its September 30, 2015 submission." Therefore, the IURC now attaches includes the following documents for your review:

- SBA Rule Promulgation Submission Form
- Draft Proposed Rule
- Fiscal Impact Analysis on State and Local Government (FMC 2010-4)
- Cost Benefit Analysis (IC 4-3-22-13, IC 4-22-2-28, FMC 2010-4)
- The Notice of Intent (IC 4-22-2-23) or, if applicable, the relevant notice from IC 13-14
- Small Business Economic Impact Statement (IC 4-22-2.1-1)

Budget Agency Review of Proposed Rules

Agency: Indiana Utility Regulatory Commission

Analyst: Ethan Simcox

Analyst Recommendation Approve: Disapprove:

Rule Number: 15-424 Date: December 28, 2015

Topic: Minimum Safety Standards for the Transportation of Gas, Hazardous Liquids, Carbon Dioxide Fluids, and Related Pipeline Facilities

Digest: IURC is seeking to amend the rule for minimum safety standards for the transportation of Gas, Hazardous Liquids, Carbon Dioxide Fluids, and Related Pipeline Facilities.

Effective Date: Anticipated effective date is May 6, 2016

Does the proposed rule have a state or local fiscal impact? State Local None

If none, please explain why:

This rule change does not have a direct fiscal impact on the State or localities since it merely clarifies existing rules and adopts under State law the federal rules that regulated entities are already required to follow. Since the adoption of the rule does allow for the Commission to be eligible to receive Federal grant funding with a State Match requirement as a condition of award, the approval of this rule could indirectly affect State appropriation depending on the amount of non-reimbursable costs incurred by the Commission for the administration of the grants where State Match is required. However, the grants that hinge on the approval of this rule have been applied for and received in years past with similar State Match requirements, so approval of this rule would not create any additional expense on State appropriation that does not already exist or has existed in past fiscal years. Thus, there is no net direct fiscal impact on the State from the approval of this rule. The proposed rule has no fiscal impact on localities.

	<u>State Fiscal Impact</u>			
	Current Biennium	Second Year	First Year	Second Year
Revenue:	0	0	0	0
Expenditure:	0	0	0	0

(indicate decreases by using brackets)

Funds Involved: General: Name of fund:

Dedicated:

Does the agency's current biennial appropriation cover this expenditure? Yes No

Other Questions

What is the agency doing and why are they doing it?

This proposed rule amends 170 IAC 5-3-0.5 through 170 IAC 5-3-5 regarding minimum safety standards for the transportation of gas, hazardous liquids, carbon dioxide fluids, and related pipeline facilities. More specifically, the rule updates the references to Federal code and regulatory citations relating to minimum pipeline safety standards for gas pipelines since the rules in place do not reflect current statutory language. Thus, this rule updates existing regulatory language to match federal codes and statutes. It also clarifies

Governor's Office Approval
Signature:
Date: 1-4-16

OMB General Counsel Approval
Signature:
Date: 1-4-16

the current rule by removing redundant and clumsy language.

IC 8-1-22.5 establishes the Pipeline Safety Division (PSD) of the Indiana Utility Regulatory Commission (IURC) and enables the PSD and the Commission to carry out enforcement of minimum pipeline safety standards for gas pipelines. This statute requires the PSD to administer and require compliance of pipeline facilities with Federal and State safety standards. As a result of this statute, the IURC was able to enter into a certification agreement with the United States Department of Transportation's Pipeline and Hazardous Material's Safety Administration (PHMSA) in which PHMSA delegated pipeline safety enforcement authority to the State. Thus, in order to enforce the Federal pipeline standards, the IURC's administrative rules must specifically adopt those standards.

Additionally, the adoption of the previously mentioned standards is required by PHMSA for the PSD to continue receiving Federal grant funds to enforce the standards.

Why should we approve this rule?

The rule should be approved because it allows the PSD to receive federal grant funding pursuant to 49 U.S.C. § 198, et seq. for the enforcement of gas pipeline standards.

Without the grant funding, the PSD would be unable to have sufficient resources in it's budget for the PSD program staff and operations.

Another benefit from the adoption of this rule could be the elimination of some questions or confusion surrounding pipeline standards enforcement that regulated entities may encounter. This could potentially result in reduced opportunity costs incurred by those entities from time spent on comparing State versus Federal requirements due to discrepancies that currently exist. Clarifying current rules would remove such discrepancies.

Finally, from a budgetary perspective, it is in the interest of the State to allow for the PSD to receive federal funding, minimizing the extent as to which State resources are expended on enforcement activities. From a public policy perspective, it is in the interest of the State to carry out pipeline enforcement activities for gas pipeline operators that transport natural or other hazardous flammable gas, hazardous liquids, and/or carbon dioxide fluids since doing so promotes public safety. Any diminishment of resources or elimination of the PSD program could potentially expose citizens to undue risks such as the destruction of property, injury, or loss of life from explosions, fires, or the release of harmful gases.

Explain the impact that this rule has on other effected groups inside and outside of state government:

The only budgetary impact that this rule would have on a group inside State government would be that the result of its enactment would allow the PSD to receive federal funding to carry out enforcement activities. The applications for federal funding from the US Department of Transportation Pipeline and Hazardous Materials Safety Administration's 2016 Hazardous Liquid Pipeline Safety and 2016 Gas Pipeline Safety Programs are split into two grant awards totaling \$9,993,71 and \$1,869,967.73, respectively.

Since these Federal grant funds include a State Match requirement as a condition of award, the approval of this rule could indirectly affect State appropriation depending on the amount of non-reimbursable costs incurred by the Commission for the administration of the grants where State Match is required. However, the grants that hinge on the approval of this rule have been applied for and received in years past, so approval of this rule would not create any additional expense on State appropriation that does not already exist or has existed in past fiscal years. Thus, there is no net or direct fiscal impact on the State from the approval of this rule. Additionally, the proposed rule has no fiscal impact on localities.

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Signature: _____

Date: _____

OMB General Counsel Approval

Signature: _____

Date: _____

There are 72 small businesses that would be subject to the proposed rule, but it will not change the manner in which small business comply to the current rule regarding minimum safety standards for gas pipelines since they must already follow existing Federal and State rules. This rulemaking simply give the PSD the ability to enforce its authority under State law and clarifies existing rules.

This proposed rule would give the PSD enforcement authority to request fines and hazardous conditions orders where safety regulations are not properly adhered to by pipeline operators. While IC 8-1-22.5 authorizes the PSD to have enforcement authority to regulate gas pipelines, the rule is needed to adopt Federal standards under State law not expressly provided in the aforementioned statute. This arrangement would benefit all citizens of the State of Indiana because by strengthening the PSD's enforcement authority through the adoption of Federal standards, it would be better equipped to promote the goal of public safety in regulating gas pipelines. Safety is of the utmost concern when regulating gas pipelines because a rupture can result in fires, explosions, damage to private and commercial property, injury, and/or death.

At least 1,984,000 customers are served by a regulated gas utility. These customers would suffer if damage to a gas pipeline resulted in loss of service.

Governor's Office Approval

Signature: _____

Date: _____

OMB General Counsel Approval

Signature: _____

Date: _____

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

COST-BENEFIT ANALYSIS

LSA Document #15-_____

I. Statement of Need.

A. Intention of rule.

This rule is intended to do the following:

1. Address a federal or state statutory requirement;
2. Serve a public need, such as improving government processes or promoting public safety or health.

Specifically, this rule updates the references to federal code and regulatory citations relating to minimum pipeline safety standards for gas pipelines. The United States Department of Transportation's Pipeline and Hazardous Material's Safety Administration ("PHMSA") can delegate pipeline safety enforcement authority to states through a certification agreement. The State of Indiana enacted Ind. Code chapter 8-1-22.5, Gas Pipeline Safety, to establish the Pipeline Safety Division ("PSD") of the Indiana Utility Regulatory Commission ("IURC" or "Commission") and to enable the PSD and the Commission to carry out enforcement of these important safety standards. As a result of this statute, the IURC was able to enter into a certification agreement with PHMSA. The PSD is now charged under state law with administering and requiring compliance with federal and state safety standards as detailed in Ind. Code chapter 8-1-22.5. In order to enforce the federal pipeline standards, the IURC's administrative rules must specifically adopt these standards. This adoption is required by PHMSA for the PSD to continue to receive federal grant money to enforce pipeline safety standards.

The changes ensure the state's rules are at least as stringent as the federal rules. The safe and efficient delivery of natural gas is essential to the citizens of the State of Indiana for heat, energy, and hot water. These rules help to safeguard the public from natural gas explosions, which are devastating and deadly.

B. Estimated number affected.

The Commission estimates the following will be affected by the rule:

1. Individuals: All citizens of Indiana. At least 1,984,000 customers are served by a regulated gas utility. These customers would suffer if damage to a gas pipeline resulted in a loss of service. In addition, the public at large is at risk if pipeline safety standards are not followed and there is a resultant explosion.
2. Businesses: Seventy-two (72) gas utilities.

C. Policy or goal of rule.

The main goal of the Proposed Rule is to increase public safety and, in particular, to reduce the risk of gas leaks and explosions causing property damage, injuries, and loss of life. In addition, the rules in place do not reflect current statutory language and some are unclear. This rule will update language to match federal and state statutes. It will remove redundant and clumsy language.

The Proposed Rule will not change the number of subject entities or increase regulations.. Gas utilities must already follow existing federal and state rules. This rulemaking simply gives the PSD the ability to enforce the necessary safety standards pursuant to its state and delegated authority.

1. Conduct the rule is designed to change.

The original rule was adopted to provide an added layer of safety to certain natural gas customers in the state and to enforce rules already in place for all customers. The Proposed Rule will provide clearer language to ensure compliance with federal standards and state statutory revisions in place since 2010.

The rule will also adopt additional federal rules that were not listed in the rulemaking previously, but for which gas utilities were already subject under federal law.

2. Harm resulting from the conduct above.

Failure to comply with the current rule or the Proposed Rule could result in increases in gas leaks and explosions, causing significant property damage, injuries, and loss of life.

3. Involvement of the regulated entities in rule development.

Regulated entities were not involved in the rule development. As noted above, regulated entities were already subject to the standards under federal law. This rulemaking simply adopts those federal standards. The Proposed Rule provides clearer language and better guidance to regulated entities.

4. Commission methodology.

The IURC compared current federal pipeline safety standards to the current state rule. Anywhere that language did not match or was missing, it was added to the Proposed Rule. In addition, current rule language was reviewed and modified for clarity.

II. Evaluation of Costs and Benefits.

Will the benefits likely exceed the costs? Yes. There are no costs associated with the Proposed Rule. It simply adopts federal standards that regulated entities are already required to follow. The rule may actually benefit regulated entities, as the language and therefore expectations are clearer.

A. Estimated primary and direct benefits.

There are two primary and direct benefits to this rule. First, the rule clarifies the expectations the PSD has for regulated entities. Also, by enumerating these requirements, the PSD has enforcement authority to request fines and hazardous condition orders from the IURC if an unsafe situation exists.

The second benefit is that the PSD will maintain the federal funding it receives under 49 U.S.C. § 198, *et seq.* The IURC does not have sufficient funding in its budget for PSD staff without this funding. The agency relies on the federal grant money to sustain the PSD's essential team of pipeline engineers and inspectors.

B. Estimated secondary or indirect benefits.

A secondary benefit to the rule is that regulated entities can now review a rule that is clearer and matches federal language, rather than being bound by federal and state rules that slightly differed from each other.

C. Estimated compliance costs for regulated entities.

There will be no increase in the costs that regulated entities already incur to comply with the current rule. If anything, the costs for regulated entities will be reduced because less administrative time will be spent comparing state versus federal requirements.

D. Estimated administrative expenses.

There will be no increase in the administrative expenses because regulated entities already comply with the current rule in its federal form.

E. Estimated cost savings to regulated entities.

Costs savings may be minimal; however, the clearer language provided by the Proposed Rule should eliminated some questions or confusion regulated entities encounter.

F. Sources consulted and methodology used.

The IURC's determinations are based on the fact that the Proposed Rule is simply a clarifying rule that rectifies issues with the language of the current rule. Regulated entities will not be faced with additional regulations as a result of the Proposed Rule's adoption. In fact, regulated entities will benefit from the clarity that will result from the language revisions implemented by the Proposed Rule.

III. Examination of Alternatives.

There are no alternatives to the rulemaking that would permit the PSD to keep its federal funding. The PSD has already been notified by the PHMSA that the current administrative rule is insufficient. That was the catalyst for this rulemaking. In addition, other alternatives are insufficient to achieve the necessary degree of pipeline safety for the reasons listed below.

- A. Alternatives defined by statute.**
No alternatives are defined by statute. The rule is consistent with the specific statutory requirements regarding the proposed rule. Specifically, Ind. Code § 8-1-22.5-2 charges the PSD with regulating gas pipelines “to promote the public safety.” The proposed rule is clearly within the Commission’s statutory discretion.
- B. The feasibility of market-oriented approaches.**
Market-oriented approaches are not appropriate as an alternative. The Proposed Rule simply clarifies language and regulations already present in the current rule.
- C. Measures to improve the availability of information as an alternative to regulation.**
Measures to improve the availability of information, rather than regulation, would not be sufficient. There is not an issue with regulated entities understanding what they have to do. These rules give the PSD enforcement authority to request fines and hazardous conditions orders where safety regulations are not followed. This can only be done with a change to the administrative rules
- D. Various enforcement methods.**
A lower degree of stringency would not be sufficient. There is no other way to reach a similar increased level of safety.
- E. Performance standards rather than design standards.**
Performance standards would not be sufficient. Regulated entities need clear guidelines on what to survey and what to report to meet the level of safety the Commission and the PSD require.
- F. Different requirements for different sized regulated entities.**
Different requirements for different sized operators would not meet the ultimate purpose of increasing safety. All regulated entities should follow the same safety standards regardless of their size.
- G. Establish a baseline.**
The baseline is the current rule. If the baseline continues, PHMSA notified PSD that is insufficient and will result in a loss of federal funding. A no-action baseline and the subsequent loss of funding would result in a diminished or possibly nonexistent pipeline program with little to no safety oversight. Explosions, with the resulting property damage and deaths, may drastically increase.
- H. Different compliance dates.**
Different compliance dates are not applicable or compatible with the current rule or the Proposed Rule.

I. Redundancy.

The Proposed Rule does not duplicate any standards already found in state law. While the rules are already found in federal law, it is necessary to adopt the standards as Indiana rules as well. Under Ind. Code § 8-1-22.5-4, the PSD shall administer and require compliance with federal safety standards. Further, it shall establish through administrative rules minimum state safety standards that are at least as stringent as the federal safety standards.

IV. Legislative Council Analysis, IC 4-22-2-28(i)

A. Steps to minimize expenses to regulated entities required to comply with the rule.

There is no expense to regulated entities to comply with the rule.

B. Justification of any requirement or cost that is imposed on a regulated entity under the rule.

There is no expense to regulated entities to comply with the rule.

C. Annual economic impact of a rule on all small businesses after the rule is fully implemented.

There is no expense to regulated entities, including small businesses, to comply with the rule.

D. Review of alternative methods of achieving the purpose of the rule that are less costly or intrusive or would otherwise minimize the economic impact of the rule on small businesses.

There is no expense to regulated entities, including small businesses, to comply with the rule. Therefore, no alternative methods are necessary.

E. Consideration of any other law to conduct an analysis of the cost, economic impact, or fiscal impact of a rule.

This statement considers all required fiscal analysis pursuant to IC 4-22.

V. Total Estimated Impact.

The Proposed Rule will have **NO FISCAL IMPACT** on regulated entities. The Proposed Rule simply clarifies the current rule and ensures compliance with 49 U.S.C. § 198, *et seq.* and Ind. Code § 8-1-22.5-4. Not adopting the Proposed Rule puts the IURC and the State of Indiana at risk of losing the federal grant that funds the Pipeline Safety program in Indiana.

The total estimated impact is **NOT** greater than \$500,000 on all regulated persons.