



WILLIAM P. KENNEY
Commissioner

VACANT
Commissioner

Missouri Public Service Commission

RYAN A. SILVEY
Chairman

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JEFFERSON CITY, MISSOURI 65102
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SCOTT T. RUPP
Commissioner

MAIDA J. COLEMAN
Commissioner

December 12, 2019

John Ashcroft
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 20 CSR 4240-40.080 Drug and Alcohol Testing

Dear Secretary Ashcroft,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed amendment lawfully submitted by the Missouri Public Service Commission.

The Public Service Commission further certifies it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo, that the proposed amendment does not constitute a taking of real property under relevant state and federal law.

The Public Service Commission has determined and hereby also certifies that if the proposed amendment does affect small business pursuant to sections 536.300 to 536.310, RSMo, a small business impact statement has been filed as required by those sections. If no small business impact statement has been filed the proposed amendment either does not affect small business or the small business requirements do not apply pursuant to section 536.300.4, RSMo.

Statutory Authority: sections 386.250, 386.310, and 393.140, RSMo

If there are any questions regarding the content of this proposed amendment, please contact:

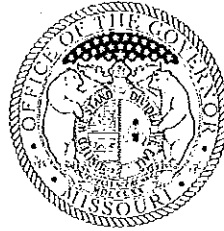
Morris Woodruff, Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-2849
Morris.Woodruff@psc.mo.gov

A handwritten signature in cursive script that reads "Morris L. Woodruff". The signature is written in black ink and is positioned above the printed name and title.

Morris L. Woodruff
Chief Regulatory Law Judge

Enclosures

STATE CAPITOL
201 W. CAPITOL AVENUE, ROOM 216
JEFFERSON CITY, MISSOURI 65101



(573) 751-3222
WWW.GOVERNOR.MO.GOV

Michael L. Parson

GOVERNOR
STATE OF MISSOURI

November 05, 2019

Mr. Ryan Silvey
Public Service Commission
200 Madison Street
PO Box 360
Jefferson City, MO 65102

Dear Ryan:

This office has received your proposed rulemaking for the following regulations:

- 20 CSR 4240-40.020 Incident, Annual, Safety-Related Condition Reporting Requirements
- 20 CSR 4240-40.030 Transportation of Gas by Pipeline
- 20 CSR 4240-40.033 Liquefied Natural Gas
- 20 CSR 4240-40.080 Drug and Alcohol Testing

Executive Order 17-03 requires this office's approval before state agencies release proposed regulations for notice and comment, amend existing regulations, rescind regulations, or adopt new regulations. After our review of these regulations, we approve the submission to the Joint Committee on Administrative Rules and the Secretary of State.

Sincerely,

Andrew T. Bailey
Deputy General Counsel

COPY

RECEIVED

DEC 12 2019

SECRETARY OF STATE
ADMINISTRATIVE RULES

Title 20 – RULES OF DEPARTMENT OF COMMERCE AND INSURANCE
Division 4240–Public Service Commission
Chapter 40–Gas Utilities and Gas Safety Standards

PROPOSED AMENDMENT

20 CSR 4240-40.080 Drug and Alcohol Testing. The Commission is amending sections (1) and (4) of this rule.

PURPOSE: This amendment proposes to amend the rule to adopt additional portions of 49 CFR part 199 and update references to CSR.

(1) As set forth in the Code of Federal Regulations (CFR) dated October 1, 201[7]8, and the subsequent amendment published on April 23, 2019 (published in *Federal Register* on April 23, 2019, page 84 FR 16770), 49 CFR parts 40 and 199 are incorporated by reference and made a part of this rule. This rule does not incorporate any subsequent amendments to 49 CFR parts 40 and 199. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. The October 1, 201[7]8, version of 49 CFR parts 40 and 199 [is available at www.gpo.gov/fdsys/search/showcitation.action] and the *Federal Register* publication on page 84 FR 16770 are available at <https://www.govinfo.gov/#citation>.

(4) For purposes of this rule, the following substitutions should be made for certain references in the federal pipeline safety regulations adopted by reference in section (2) of this rule:

(B) The references to “accident” in sections 199.3, 199.100, 199.105, 199.200, 199.221, 199.225, 199.227, and 199.231 of 49 CFR part 199 should refer to a “federal incident reportable under [4 CSR 240]20 CSR 4240-40.020” instead;

(C) The references to “part 192, 193, or 195 of this chapter” or “part 192, 193, or 195” in sections 199.1, 199.3, 199.100, and 199.200 of 49 CFR part 199 should refer to “[4 CSR 240]20 CSR 4240-40.030 or 40.033” instead (the commission regulations contained in [4 CSR 240]20 CSR 4240-40.030 parallel 49 CFR part 192, and [4 CSR 240]20 CSR 4240-40.033 adopts 49 CFR part 193, but the commission does not have any rules pertaining to 49 CFR part [193 or]195); and

(D) The references to the applicability exemptions for operators of master meter systems as defined in section “191.3 of this chapter” in 49 CFR 199.2 should refer to “[4 CSR 240]20 CSR 4240-40.020(2)(G)” instead.

AUTHORITY: sections 386.250, 386.310, and 393.140, RSMo 2016.* Original rule filed Nov. 29, 1989, effective April 2, 1990. Rescinded and readopted: Filed Jan. 9, 1996, effective Aug. 30, 1996. Rescinded and readopted: Filed April 9, 1998, effective Nov. 30, 1998. Amended: Filed Oct. 15, 2007, effective April 30, 2008. Amended: Filed Nov. 29, 2012, effective May 30, 2013. Amended: Filed Nov. 14, 2016, effective June 30, 2017. Amended: Filed June 4, 2018, effective Jan. 30, 2019. Amended: Filed Date.

*Original authority: 386.250, RSMo 1939, amended 1963, 1967, 1977, 1980, 1987, 1988, 1991, 1993, 1995, 1996; 386.310, RSMo 1939, amended 1979, 1989, 1996; and 393.140, RSMo 1939, amended 1949, 1967.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions in excess of \$500.00 in total.

PRIVATE COST: This proposed rule will not cost private entities in excess of \$500.00 in total.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed amendment with the Missouri Public Service Commission, 200 Madison Street, PO Box 360, Jefferson City MO 65102-0360. To be considered, comments must be received no later than February 14, 2020, and should include a

JOINT COMMITTEE ON

DEC 12 2019

ADMINISTRATIVE RULES

reference to Commission Case No. GX-2020-0112. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for 10:00 a.m., February 24, 2020, in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TOO Hotline 1-800-829-7541.

Small Business Regulator Fairness Board Small Business Impact Statement

Date: October 21, 2019

Rule Number: 20 CSR 4240-40.080 Drug and Alcohol Testing

Name of Agency Preparing Statement: Missouri Public Service
Commission

Name of Person Preparing Statement: Jamie Myers and Kathleen McNelis

Phone Number: 573-526-6036

Email: jamie.myers@psc.mo.gov
kathleen.McNelis@psc.mo.gov

Name of Person Approving Statement: Natelle Dietrich and Kevin
Thompson

Please describe the methods your agency considered or used to reduce the impact on small businesses (*examples: consolidation, simplification, differing compliance, differing reporting requirements, less stringent deadlines, performance rather than design standards, exemption, or any other mitigating technique*).

This proposed amendment modifies the rule to address any amendments of 49 CFR parts 40 and 199 promulgated between October 2017 and December 2018.

Please explain how your agency has involved small businesses in the development of the proposed rule.

The Commission opened a working case docket GW-2020-0036 and provided notification to Missouri natural gas operators. Commission proceedings are open to all interested stakeholders, including small businesses.

Please list the probable monetary costs and benefits to your agency and any other agencies affected. Please include the estimated total amount your agency expects to collect from additionally imposed fees and how the moneys will be used.

It is anticipated the proposed rule will result in a net benefit to the Commission and other affected agencies because it updates the Commission's rules in order to align them with federal requirements and maintain federal funding for the Commission. No additional fees will be imposed.

Please describe small businesses that will be required to comply with the proposed rule and how they may be adversely affected.

Gas utilities are already required to adhere to federal requirements. This proposed amendment simply ensures that the Commission's rules match those federal requirements; no adverse impact is expected.

Please list direct and indirect costs (in dollars amounts) associated with compliance.

None identified.

Please list types of business that will be directly affected by, bear the cost of, or directly benefit from the proposed rule.

Utilities regulated by the Commission, business owners that are ratepayers of those utilities.

Does the proposed rule include provisions that are more stringent than those mandated by comparable or related federal, state, or county standards?

Yes ___ No X

If yes, please explain the reason for imposing a more stringent standard.

For further guidance in the completion of this statement, please see §536.300, RSMo.

Rule Proposal Summary

Please submit the completed form and attachments to Justin Smith and Kristen Sanocki by hand delivery or mail to the Governor's Office (Capitol Room 216) or by fax (1-1495). In accordance with Executive Order 17-03, the Governor's Office must approve each rule twice during the rulemaking process: (1) before the proposed rule is filed with the Secretary of State for notice and comment; and (2) before the rule is adopted by the state agency and the order of rulemaking is filed with JCAR and the Secretary of State. Accordingly, this form also should be submitted twice. Upon approval, the Governor's Office will send an approval letter to the identified contact person. This letter should be included in the rulemaking packet submitted to the Secretary of State and/or JCAR.

Date: October 21, 2019

Department: Public Service Commission

Rule number: 20 CSR 4240-40.080

Type of rule (new, amendment, rescission, emergency): Amendment

Stage of process (proposed or final): Proposed

Contact person name and title: Morris Woodruff, Secretary/Chief Regulatory Law Judge

Contact phone number: 573-751-2849

1. Describe the proposed rule (if an emergency rule, include Section 536.025, RSMo justifications).

This proposed amendment modifies the rule to address any amendments of 49 CFR parts 40 and 199 promulgated between October 2017 and December 2018.

2. What is the statutory authority for the proposed rule?

Sections 386.250, 386.310, and 393.140, RSMo.

3. Why should the proposed rule become a Missouri regulation?

The proposed amendment updates Missouri's gas pipeline safety rules to adopt relevant changes in federal drug and alcohol testing rules for pipeline operators.

4. Why is the proposed rule needed now? Why has it not been promulgated before?

The proposed amendment adopts recent amendments to federal regulations. The adoption of these changes is necessary to maintain federal certification and funding of Missouri's pipeline safety program.

5. Is the proposed rule needed as a result of, or in response to, any specific legislation or litigation?

No.

6. Is the proposed rule based on any federal, state, or local regulations or ordinances? If yes, what are any key differences?

Yes. The proposed amendment adopts changes in the federal drug and alcohol testing regulations for pipeline operators. The federal regulation is adopted by reference.

7. Is the proposed rule based on any standards, guidelines, or model rules of an agency of the United States or a nationally or state-recognized organization or association? If yes, what are any key differences?

No.

8. How is the proposed rule essential to the health, safety, or welfare of Missouri residents?

The proposed amendments are essential to the health, safety, and welfare of Missouri residents by ensuring that Missouri's drug and alcohol testing requirements for pipeline operators are up-to-date by adoption of the federal amendments by reference.

9. Have the proposed rule's estimated costs been quantified? What are they?

Since the proposed rule adopts already-effective federal rules there are no new costs imposed from promulgation of the state rule.

10. Have the proposed rule's estimated benefits been quantified? What are they?

No.

11. What process and schedule are in place to measure the effectiveness of the proposed rule?

The PSC Staff Safety Engineering Department will continue to monitor federal and state natural gas pipeline safety rules. The Department also conducts inspections of natural gas operators for compliance with regulations.

12. Do any less restrictive alternatives exist? Why are these alternatives less desirable than the proposed rule?

No. 49 U.S. Code Section 60105 [State pipeline safety program certifications] requires adoption of the federal pipeline safety standards.

13. What is the sound, reasonably available scientific, technical, economic, or other relevant information upon which the proposed rule is based?

This proposed amendment adopts relevant changes in federal drug and alcohol testing rules that the PSC Safety Engineering Department have identified.

The amendments to the Federal pipeline requirements addressed the addition of hydrocodone, hydromorphone, oxymorphone, and oxycodone to the required drug testing panel and methylenedioxyamphetamine as an initial test analyte, removed the requirements for submission of blind specimens, and clarified certain existing drug-testing program provisions and definitions. Additional information and supporting documents related to the Federal amendments is available in federal Docket No. PHMSA-2016-0189.

14. Does the proposed rule unduly or adversely affect Missouri citizens or customers of the State, or the competitive environment in Missouri?

No. Missouri is adopting already effective federal requirements for pipeline safety.

15. List the stakeholders engaged to review the proposed rule and the name and title of each stakeholder representative. What was each stakeholder representative's feedback on the proposed rule? Were there any stakeholders that were not engaged to review the proposed rule, and if not, why not?

Interested natural gas operators in Missouri were engaged in a working docket GW-2020-0036. There was no negative feedback.

16. List the other state departments affected by the proposed rule and the name and title of each department representative engaged to review the proposed rule. What was each department representative's feedback?

N/A

17. (If proposed rule) Please identify each person or organization that you anticipate may oppose or be dissatisfied with the proposed rule. Why do you anticipate this opposition or dissatisfaction? What has been done to attempt to mitigate or eliminate this opposition or dissatisfaction?

No opposition or dissatisfaction is anticipated.

18. (If proposed rule) Has this proposal been considered at a public hearing or meeting? If so, what comments were received, if any?

Not at this time. The Commission will accept filed comments and comments at a rulemaking hearing when scheduled.

19. (If final rule) Provide the summary of comments received during the notice and comment period (can be the same as the summary included in the order of rulemaking). If a public hearing was held, please describe how many people attended and what comments were made.

N/A

20. By what date do you need a response from the Governor's Office, and why that date?

Attachments:

5. Proposed rule text (changes to existing regulations visible in bold or redline)
6. Public Entity and Private Entity Fiscal Note
7. Small Business Impact Statement
8. (If final rule) Order of Rulemaking