



Robin Carnahan
Secretary of State

**Administrative Rules Division
Rulemaking Transmittal Receipt**

Rule ID: 7510
Date Printed: 10/15/2007
Rule Number: 4 CSR 240-40.020
Rulemaking Type: Proposed Amendment
Date Submitted to Administrative Rules Division: 10/15/2007
Date Submitted to Joint Committee on Administrative Rules: 10/15/2007

Name of Person to Contact with questions concerning this rule:

Content: Cully Dale

Phone: 751-4255

Email: cully.dale@psc.mo.gov

Fax: NA

RuleDataEntry:

Phone:

Email:

Fax:

Included with Rulemaking:

Cover Letter

10/15/2007

Affidavit for public cost

10/15/2007

Print Close

Robin Carnahan

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 4 CSR 240-40.020

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Cully Dale Phone 573-751-4255 FAX

Email address cully.dale@psc.mo.gov

Data Entry same Phone FAX

Email address

Interagency mailing address Public Service Commission, 9th Floor, Governor Ofc Bldg

TYPE OF RULEMAKING ACTION TO BE TAKEN

☐ Emergency rulemaking, include effective date

☒ Proposed Rulemaking

☐ Withdrawal ☐ Rule Action Notice ☐ In Addition ☐ Rule Under Consideration

☐ Order of Rulemaking

Effective Date for the Order

☐ Statutory 30 days OR Specific date

Does the Order of Rulemaking contain changes to the rule text? ☐ NO

☐ YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

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REGULATORY FAIRNESS
BOARD

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JOINT COMMITTEE ON

OCT 15 2007

ADMINISTRATIVE RULES



Commissioners

JEFF DAVIS
Chairman

CONNIE MURRAY

TERRY JARRETT

ROBERT M. CLAYTON III

LINWARD "LIN" APPLING

Missouri Public Service Commission

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JEFFERSON CITY MISSOURI 65102
573-751-3234
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WESS A. HENDERSON
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ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

COLLEEN M. DALE
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
General Counsel

October 15, 2007

Honorable Robin Carnahan
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Dear Secretary Carnahan:

Re: Proposed Rule 4 CSR 240-40.020

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rule lawfully submitted by the Missouri Public Service Commission for filing on this 15th day of October, 2007.

Statutory Authority: Sections 386.210.2 and 386.250 RSMo 2000.

Executive Order 93-13 requires state agencies to undertake a "takings analysis" of each proposed rulemaking in light of the United States Supreme court decision in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992). Pursuant to that order, I have undertaken a "takings analysis" of the above-referenced proposed rulemaking. In *Lucas*, the Court held that state regulation depriving an owner of real property of all economically beneficial use of that property constitutes a "taking" under the Fifth and Fourteenth Amendments of the U.S. Constitution, for which the property owner must be compensated. Adopting the proposed rulemaking does not implicate the takings clause of the U.S. Constitution, because the proposed rulemaking does not involve the taking of real property.

Section 536.300, RSMo Supp. 2006, requires state agencies to "determine whether the proposed rule amendments affect small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking." Executive Order 03-15, which similarly addresses the impacts of rulemakings on small businesses, defines a small business to be "a for-profit enterprise consisting of fewer than one hundred full- or part-time employees" and elaborates

that a proposed rule "affects" a small business if it "impose[s] any potential or actual requirement" that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." Section 536.300.3, RSMo Supp. 2006, in part, provides: "If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small business . . ."

Proposed amendments to 4 CSR 240-40.020 do not impose any requirement that "will cause direct and significant economic burden upon a small business, or that is directly related to the formation, operation, or expansion of a small business." The Commission certifies that it has determined that the proposed rule amendment will not have an economic impact on small businesses.

If there are any questions, please contact: Colleen M. Dale, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
(573) 751-4255
cully.dale@psc.mo.gov

BY THE COMMISSION

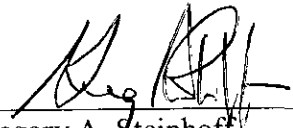
A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over the printed name and title.

Colleen M. Dale
Secretary

**AFFIDAVIT
PUBLIC COST**

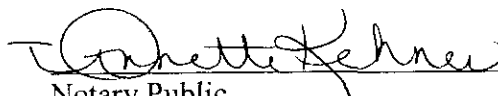
STATE OF MISSOURI)
)
COUNTY OF COLE)

I, Gregory A. Steinhoff, Director of the Department of Economic Development, first being duly sworn, on my oath, state that it is my opinion that the cost of proposed amendment, 4 CSR 240-40.020, is less than five hundred dollars in the aggregate to this agency, any other agency of state government or any political subdivision thereof.

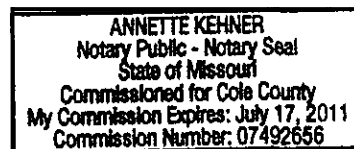


Gregory A. Steinhoff
Director
Department of Economic Development

Subscribed and sworn to before me this 21st day of September, 2007, I am commissioned as a notary public within the County of COLE, State of Missouri, and my commission expires on 17 July 2011.



Notary Public



Title 4—Rules of Department of Economic Development
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED AMENDMENT

4 CSR 240-40.020 Incident, Annual and Safety-Related Condition Reporting Requirements. The Commission is amending sections (2), (4), (5), (6), (7), (9), (10), (11) and (13); and deleting the forms that follow this rule.

PURPOSE: This amendment proposes to amend the rule to conform to amendments of 49 CFR part 191, to incorporate by reference current versions of the incident and annual report forms, and to delete the outdated versions of the incident and annual report forms that are printed after this rule in the Code of State Regulations.

(2) Definitions. (191.3) As used in this rule and in the *[RSPA]* **PHMSA** Forms referenced in this rule -

(A) Administrator means the Administrator of *[the RSPA]* **PHMSA** or *[any person to whom authority in the matter concerned has been delegated by the Secretary of the United States Department of Transportation]* **his or her delegate**;

(K) *[RSPA]* **PHMSA** means the *[Research and Special Programs]* **Pipeline and Hazardous Materials Safety** Administration of the United States Department of Transportation; and

(4) Missouri Reporting Requirements.

(C) Within thirty (30) days of a telephone notification made under subsection (4)(A) each gas operator shall submit U.S. Department of Transportation Form *[RSPA]* **PHMSA** F 7100.1 or *[RSPA]* **PHMSA** F 7100.2, as applicable, to designated commission personnel. *[A copy of both incident report forms is printed at the end of this rule.]* **These two incident report forms for gas distribution systems (PHMSA F 7100.1, revised March 2004) and gas transmission and gathering systems (PHMSA F 7100.2, revised January 2002) are incorporated by reference. The forms are published by the U.S. DOT Office of Pipeline Safety, Room 2103, 400 Seventh St. SW, Washington DC 20590. The forms are available at <http://ops.dot.gov/library/forms/forms.htm> or upon request from the Pipeline Safety Program Manager at the address given in section (5). The PHMSA F7100.1 form does not include any amendments or additions to the March 2004 version. The PHMSA F7100.2 form does not include any amendments or additions to the January 2002 version.** An incident report is required when an event causes the criteria listed in paragraphs (4)(A)1. or 2. to be met. Additional information required in subsections (6)(B) and (9)(B) (191.9[b] and 191.15[b]) shall apply.

JOINT COMMITTEE ON

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(D) Federal incident and annual report required by this rule shall be submitted in duplicate to designated commission personnel as follows:

1. Federal incident reports required by section(s) (6) or (9), or both, (191.9 or 191.15, or both) shall be submitted as soon as practicable but not more than thirty (30) days after detection of the incident. Upon receipt and processing of these reports, the designated commission personnel, within ten (10) days, shall transmit one (1) copy to the Information Resources Manager at *[RSPA]* **PHMSA**; and

2. Annual reports required by section(s) (7) or (10), or both, (191.11 or 191.17, or both) shall be submitted no later than February 28 of each year. Upon receipt and processing these reports, the designated commission personnel shall transmit one (1) copy by March 15 to the Information Resources Manager at *[RSPA]* **PHMSA**.

(E) Safety-related condition reports required by section (12) (191.23) shall be submitted concurrently to the Associate Administrator, Office of Pipeline Safety at *[RSPA]* **PHMSA** and to designated commission personnel. A safety-related condition report can be submitted to the addresses provided in section (5) (191.7) or by telefacsimile (fax) as provided for in section (13).

(5) Addressee for Written Reports. (191.7) Incident, annual, and safety-related condition reports shall be submitted to designated commission personnel as required by section (4). The address for the designated commission personnel is Pipeline Safety Program Manager, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102. As required by subsection (4)(E), safety-related condition reports must be submitted concurrently to the Associate Administrator, Office of Pipeline Safety at *[RSPA]* **PHMSA** by mail or by telefacsimile (fax). If submitted by mail, the address is Information Resources Manager, Office of Pipeline Safety, ~~*[Research and Special Programs Administration]*~~ **Pipeline and Hazardous Materials Safety Administration**, U.S. Department of Transportation, Room ~~*[8417]*~~ **2103**, 400 Seventh Street S.W., Washington, D.C. 20590. Safety-related condition reports may be submitted by fax as provided for in section (13).

(6) Distribution System - Federal Incident Report. (191.9)

(A) Except as provided in subsection (6)(C), each operator of a distribution pipeline system shall submit U.S. Department of Transportation Form *[RSPA]* **PHMSA** F 7100.1 to designated commission personnel in accordance with subsection (4)(D) following each incident required to be reported under section (3). *[A copy of Form RSPA F 7100.1 is printed at the end of this rule.]* **The incident report form (revised March 2004) is incorporated by reference and is published by US DOT Office of Pipeline Safety, Room 2103, 400 7th St. SW, Washington DC 20590. The form is available at <http://ops.dot.gov/library/forms/forms.htm> or upon request from the Pipeline Safety Program Manager at the address given in section (5). The form does not include any amendments or additions to the March 2004 version.**

(7) Distribution system - Annual Report. (191.11)

(A) Except as provided in subsection (7)(B), each operator of a distribution pipeline system shall submit an annual report for that system on U.S. Department of Transportation Form *[RSPA]* **PHMSA F 7100.1-1**. This report must be submitted each year as required by section (4) for the preceding calendar year. *[A copy of Form RSPA F 7100.1-1 is printed at the end of this rule.]* **The annual report form (revised December 2005) is incorporated by reference and is published by US DOT Office of Pipeline Safety, Room 2103, 400 7th St. SW, Washington DC 20590. The form is available at <http://ops.dot.gov/library/forms/forms.htm> or upon request from the Pipeline Safety Program Manager at the address given in section (5). The form does not include any amendments or additions to the December 2005 version.**

(9) Transmission and Gathering Systems - Federal Incident Report. (191.15)

(A) Except as provided in subsection (9)(C), each operator of a transmission or a gathering pipeline system shall submit U.S. Department of Transportation Form *[RSPA]* **PHMSA F 7100.2** to designated commission personnel in accordance with subsection (4)(D) following each incident required to be reported under section (3). *[A copy of Form RSPA F 7100.2 is printed at the end of this rule.]* **The incident report form (revised January 2002) is incorporated by reference and is published by US DOT Office of Pipeline Safety, Room 2103, 400 7th St. SW, Washington DC 20590. The form is available at <http://ops.dot.gov/library/forms/forms.htm> or upon request from the Pipeline Safety Program Manager at the address given in section (5). The form does not include any amendments or additions to the January 2002 version.**

(10) Transmission and Gathering Systems - Annual Report. (191.17)

(A) Except as provided in subsection (10)(B), each operator of a transmission or a gathering pipeline system shall submit an annual report for that system on U.S. Department of Transportation Form *[RSPA]* **PHMSA F7100.2-1**. This report must be submitted each year as required by section (4) for the preceding calendar year. *[A copy of Form RSPA F 7100.2-1 is printed at the end of this rule.]* **The annual report form (revised December 2005) is incorporated by reference and is published by US DOT Office of Pipeline Safety, Room 2103, 400 7th St. SW, Washington DC 20590. The form is available at <http://ops.dot.gov/library/forms/forms.htm> or upon request from the Pipeline Safety Program Manager at the address given in section (5). The form does not include any amendments or additions to the December 2005 version.**

(11) Report Forms. (191.19)

Copies of the prescribed report forms are available without charge upon request from the *[Information Resource Manager's]* **Pipeline Safety Program Manager at the** address given in section (5). Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be

submitted by any other means that is acceptable to the administrator or Pipeline Safety Program Manager. *[A copy of each report form is printed at the end of this rule.]*

(13) Filing Safety-Related Condition Reports. (191.25)

(A) Each report of a safety-related condition under subsection (12)(A) must be filed (received by the Associate Administrator, Office of Pipeline Safety at *[RSPA]* **PHMSA** and designated commission personnel as required by subsection (4)(E)) in writing within five (5) working days (not including Saturday, Sunday, or federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than ten (10) working days after the day a representative of the operator discovers the possibility of a condition. Separate conditions may be described in a single report if they are closely related. To file a report by telefacsimile (fax), dial (202) 366-7128 for the Associate Administrator, Office of Pipeline Safety and (573) ~~[751-1847]~~ **522-1946** for designated commission personnel.

AUTHORITY: sections 386.250 and 386.310, RSMo Supp. 1999 and 393.140, RSMo 1994. Original rule filed Feb. 5, 1970, effective Feb. 26, 1970. Amended: Filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed Feb. 8, 1985, effective Aug. 11, 1985. Rescinded and readopted: Filed May 17, 1989, effective Dec. 15, 1989. Amended: Filed Oct. 7, 1994, effective May 28, 1995. Amended: Filed April 9, 1998, effective Nov. 30, 1998. Amended: Filed December 14, 2000, effective May 30, 2001. **Amended: Filed October 15, 2007.**

PUBLIC ENTITY COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

PRIVATE ENTITY COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.

NOTICE TO SUBMIT COMMENTS AND NOTICE OF PUBLIC HEARING: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Colleen M. Dale, Secretary of the Commission, P.O. Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the Commission's offices on or before December 17, 2007, and should include a reference to Commission Case No. GX-2008-0032. 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 regarding this proposed rule is scheduled for December 17, 2007 at 10:00 a.m. in the commission's offices in the Governor Office Building, 200 Madison Street, 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 (voice) or Relay Missouri at 711.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-40, Gas) Case No. GX-2008-0032
Utilities and Gas Safety Standards)

NOTICE OF FINDING OF NECESSITY

Issue Date: October 12, 2007

On August 3, 2007, the Commission opened this docket to consider proposed amendments to the following rules: 4 CSR 240-40.020, 4 CSR 240-40.030, and 4 CSR 240-40.080. The subject rules pertain to gas utilities and gas safety standards, and are necessary for the Commission to amend the rules to conform to amendments of 49 CFR and clarify the rules.

The Commission finds that the subject rules are necessary and seeks comments from interested persons as to whether the rules are appropriate and properly designed and written.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Dated at Jefferson City, Missouri,
on this 12th day of October, 2007.

Dale, Chief Regulatory Law Judge

Small Business Regulator Fairness Board

Small Business Impact Statement

Date: August 2, 2007

Rule Number: 4 CSR 240-40.020

Name of Agency Preparing Statement: Missouri Public Service Commission

Name of Person Preparing Statement: Lera L. Shemwell

Phone Number: 751-7431

Email: lera.shemwell@psc.mo.gov

Name of Person Approving Statement: Colleen Dale

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 rule substantially codifies existing federal law, with which small businesses must already comply. There is no additional fiscal impact as a result of this rule.

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

No additional fiscal impact as a result of this rule.

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.

No expected changes.

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

No additional fiscal impact as a result of codification of existing federal law.

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

No additional fiscal impact as a result of codification of existing federal law.

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

Utility companies that transport natural gas.

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.