

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ADOPTING RULES**

Mailed Date: November 8, 2023

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I. PROCEDURAL BACKGROUND

1. On November 9, 2022, the Colorado Public Utilities Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Pipeline Operators and Gas Pipeline Safety.¹ The NOPR proposed significant changes to the aforementioned rules, described those changes in detail and the justification therefor, attached the Rules in legislative (*i.e.*, strikeout/underline) format and in a clean version, to establish deadlines of December 12, 2022 and January 3, 2023 for initial comments and response comments concerning the proposed rules, respectively, and scheduled a remote hearing for January 19, 2023 at 9:00 a.m. for oral comments regarding the proposed rules. The NOPR also referred this proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

2. The American Petroleum Institute (API), Atmos Energy Corporation (Atmos), Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (Black Hills), Colorado Natural Gas, Inc. (CNG), Colorado Oil and Gas Association (COGA), Public Service Company of Colorado (Public Service), the Southern Ute Indian Tribe and Red Cedar Gathering Company, and the Office of the Utility Consumer Advocate (UCA) filed initial comments. API, Atmos, Public Service, and the UCA filed response comments.

3. At 9:00 a.m. on January 19, 2023, the ALJ held the hearing noticed in the NOPR. The ALJ discussed the proposed rules and the initial and response comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered

¹ Decision No. C22-0701.

another round of comments by February 9, 2023 addressing: (a) the current status of the Order Addressing the Designation of Sensitive Security Information issued by the Transportation Security Administration on November 12, 2008 (TSA's SSI Order); (b) whether the TSA's SSI Order applies to the Colorado Oil and Gas Conservation Committee (COGCC) and specifically to Rule 1101.e of the COGCC's Flowline Regulations; and (c) whether the TSA's SSI Order applies to the Commission and specifically its Rules Regulating Pipeline Operators and Gas Pipeline Safety. The ALJ also continued the remote public comment hearing to May 2, 2023, at 9:00 a.m.

4. The ALJ issued Decision No. R23-0054-I on January 24, 2023, that memorialized the decisions made at the January 19, 2023 remote public comment hearing.

5. On May 2, 2023, at 9:00 a.m., the ALJ held the continued hearing. The ALJ discussed the proposed rules and the written and oral comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered another round of comments due by June 16, 2023 and response comments due by June 23, 2023 addressing: (a) the comments submitted by Mark and Julie Nygren (Nygrens) on May 1, 2023; (b) the definition of "advanced leak detection technology" that participants in the rulemaking stated would be included in rules that would be proposed by the Pipeline Safety Trust and the Pipeline and Hazardous Materials Safety Administration (PHMSA) in relatively short order; (c) if the Commission concludes that it must make publicly available a GIS mapping tool containing pipeline information at the 1:6,000 scale, what actions can be taken to mitigate or eliminate the risk that bad actors can use the provided information to undertake improper action; and (d) the other questions raised at the May 2, 2023 continued remote public comment hearing. The ALJ also continued the remote public comment hearing to June 29, 2023, at 11:30 a.m.

6. On May 4, 2023, PHMSA issued its Notice of Proposed Rulemaking proposing amendments to the Federal pipeline safety regulations, including a proposed rule addressing an “Advanced Leak Detection Program” that included a proposed standard that advanced leak detection technology would have to satisfy.²

7. The ALJ issued Decision No. R23-0328-I on May 17, 2023, that memorialized the decisions made at the May 2, 2023 continued remote public comment hearing.

8. At 11:30 a.m. on June 29, 2023, the ALJ held the second continued hearing. The ALJ discussed the proposed rules and the written and oral comments with the participants at the hearing. Based on the input of the participants at the hearing, the ALJ ordered another round of comments due by July 13, 2023, and response comments due by July 27, 2023, focusing on rule amendments that the Colorado Energy Office (CEO) stated it would propose in its July 13, 2023 comments, and any other issues raised in this proceeding.

9. The ALJ issued Decision No. R23-0453-I on July 13, 2023, that memorialized the decisions made at the June 29, 2023 second continued remote public comment hearing.

10. During the Commissioners’ Weekly Meeting on August 2, 2023, Dr. Pam Fischhaber, who is the Deputy Director of Public Safety Sections and Interim Deputy Director of Fixed Utilities Sections, announced that the Commission intends to engage in a stakeholder process in advance of opening a new rulemaking that will address the rapid development of Advanced Leak Detection Technology (ALDT) and Commission requirements for its use by operators within Colorado.

² See Nygrens’ Comment on PUC Rulemaking, Attach. 1 at 1 (filed on June 12, 2023).

11. At 11:30 a.m. on August 3, 2023, the ALJ held the third continued remote public comment hearing. The ALJ discussed with the participants the new rule changes proposed by CEO. At the conclusion of the hearing, the ALJ adjourned the hearing.

II. STATUTORY BACKGROUND

12. Governor Jared Polis signed Senate Bill (SB) 21-108, which amended Title 40 of the Colorado Revised Statutes, on July 6, 2021. The legislative declaration of SB 21-108 states:

- (1) The general assembly finds and determines that:
 - (a) Due to recent innovations in extraction technology leading to ample supplies and reduced prices for natural gas, the number of households and businesses in Colorado that receive natural gas service is at an all-time high;
 - (b) At the same time, the pace of expansion of natural gas infrastructure has stressed the capacity of skilled installation and maintenance personnel and in many cases outstripped the ability of the public utilities commission's gas pipeline safety section to keep up with vital safety inspections and enforcement of applicable rules and standards, with regard not only to new installations but also to older pipelines that continue to age but are working harder than ever;
 - (c) An issue of special concern in Colorado is the juxtaposition of new gas wells and gathering lines with tracts of new homes, often in close proximity. This raises the stakes of potential mishaps and adds urgency to the need for sound and comprehensive application of common-sense safety measures in the gas industry; and
 - (d) Leaks in natural gas gathering and distribution pipelines pose safety risks and environmental harm due to methane emissions that contribute to near-term climate change and other hydrocarbon emissions that pose a threat to public health and safety.
 - (2) Therefore, the general assembly declares that the purpose of this act is to appropriately strengthen and streamline Colorado's laws governing gas pipeline safety to meet these emerging challenges.
13. SB 21-108 amended § 40-2-115(1), C.R.S. by adding the following provisions:
- (d)

- (I) The commission shall adopt pipeline safety rules that incorporate the most current federal requirements under 49 cfr 191, 192,193, and 199, as applicable, to maintain minimum standards for gas pipeline safety.
- (II) The commission's gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:
 - (A) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities;
 - (B) Reduction of the risks posed by abandoned gas pipelines;
 - (C) Mapping of all pipelines within the commission's jurisdiction. For this purpose the commission may incorporate information from any existing flowline maps or other maps prepared by the oil and gas conservation commission and showing pipelines subject to the jurisdiction of that agency. The public utilities commission's mapping requirements for pipelines within its jurisdiction must incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.
 - (D) Increased frequency of inspections of all pipelines within the commission's jurisdiction;
 - (E) Use of advanced leak detection technology to meet the need for pipeline safety and protection of the environment;
 - (F) Expansion of annual reporting requirements for pipeline operators; and
 - (G) Requirements for commission investigation of specific types of pipeline damage and pursuit of appropriate civil remedies for such damage.

14. Rule 1101.e of the Colorado Oil and Gas Conservation Commission, which is referenced in § 40-2-115(d)(II)(C), C.R.S., states:

1101.e. Disclosure of Form 44 Data.

- (1) The Director will make Geographic Information System (GIS) data for off-location flowlines, crude oil transfer lines, and produced water transfer systems available through a publicly accessible online map viewer. Line attributes available to the public through

the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.

- (2) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all Geographic Information System (GIS) data submitted through Flowline Reports, Form 44s, for all off-location flowlines, crude oil transfer lines and produced water transfer systems. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (3) Except as provided in parts (1) and (2), above, the Commission will keep all such Geographic Information System (GIS) data confidential to the extent allowed by the Colorado Open Records Act.

15. The foregoing statutory changes contained in SB 21-108 went into effect on July 6, 2021.

III. APPROACH

16. In rendering this Decision, the ALJ has carefully reviewed and considered all the comments filed in this Proceeding and provided at the public comment hearing, even if this Decision does not specifically address every comment, or every nuance of every comment.

IV. DISCUSSION, FINDINGS, AND CONCLUSIONS

A. Rules 11001(a), 11100(d), & 11103(a)(VII) – Advanced Leak Detection Technology

1. NOPR

17. In the NOPR, the Commission proposed the following rules addressing Advanced Leak Detection Technology (ALDT):

11001. Definitions.

....

- (a) “Advanced Leak Detection Technology” is included in the definition of “New and novel technologies,” 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.”³

11100. Submission of Reports and Notices – General

....

- (d) All advanced leak detection technologies being used and their descriptions. If advanced leak detection technology is not being used, an explanation describing why should be provided.⁴

11103. Submission of Annual Reports.

- (a) On or before March 15 of each year:

....

- (VII) Each operator shall submit a list of advanced leak detection technology and their descriptions according to paragraph 11100(d).⁵

- 18. In support of these proposed rules, the Commission stated that:

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.⁶

³ NOPR, Attach. A at 1 (Proposed Rule 11001(a)).

⁴ NOPR, Attach. A at 10 (Proposed Rule 11100(d)).

⁵ NOPR, Attach. A at 11 (Proposed Rule 11103(d)).

⁶ NOPR at 9 (¶ 31).

2. Comments

a. Public Service

19. Public Service proposes to eliminate the definition of “advanced leak detection technology.”⁷ Public Service also proposes the following modifications to the Commission’s proposed rules regarding reporting of ALDT (with underlining indicating additions and strikethrough showing deletions):

11100. Submission of Reports and Notices – General

....

(d) Operators shall identify and describe all advanced leak detection technologies, including advanced leak detection technology, being used and their descriptions. If advanced leak detection technology is ~~not~~ being used, an explanation describing why should be provided.⁸

11103. Submission of Annual Reports.

(a) On or before March ~~15~~ 31 of each year each operator shall file with the Commission the following annual reports in the designated miscellaneous proceeding opened as a repository for annual reports. The annual reports shall be filed in accordance with subparagraph 1204(a)(III) of the Commission’s Rules of Practice and Procedure:

....

(VII) Each operator shall submit the information required by a list of advanced leak detection technology and their descriptions according to paragraph 11100(d).⁹

20. As justification, Public Service states that ““advanced leak detection technology’ is developing and being discussed in various regulatory contexts” and pointed to: (a) a recently

⁷ Initial Comments of Public Service at 11-13 (filed on December 12, 2022).

⁸ Reply Comments of Public Service, Attach. A at 1 (Rule 11000(d)), 10 (Rule 11100(d)) (filed on January 3, 2023).

⁹ *Id.* at 10 (Rule 11100(d)), 11 (Rule11103(a)(VII)).

enacted rulemaking by the Pipeline and Hazardous Materials Safety Administration (PHMSA); (b) a recently-enacted Commission rule requiring utilities to identify and report on use of advanced leak detection in its annual Gas Infrastructure Plan;¹⁰ and (c) another recently-enacted rule allowing a utility to “petition the Commission as part of its application to approve a clean heat plan . . . to adjust its baseline emissions based on empirical data of distribution system methane leakage emissions” measured by “advanced leak detection technologies and approaches, consistent with directives from the Air Pollution Control Division or the Commission” and “the utility continues to use advanced leak detection technologies and approaches for all future measurement years.”¹¹ Public Service concludes that “[g]iven the fluidity of ALDT, developing PHMSA rules, and already-required reporting under the Commission’s Gas Infrastructure Planning rules, it is premature to do more than meet the statutory requirement in the Pipeline Safety Rules at this time.”¹²

21. Public Service thus advocates for adopting its proposed rules shown above and deferring the implementation of any rules addressing ALDT until PHMSA has completed its rulemaking. According to Public Service, the only statutory requirement is that the Commission, in its Pipeline Safety Rules, “address use of advanced leak detection technology, nothing more.”¹³ For this reason, “the Commission can reasonably defer defining the term until after the final PHMSA rules are issued.”¹⁴ Public Service concludes that adopting its rule will satisfy the

¹⁰ Initial Comments of Public Service at 12 (filed on December 12, 2022) (citing Commission Rule 4553(d)(III)).

¹¹ *Id.* (citing Commission Rule 4527(a)(1)).

¹² *Id.* at 13.

¹³ *Id.* at 12 (citing the changes in SB 21-108 to § 40-2-115(1)(d)(II)(E), C.R.S.).

¹⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 6 (filed on June 16, 2023).

SB 21-108’s requirement to “address [the] [u]se of advanced leak detection technology to meet the need for pipeline safety and protection of the environment,” and deferring the adoption of a comprehensive rule on ADLT until the conclusion of the PHMSA rulemaking will “promote administrative efficiency and prudent use of the Commission’s and participants’ resources.”¹⁵

22. Atmos and Black Hills support Public Service’s proposed changes to Rules 11100 and 11103.¹⁶ “CNG agrees with PSCo and [Black Hills] that it would be premature for the Commission to enact rules prior to the completion of the PHMSA rulemaking.”¹⁷ API and Colorado Springs Utilities have not expressly advocated for the adoption of Public Service’s foregoing proposal, but have recommended deferring the adoption of rules addressing ALDT until the conclusion of the PHMSA rulemaking.¹⁸

b. Nygrens’ Proposal

23. The Nygrens propose a definition of ALDT within a broader Advanced Leak Detection Program (ADLP), as follows:

11000. Submission of Reports and Notices – General

. . . .

(d) Advanced Leak Detection Program (ADLP). Beginning March 16, 2024, and on an annual basis thereafter, each operator must submit and follow a written ALDP. The ALDP will be submitted to the PSP as part of the

¹⁵ *Id.* at 5.

¹⁶ Transcript of June 29, 2023 Remote Public Comment Hearing at 162, 171.

¹⁷ Reply Comments of CNG at 3 (filed on June 23, 2023).

¹⁸ API’s Additional Comments at 2 (filed on June 16, 2023) (“API Colorado recommends the Commission delay a decision until PHMSA’s rulemaking is complete. Colorado could potentially adopt the federal terms on this subject, saving all parties significant time and resources, or simply incorporate them by reference.”); Colorado Springs’ Utilities Response Comments in Compliance with Decision No. R23-0328-I at 2 (filed on June 23, 2023) (“Springs Utilities joins in the recommendations of Public Service Company of Colorado (‘Public Service’) and Black Hills Colorado Gas, Inc. d/b/a Black Hills Energy (‘Black Hills Energy’) (as well as other participants expressing a similar position) that the Commission defer promulgating rules addressing or defining advanced leak detection technologies, leak repairs, and leak reporting.”).

annual report, enforceable under Rule 11100, and will be reviewed by PSP to ensure that it includes the following elements:

- (I) Leak detection equipment.
 - (A) The ALDP must include a list of leak detection equipment used in operator leakage surveys, pinpointing leak locations, and investigating leaks.
 - (B) Leak detection equipment used for leakage surveys, pinpointing leak locations, investigating, and inspecting leaks must have a minimum sensitivity of 5 parts per million for each gas being surveyed. The operator must validate the sensitivity of this equipment before using the device in a leakage survey by testing with a known concentration of gas.
 - (C) Leak detection equipment must be selected based on a documented analysis considering, at a minimum, the state of commercially available leak detection technologies and practices, the size and configuration of the pipeline system, and system operating parameters and environment. At a minimum, operators must analyze the effectiveness of the following technologies for their systems:
 - (i) The use of handheld leak detection equipment capable of detecting and locating all leaks of 5 parts per million or more when measured within 5 feet of the pipeline or within a wall to-wall paved area, in conjunction with locating equipment to verify the tools are sampling the area within 5 feet of the buried pipeline. The procedure must include sampling the atmosphere near cracks, vaults, or any other surface feature where gas could migrate;
 - (ii) Periodic surveys performed with leak detection equipment mounted on mobile, aerial, or satellite-based platforms that, in conjunction with confirmation by hand-held equipment, is capable of detecting and pinpointing all leaks of 5 parts per million or more when measured within 5 feet of the pipeline, or within a wall-to-wall paved area;
 - (iii) Periodic surveys performed with optical, infrared, or laser-based leak detection equipment that can sample or inspect the area within 5 feet of the pipeline, or within a wall-to-wall paved area, capable of detecting and pinpointing all leaks of 5 parts per million or more;

- (iv) Continuous monitoring for leaks via stationary sensors, pressure monitoring, or other means that provide alarms or alerts and that, in conjunction with confirmation by hand-held equipment, is capable of detecting and pinpointing all leaks of 5 parts per million or more when measured within 5 feet of the pipeline, or within a wall-to-wall paved area; and
 - (v) Systematic use of other commercially available technology capable of detecting and pinpointing all leaks producing a reading of 5 parts per million or more within 5 feet of the pipeline, or within a wall-to-wall paved area.
- (II) Leak detection practices. At a minimum, an operator must have and follow written procedures for:
 - (A) Performing leakage surveys. Operators must have written procedures for performing leakage surveys using each selected leak detection technology as described in (I). The procedures must define environmental and operational conditions for which each leak detection technology is and is not permissible. The operator's procedures must follow the leak detection equipment manufacturer's instructions for survey methods and allowable environmental and operational parameters.
 - (B) Pinpointing and investigating leaks. The location of the source of each leak indication on an onshore pipeline or any portion of an offshore pipeline above the waterline must be pinpointed and investigated with handheld leak detection equipment. Leak indications on offshore pipelines below the waterline may be pinpointed with human senses.
 - (C) Validating performance. Operators must have procedures validating that leak detection equipment meets the requirement of paragraph (I)(B) of this section. The operator must have procedures for validating the sensitivity of the equipment before initial use by testing with a known concentration of gas and at the required offset conditions of 5 feet. Records validating equipment performance must be maintained for five years after the date the device is no longer used by the operator.
 - (D) Maintaining and calibrating leak detection equipment. At a minimum, procedures must follow the equipment manufacturer's instructions for calibration and maintenance. Leak detection equipment must be

recalibrated or replaced following any indication of malfunction. Records validating equipment calibration and failures indicating recalibration is necessary must be maintained for 5 years after the date the individual device is retired by the operator.

- (III) Leakage survey frequency. Leakage survey frequency must be sufficient to detect all leaks that have a sufficient release rate to produce a reading of 5 parts per million or more of gas when measured from a distance of 5 feet or less from the pipeline, or within a wall-to-wall paved area, but may be no less frequent than required in 49 C.F.R. §§ 192.706 and 192.723. Less sensitive equipment, challenging survey conditions, or facilities known to leak based on their material, design, or past operating and maintenance history may require more frequent surveys to detect leaks consistent with paragraph (IV) of this section.
- (IV) Annual evaluation and improvement. The ALDP must include procedures and records showing the operator is meeting all of the program requirements.
 - (A) The operator must evaluate the ALDP at least once each calendar year as a part of its annual report.
 - (B) The operator must make changes to any program elements necessary to locate and eliminate leaks and minimize releases of gas.
 - (C) When considering changes to program elements, operators must analyze, at a minimum, the performance of the leak detection equipment used, the adequacy of the leakage survey procedures, advances in leak detection technologies and practices, the number of leaks that are initially detected by the public, the number of leaks and incidents, and estimated emissions from leaks detected pursuant to this section.
 - (D) The operator must document any improvements necessary and how they have been addressed in the updated ALDP.

24. The Nygrens' proposed ALDT Rules are based on the proposed rules released by PHMSA on May 4, 2023.¹⁹ The Nygrens state that “[t]he only changes [they] have proposed from the draft PHMSA rules are to require annual updating of the advanced leak detection programs (the PHMSA rules encourage annual updating but allow updates every 15 months) and elimination of ‘alternative advanced leak detection performance standards’ for natural gas transmission lines and natural gas lines in Class 1 or Class 2 locations.”²⁰ Under federal law, a Class 1 location has ten (10) or fewer buildings intended for human occupancy within 660 feet of “any continuous 1-mile (1.6 kilometers) length of pipeline.”²¹ A Class 2 location has “more than 10 but fewer than 46 buildings intended for human occupancy.”²²

25. PHMSA proposes such “alternative advanced leak detection performance standards” for Class 1 and 2 locations “because of the comparatively low emissions from natural gas transmission pipeline leaks (relative to other gas transmission pipeline facilities such as compressor stations), comparatively lower potential safety risks to persons or property in remote areas, and the continued development of methane leak detection technologies.”²³ PHMSA further proposes that, to satisfy its alternative advanced leak detection performance standards, “[t]he operator must demonstrate . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to

¹⁹ See Nygrens' Letter, Attach. A at 1 (filed on June 12, 2023) (“PHMSA issued this Notice of Proposed Rulemaking on May 4, 2023”); Nygrens' Comment on PUC Rulemaking at 3 (filed on June 12, 2023) (“The Nygrens urge the PUC to adopt the proposed PHMSA advanced leak detection technology program rules with some exceptions that are noted below.”).

²⁰ Nygrens' Comment on PUC Rulemaking at 4 (filed on June 12, 2023).

²¹ 49 C.F.R. § 192.5(b)(1)(ii).

²² *Id.* at § 192.5(b)(2).

²³ Nygrens' Comment on PUC Rulemaking, Exhibit 1 at 149 (filed on June 12, 2023).

reducing greenhouse gas emissions and other environmental hazards.”²⁴ As justification for the alternative standards, PHMSA states that the “flexibility” provided thereby “can promote emerging technologies where they may be most effective.”²⁵

26. The Nygrens oppose the “alternative standards” for Class 1 and 2 locations because they disagree with “the notion that rural areas, and rural residents, are somehow deserving of less protection than areas with greater density.”²⁶ The Nygrens state that their property that was significantly impacted by a “produced natural gas pipeline leak”²⁷ is within a Class 2 location.²⁸ The Nygrens believe that “[t]he devastation [they] experienced is a direct result of federal and state policies that ignored or minimized the threat posed by pipelines in rural areas of Colorado.”²⁹

27. The following support the Nygrens’ foregoing proposal: Kate Burke, Senior Assistant County Attorney Boulder County; Danee Brouillard, Director of Strategic Initiatives and Governmental Affairs City and County of Broomfield; Greg Dean, Oil & Gas Administrator, Community & Economic Development Department Adams County; Matthew Lafferty, Principal Planner Larimer County; David Frank, Energy & Environment Program Specialist Town of Erie; Dr Rosemarie Russo, Sustainability Manager, City of Commerce City; Jeffrey S. Moore, P.G., Manager, Energy & Environment Division City of Aurora; Gwen Lachelt, Founder and

²⁴ *Id.*

²⁵ *Id.*

²⁶ Nygrens’ Comment on PUC Rulemaking at 4 (filed on June 12, 2023)

²⁷ Nygrens’ Notice of Participation at 1 (filed on April 3, 2023).

²⁸ *Id.* at 4 n.8.

²⁹ *Id.* at 4. *See* Nygrens’ Comment on PUC Rulemaking, Exhibit E (filed on May 1, 2023).

Executive Director Western Leaders Network; Jacob Smith, Executive Director Colorado Communities for Climate Action; Micah Parkin, Founder and Executive Director, 350 Colorado; Andrew Forkes-Gudmundson, Senior Manager for State Legislative and Regulatory Affairs Earthworks; Emily Hornback, Executive Director Western Colorado Alliance; Natasha Léger, Executive Director Citizens for a Healthy Community; John Magnino, Senior Government Affairs Director Conservation Colorado; Scott Simmons, Chapter Lead Climate Reality Project of Northern Colorado; Kevin Cross, Convener Colorado Coalition for a Livable Climate; Ramesh Bhatt, Chair of the Conservation Committee Colorado Sierra Club; Paul Culnan, Senior Policy Analyst Empower Our Future; Jeff Hart, Co-Founder Save EPA; Leslie Glustrom, Senior Policy Advisor Clean Energy Action (Nygrens Consensus Group).

c. CNG

28. CNG recommends requiring each operator to submit an application requesting approval of an ALDT “Plan” developed by the operator.³⁰ However, CNG does not believe that such a requirement should be imposed by rule. Through the Commission’s application process, each ALDT Plan would be “considered individually and on its own merits in a way that best fits each individual utility.”³¹

29. As support for its proposal, CNG emphasizes that each utility is different in terms of resources, service territory, and infrastructure. As a result, each utility (and its ratepayers) has a different ability to afford the use of ALDT, and the different service territories and

³⁰ Response Comments of CNG at 2 (filed on June 16, 2023).

³¹ *Id.*

infrastructure of utilities may require different levels and types of ALDT. According to CNG, “as Colorado’s smallest gas utility, there are substantial differences in manpower and resources that may make accomplishing the requirements described in the plan recommendation more difficult than for some of the larger utilities. Additionally, the rural nature of CNG’s service areas may create differences in the implementation of ALD.”³² For this reason, “CNG believes there is good cause for the Commission to consider the plans in a forum focused on the characteristics of each utility.”³³

d. API

30. API recommends delaying adoption of ALDT rules until PHMSA’s rulemaking is complete for two reasons. First, such an approach would be more efficient. Second, implementing rules before the PHMSA rulemaking is complete could lead to conflicts between the Commission’s and PHMSA’s rules. As SB 21-108 requires the Commission’s rules to “incorporate the most current federal requirements under 49 CRR 191, 192,193, and 199 as applicable, to maintain minimum standards for gas pipeline safety,” any conflicts between the Commission’s and PHMSA’s rules could violate SB 21-108.³⁴

3. Analysis

31. The participants have developed a good preliminary record on ALDT and its required use by operators in Colorado. As summarized above, there is a broad spectrum of comments and proposals. The record also reflects that the development of ALDT, including a definition of what ALDT even is and the requirements for the use of ALDT by operators that can

³² *Id.* at 2-3.

³³ *Id.* at 3.

³⁴ API’s Additional Comments at 2 (filed on June 16, 2023).

reasonably be imposed without imposing unsustainable costs, is in an early stage. This is underscored by the fact that PHMSA is in the midst of a rulemaking that seeks to create ALDT rules, including a first-time definition of ALDT.

32. The ALJ has reviewed PHMSA's draft rules. The ALJ believes that those draft rules are a good first step. For example, the ALJ believes that a functional definition of ALDT based on the result that ALDT must achieve like the one proposed in PHMSA's draft rules is the best way to define a complex and evolving technology. Specifically, PHMSA proposed § 192.763 specifies that any ALDT employed by an operator "used for leakage surveys, pinpointing leak locations, investigating, and inspecting leaks must have a minimum sensitivity of five (5) parts per million for each gas being surveyed." As the technology develops further, it may be possible to decrease the minimum sensitivity.

33. The use of Advanced Leak Detection Programs (ALDPs) developed by each operator employing elements defined and required by PHMSA is also a good conceptual start. Such an approach allows each operator to tailor their program to match the needs and resources of the operator, which is a recognition of the indisputable fact that each operator possesses different infrastructure, different resources, and thus different ALDT requirements to provide safe and reliable service. The ALJ believes that, following the promulgation of ALDT and ALDP rules, it may be appropriate for the Commission to review and approve at least the first ALDPs proposed by operators to ensure that operators understand and apply the Commission's ALDT and ALDP rules consistent with the Commission's intentions.

34. The ALJ understands and appreciates the Nygrens' concern regarding the use of "alternative advanced leak detection performance standards" for more rural areas of Colorado. As noted above, PHMSA has proposed that operators may use such "alternative advanced leak

detection performance standards” for Class 1 and 2 locations “because of the comparatively low emissions from natural gas transmission pipeline leaks (relative to other gas transmission pipeline facilities such as compressor stations), comparatively lower potential safety risks to persons or property in remote areas, and the continued development of methane leak detection technologies.”³⁵ Such an alternative standard can only be employed if “[t]he operator [] demonstrate[s] . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to reducing greenhouse gas emissions and other environmental hazards.”³⁶

35. The Nygrens are certainly correct that rural areas and residents are not entitled to less protection from pipeline leaks than their fellow Coloradans that live in more urban locations. However, as noted above, PHMSA has proposed that such alternative standards can only be used if “[t]he operator [] demonstrate[s] . . . that the alternative performance standard is consistent with pipeline safety and equivalent to the performance standard in § 192.763(b) with respect to reducing greenhouse gas emissions and other environmental hazards.”³⁷ Further, utilities are required to not only provide safe and reliable service, but to do so at just and reasonable rates.³⁸ As a result, if it is true that there are comparatively lower safety risks to persons and property and emissions from gas pipeline leaks in rural versus urban areas, then the allocation of limited resources based on degree of risk to mitigate overall risk may justify the use of different ALDT standards in rural versus urban areas.

³⁵ Nygrens’ Comment on PUC Rulemaking, Exhibit 1 at 149 (filed on June 12, 2023).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.; *Cottrell v. City & County of Denver*, 636 P.2d 703, 711 (Colo. 1981) (“A primary purpose of [utility] regulation is to ensure that the rates charged are not excessive or unjustly discriminatory.”).

36. In any event, given the relatively early stage of ALDT technology development and the PHMSA ALDT rulemaking processes, the fact that PHMSA's ALDT rules will be the first of their kind when finalized, the likelihood that PHMSA's final rules will differ significantly from the currently-issued draft rules as a result of the rulemaking process, and the Commission's commitment to engage in a stakeholder process in advance of opening a new rulemaking that will address ALDT and its use by operators within Colorado, the ALJ finds and concludes that it would be more efficient to decline to adopt any ALDT rules at this time. Adopting Commission rules at this time carries with it a significant risk of inefficiency, as it is likely that such rules will need to be amended significantly once the final PHMSA ALDT rules issue. Forcing operators to prepare for compliance with one set of ALDT rules that may change substantially when PHMSA's ALDT rulemaking concludes would potentially result in the waste of operator resources. Moreover, the promised future ALDT rulemaking by the Commission will have a far more substantial record on ALDT that will be generated as PHMSA's ALDT rulemaking progresses. Accordingly, based on the foregoing, the ALJ finds and concludes that it is not in the public interest to adopt ALDT rules at this time.

37. Based on the foregoing, the ALJ will reject the Commission's Proposed Rules 11001(a) and 11100(d). The ALJ will move Proposed Rule 11100(d), which requires operators to submit a list of ALDT they are using at the time of the report and, if none, an explanation of why they are not using ALDT, to Rule 11103(a)(VII). The definition of ALDT to be used for purposes of this reporting requirement is the definition used by PHMSA at the time of the report. Such reporting will give the Commission an understanding of operators' use of ALDT that may inform future Commission rulemaking(s) addressing ALDT.

B. Rule 11001(xx) – Definition of “Records”

1. Statutory Background

38. Section 40-2-115(1)(d)(II)(A), C.R.S. states:

(II) The commission’s gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:

A. Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities.

2. NOPR

39. In the NOPR, the Commission proposed the following definition of “Records”:

11001. Definitions.

.....

(xx) “Records” means all recorded information, regardless of form or characteristics, made or received by a federal agency under federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the information value of data in them; and does not include library and museum material made or acquired and preserved solely for reference or exhibition purposes; or duplicate copies of records preserved only for convenience. For purposes of this rule, the term “recorded information” includes all traditional forms of records, regardless of physical form or characteristics, information created, manipulated, communicated, or stored in digital or electronic form. The Archivist’s determination whether recorded information, regardless of whether it exists in physical, digital, or electronic form, is a record as defined in subsection (a) shall be binding on all federal agencies as defined in 44 U.S.C. Section 3301.³⁹

³⁹ NOPR, Attach. A at 5 (Proposed Rule 11001(xx)).

40. As justification, the Commission stated that this definition was added “in support of the requirement for § 40-2-115(1)(d)(II)(A), C.R.S.,” which “requires increased availability of records for Pipeline Safety Program inspectors in the field for all field activities.”⁴⁰

3. Comments

41. Black Hills, Public Service, CNG, and API note that the proposed definition is the same as the definition in 44 U.S.C. § 3301. All cite to the language in the proposed rule and 44 U.S.C. § 3301 that the definition applies to records “made or received by a federal agency under federal law” or “activities of the Federal Government.” To the extent it applies to the Commission’s “records,” it is overbroad.⁴¹ Public Service further states that where “records” are referenced elsewhere in the rules, the meaning is clear.⁴² Black Hills and Public Service agree that the definition of “records” is unnecessary and should be deleted.⁴³ API requests that “the Commission staff re-evaluate the definition to provide one that better reflects the Commission’s work and its jurisdiction”⁴⁴ or delete the definition.⁴⁵ CNG proposes the following alternative definition:

“Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records may include, but are not limited to, functions, policies, decisions, procedures, operations, or other activities of the utility.⁴⁶

⁴⁰ NOPR at 6 (¶ 19).

⁴¹ Black Hills’ Initial Comments at 3-4 (filed on December 12, 2022); Public Service’s Initial Comments at 16 (filed on December 12, 2022); CNG’s Initial Comments at 3 (filed on December 12, 2022); API’s Initial Comments at 3 (filed on December 12, 2022).

⁴² Public Service’s Initial Comments at 16 (filed on December 12, 2022).

⁴³ Black Hills’ Initial Comments at 3-4 (filed on December 12, 2022); Public Service’s Initial Comments at 16 (filed on December 12, 2022).

⁴⁴ API’s Initial Comments at 3 (filed on December 12, 2022).

⁴⁵ API’s Response Comments at 4 (filed on January 3, 2023).

⁴⁶ CNG’s Initial Comments at 3 (filed on December 12, 2022).

4. Analysis

42. 44 U.S.C. § 3301 applies to the disposal of records by the federal government. The ALJ agrees that it has limited application to the Commission or the operators and utilities it regulates. As a result, the ALJ will adopt the following, which is based on the definition proposed by CNG:

“Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.

C. Rule 11001(eee) – Definition of “Transportation of Gas”

1. NOPR

43. The NOPR provides the following definition of “Transportation of Gas:”

Rule 11001. Definitions

....

(eee) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.⁴⁷

2. Comments

44. API and Public Service assert that the language should be deleted because the Commission’s jurisdiction is limited to the intrastate transportation of natural gas.⁴⁸

⁴⁷ NOPR, Attach. A at 6 (Proposed Rule 11001(eee)).

⁴⁸ API’s Initial Comments at 1,3 (filed on December 12, 2022); Public Service’s Reply Comments at 14-15 (filed on January 3, 2023).

3. Analysis

45. The ALJ agrees with the comments and will delete the reference to “in or affecting interstate or foreign commerce.”

D. Rule 11008(e) – Incorporation by Reference of NPMS Operator Standards Manual

1. NOPR

46. In the NOPR, the Commission proposed the following subpart of Rule 11008:

11008. Incorporation by Reference.

....

(e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.

2. Comments

47. Public Service states that it is concerned about the proposed incorporation because “the NPMS data requirements and mapping standards may create potential areas of conflict with certain provisions of the Commission’s Pipeline Safety Rules, especially rules that incorporate regulations from the COGCC.”⁴⁹ As support, Public Service cites two examples of possible conflicts, without stating or otherwise establishing actual conflicts.⁵⁰ Nevertheless, Public Service recommends deleting the proposed incorporation of the NPMS Operator Standards Manual.

48. API asserts that guidance/clarification should be provided about: (a) the extent to which the manual will be incorporated, whether it be the manual in its entirety or specific

⁴⁹ Public Service’s Initial Comments at 17 (filed on December 12, 2022).

⁵⁰ *Id.*

portions”; and (b) the manual's application to single states and its relation to Colorado-specific rules.”⁵¹

3. Analysis

49. The ALJ finds and concludes that Proposed Rule 11008(e) shall be retained. The arguments of Public Service and API are insufficiently compelling to justify omitting the incorporation into the Commission’s rules of the 2017 updated version of the NPMS Operator Standards Manual.

E. Rule 11013(b) – Qualifications and Verifiable Credentials

1. NOPR

50. In the NOPR, the Commission proposed the following regarding qualifications and verifiable credentials:

11013. Inspections and Investigations.

....

- (b) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site.

As justification, the Commission stated that SB 21-108 requires verifiable credentials to be available on site “when requested by a Pipeline Safety Program Inspector.”⁵²

2. Comments

51. Public Service contends that SB 21-108 does not require occupational qualifications or verifiable credentials to be available on-site. Public Service states that it has the capability to provide occupational qualifications on site, but not verifiable credentials. In

⁵¹ API’s February 18, 2022 Letter at 1-2 (filed on December 12, 2022).

⁵² NOPR at 7 (¶ 25).

addition, it does not know whether employees or contractors have the capability to provide both their occupational qualifications and verifiable credentials on site. Based on the foregoing, Public Service requests the proposed rule to be revised as follows (with underlining indicating additions and strikethrough showing deletions):

- (b) Operator qualifications ~~and verifiable credentials~~ for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site. Other verifiable credentials may be provided later by request if they cannot be provided on site.⁵³

52. Similarly, API states that the assumption that all operators have the capacity to have operator qualifications and verifiable credentials available on site is questionable. API echoes Public Service's request to allow verifiable credentials to be available off site upon request but extends the request to occupational qualifications as well.⁵⁴

53. CNG requests clarification of "qualifications" because "there is a fairly wide spectrum as to what may be considered . . . qualifications." CNG suggests changing the proposed rule to "for activities that require a license or other certification necessary to perform such activities, all construction, inspection, and repair personnel shall provide such license or certification on-site."⁵⁵

54. Finally, COGA requests clarification that "'qualifications and verifiable credentials' refers to those qualifications that are determined by each operator to be required for construction, inspection or repair projects on regulated pipelines (not Type R) or that are otherwise required under Subpart N of Part 192."⁵⁶

⁵³ Public Service's Initial Comments at 18 (filed on December 12, 2022).

⁵⁴ API's Initial Comments at 2-3 (filed on December 12, 2022).

⁵⁵ CNG's Initial Comments at 3-4 (filed on December 12, 2022).

⁵⁶ COGA's Initial Comments at 3 (filed on December 12, 2022).

3. Analysis

55. SB 21-108, codified at § 40-2-115(1)(d)(II)(A), C.R.S. states that “[t]he commission’s gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to: (A) Qualifications and verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities.” On its face, § 40-2-115(1)(d)(II)(A), C.R.S. does not require “qualifications and verifiable credentials” to be available at the site of pipeline construction, inspection, and repair activities. No participant has stated that federal law requires “qualifications and verifiable credentials” to be available on-site, and the ALJ is unaware of any such requirement.

56. The purpose of the “verifiable credentials” requirement is to allow pipeline safety inspectors to confirm that personnel on a site engaging in pipeline construction, inspection, and repair activities are who they say they are and that the personnel are authorized by an operator to be onsite engaging in those activities. Given their importance and destructive capability, pipelines can be the target of individuals or groups with nefarious intentions and actions taken to achieve their nefarious intentions can appear to be pipeline construction, inspection, and repair activities. As a result, it is important that a pipeline safety inspector be able to verify that individuals working on a pipeline site are authorized by an operator to be there.

57. Similarly, the ALJ interprets the purpose of the “qualifications” requirement is to allow pipeline safety inspectors to be able to confirm that an individual or group have the requisite qualifications to undertake the specific pipeline construction, inspection, and/or repair activities in which they are engaged.

58. The ALJ finds and concludes that it is less important to have the qualifications of an individual or group available on-site than the verifiable credentials of that individual or group.

As a result, the ALJ will amend the proposed rule as follows:

- (b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site.

The ALJ understands and appreciates that providing credentials for all personnel, and particularly for contractors, to be carried on-site may be difficult for smaller operators. As a result, the ALJ recommends a measure of flexibility in applying this rule. For example, requiring all personnel to carry government-issued identification and providing a phone number and the identity of an employee that an inspector can call to verify that on-site personnel are authorized by the operator to be on-site and perform certain work would satisfy the goal of the rule.

F. Rule 11100(c) – GIS Pipeline Reporting and Mapping

1. Background

59. Section 40-2-115(1)(d)(II)(C), C.R.S., which was promulgated in Senate Bill 21-108 (SB 21-108), states:

- (II) The commission's gas pipeline safety rules must address, and may be more stringent than required by federal standards with regard to:
 - (C) Mapping of all pipelines within the commission's jurisdiction. For this purpose the commission may incorporate information from any existing flowline maps or other maps prepared by the oil and gas conservation commission and showing pipelines subject to the jurisdiction of that agency. The public utilities commission's mapping requirements for pipelines within its jurisdiction must incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.

Rule 1101.e of the Colorado Oil and Gas Conservation Commission states:

- (1) The Director will make Geographic Information System (GIS) data for off-location flowlines, crude oil transfer lines, and produced water transfer systems available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission’s office.
- (2) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all Geographic Information System (GIS) data submitted through Flowline Reports, Form 44s, for all off-location flowlines, crude oil transfer lines and produced water transfer systems. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (3) Except as provided in parts (1) and (2), above, the Commission will keep all such Geographic Information System (GIS) data confidential to the extent allowed by the Colorado Open Records Act.

2. NOPR

60. In the NOPR, the Commission proposed the following regarding pipeline mapping:

Rule 11001

....

(l) “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.

....

(n) “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low presser or has not been purged but the volume

of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.

11100. Submission of Reports and Notices - General.

....

(c) Geographic Information System (GIS) data shall be submitted to the PSP and shall include assets as defined in paragraph 11001(mm) as pipeline facilities and/or pipeline systems. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.

....

(II) Data specifications. In addition to the data requirements listed in the National Pipeline Mapping System (NPMS) Operator Standards Manual, the state of Colorado also has the following data requirements:

- (A) the maximum allowable operating pressure;
- (B) testing pressure;
- (C) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
- (D) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA);
- (E) identify as HCA/MCA on each segment for class location, as applicable; and
- (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.

(III) Disclosure of GIS data.

- (A) The PSP Chief will make GIS data for transmission and distribution pipeline systems available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.

- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act, the Commission will provide to the local government all GIS data for all transmission, distribution or gathering systems. The local government may only reproduce or public data that the Commission makes publicly available through its website. A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.

61. In support of this proposal, the Commission stated:

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.

3. Comments

a. Public Service

(1) Comments Regarding Commission’s Proposed Rule

62. Public Service raises four primary concerns with the Commission’s proposed rules.

63. First, Public Service states that disclosure of the information listed in the Commission’s proposed rule raises serious security concerns. Specifically, Public Service cites the 2020 Biennial National Strategy for Transportation Security (NSTS) (NSTS Report), which states that “[p]rotecting vital supply chain infrastructure of pipeline operations is critical to national security and commerce.”⁵⁷ Public Service also cites federal law establishing that information concerning at least transmission and distribution pipelines is “critical energy/electric infrastructure information” (CEII). 18 C.F.R. § 388.113 states:

- (2) Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:
 - (i) Relates details about the production, generation, transportation, transmission, or distribution of energy;
 - (ii) Could be useful to a person in planning an attack on critical infrastructure;
 - (iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and
 - (iv) Does not simply give the general location of the critical infrastructure.

.....

- (4) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

64. According to Public Service, “the Commission’s [proposed] rules would appear to provide public access to sensitive infrastructure information with limited protections,”⁵⁸ thereby making the publicly available map containing the information “an attractive target for acts of

⁵⁷ Joint Supplemental Comments at 3 (filed on February 9, 2023).

⁵⁸ *Id.* at 5. API, Atmos, Black Hills, CNG, Colorado Springs Utilities, and COGA share this concern.

terrorism.”⁵⁹ Public Service believes that the most “sensitive infrastructure information” is the maximum allowable operating pressure, test pressure, nominal diameter, and HCA/MCA of pipelines because “these attributes may indicate the importance of the pipeline or possible consequences to public safety.”⁶⁰

65. Second, Public Service contends providing the information in proposed Rule 11100(c)(II) below a 1:24,000 scale would exacerbate the security concerns.⁶¹ According to Public Service, a 1:6,000 scale would provide the location of pipelines with too much precision. Thus, the detailed characteristics of pipelines required by Proposed Rule 11100(c)(II) coupled with the 1:6,000 scale map required by Rule 11100(c)(III) would provide a roadmap to the location of the most critical pipeline infrastructure and/or the pipeline infrastructure that, if attacked, would cause the greatest possible damage.⁶²

66. Third, Public Service further contends that “an online map viewer with publicly available natural gas pipeline attributes at a 1:6,000 scale would conflict with federal law.”⁶³ Specifically, Public Service contends that the Commission cannot provide a publicly available map below the 1:24,000 scale of the publicly available NPMS. According to Public Service, “the 1:6,000 scale in the COGCC’S rule” does not violate federal law because it “is limited to the COGCC’s jurisdictional flowlines, crude oil transfer lines, and produced water transfer

⁵⁹ Public Service’s Initial Comments at 7 (filed on December 12, 2022).

⁶⁰ Public Service’s Comments in Response to Decision No. R23-0328-I at 19 (filed on June 16, 2023).

⁶¹ Public Service’s Comments in Response to Decision No. R23-0328-I at 12 -13 (filed on June 16, 2023).

⁶² *Id.* at 12-13, 19.

⁶³ *Id.* at 15.

systems.”⁶⁴ If the Commission nevertheless makes publicly available a map at 1:6,000 scale, “the viewable information must be very limited.”⁶⁵

67. Fourth, Public Service states that it has not tracked and collected all of the GIS data required in Proposed 11100(c)(II).⁶⁶ Public Service, has “2,070 miles of transmission . . . , 25,311 miles of distribution main, and approximately 1,187,000 distribution services.”⁶⁷

According to Public Service,

[c]ollecting a number of the proposed attributes may be near impossible, involve significant lead times, or require system and process improvements - which could be very costly - to capture data and activity. . . . It could take decades and potentially hundreds of millions of dollars to comply with the distribution [maximum allowable operating pressure] and testing pressure requirements alone.⁶⁸

Public Service’s primary cost-based concerns relate to the pipe description attributes, description of corrosion protection, HCA/MCA status, and characterization as abandoned versus inactive. Public Service either has some of this data but it is not in its GIS system (test pressure, standard dimension ratio, corrosion protection description, and HCA/MCA), or does not have the data (pipe material for older pipelines, coating for older pipelines, inactive status). Public Service does have data concerning active and abandoned pipelines, but does not have data concerning “inactive/idle” pipelines.⁶⁹ According to Public Service, “[n]atural gas pipelines [] either have an ‘active’ or ‘abandoned’ status pursuant to PHSMA.”⁷⁰

⁶⁴ *Id.* at 17-18.

⁶⁵ *Id.* at 19.

⁶⁶ *Id.* at 8.

⁶⁷ *Id.* at 8-9

⁶⁸ *Id.* at 8.

⁶⁹ Public Service’s Initial Comments at 14-15 (filed on December 12, 2022); Transcript of 5/2/2023 Continued Public Comment Hearing at 12-35.

⁷⁰ Public Service’s Initial Comments at 14 (filed on December 12, 2022).

(2) Public Service’s Proposed Revisions

68. Public Service proposes the following modifications to the Commission’s proposed rules regarding GIS pipeline data and mapping (with underlining indicating additions and strikethrough showing deletions):

Rule 11001. Definitions

....

~~(n) “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.~~

Rule 11100. Submission of Reports and Notices – General

....

(c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP ~~and shall include assets as defined in paragraph 11001(mm) as pipeline facilities and/or pipeline systems.~~ GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.

(I) Data shall be submitted electronically and can be submitted through a form available on the Commission’s website. Commission staff may update the form periodically upon reaching consensus with the affected operators regarding the changes. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.

(II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available: ~~In addition to the data requirements listed in the National Pipeline Mapping System (NPMS) Operator Standards Manual, the state of Colorado also has the following data requirements:~~

(A) ~~the maximum allowable operating pressure~~ Spatial location of the pipeline;

- (B) ~~testing pressure~~Operator;
- (C) ~~the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material)~~Fluid type;
- (D) ~~description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA)~~Designation of pipeline as Transmission, Distribution, or Gathering; and
- (E) ~~identify as HCA/MCA on each segment for class location, as applicable; and~~For Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator.
- (F) ~~abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.~~
- (III) Disclosure of GIS data.
- (A) The PSP Chief will make GIS data for transmission, ~~and distribution, and gathering pipelines systems~~ available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location of pipelines, operator, and fluid type, ~~pipe material type, and pipe size~~. Online map viewer data only will be available at scales greater than or equal to ~~1:6,000~~ 1:24,000. ~~Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.~~
- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will ~~provide to allow the local government to view in the Commission's offices~~ all the GIS data for mapping all transmission, distribution or gathering systems pipelines within the Commission's jurisdiction. The local government may only reproduce or ~~public~~ publish data that the Commission makes publicly available through its website. ~~A local government may share more specific data in person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.~~
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential

pursuant to ~~to the extent allowed by~~ the Colorado Open Records Act and applicable federal law.

- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5- 104.5, C.R.S.⁷¹

69. Public Service argues that § 40-2-115(1)(d)(II)(C), C.R.S. does not require that any particular pipeline attributes be included in the Commission's publicly available map of pipelines.⁷² Instead, it merely requires that the Commission employ "the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e." According to Public Service, its proposed revisions provide sufficient information to the public, do not create a roadmap for terrorists to cause significant damage to our utility infrastructure, and comply with § 40-2-115(1)(d)(II)(C), C.R.S.

70. Public Service asserts that the pipeline attributes it proposes to provide to the Commission in its proposed revisions to Rule 11100(c)(I) are the same as those it provides to the National Pipeline Mapping System (NPMS). As a result, the data already exists and providing it to the Commission would not be prohibitively expensive. Public Service also believes that providing its recommended information for the Commission's publicly available map would not create significant security concerns provided the map is limited to 1:24,000 scale, which, as noted above, is the scale limitation on the NPMS map.

⁷¹ Public Service's Reply Comments, Attach. A at 2, 9-10 (filed on January 3, 2023).

⁷² Public Service's Reply Comments at 10-12 (filed on January 3, 2023).

71. Atmos and Black Hills support Public Service’s proposed changes to Rule 11100.⁷³

b. Representative Story

72. Representative Story makes two primary points. First, Representative Story states that SB21-108 requires all pipelines within the jurisdiction of the PUC to be mapped, and for those maps to be publicly shared at a 1:6,000 scale. According to Representative Story,

It is broadly understood that the handling and use of oil and gas requires significant safety measures due to the highly flammable and explosive nature of the fuel. This is a clear and present danger at all times. There are now, and always have been, additional risks that nefarious actions could cause catastrophic outcomes, even without additional mapping available to communities and local governments. Providing pipeline mapping at the scale of 1:6,000 for communities and local governments allows for better planning and knowledge for informed decision making. The benefits of mapping access far outweigh the additional minimal risk of nefarious actions because of the access to this mapping, over the current knowledge of oil and gas infrastructure that is in clear view.⁷⁴

73. Second, Representative Story asserts that the Commission must institute the same “confidentiality, security and public access limitations” as the Colorado Oil and Gas Conservation Commission, which is now known as the Colorado Energy & Carbon Management Commission.⁷⁵

⁷³ Transcript of January 19, 2023 Public Comment Hearing at 15-16. *See also* Comments of Black Hills to Decision No. R23-0328-I at 4 (filed on June 16, 2023) (“If maps are provided at the 1:6,000 scale, each layer that is added to that map increases the likelihood that bad actors could utilize that information to cause a catastrophic event. As an example, providing information on the pressures of the natural gas pipelines in specific locations would allow bad actors to target areas that might result in the greatest number of casualties.”).

⁷⁴ Comments of Representative Story at 2 (filed on August 3, 2023).

⁷⁵ *Id.*

c. Nygrens' Consensus Group

74. The Nygrens support the NOPR's language in proposed Rules 11100(c)(I) & (II). The Nygrens propose the following change to the Commission's proposed Rule 11100(c)(III) (with underlining indicating additions and strikethrough showing deletions):

(III) Disclosure of GIS data.

(A) The PSP Chief will make GIS data for all pipeline systems within its jurisdiction ~~transmission and distribution pipeline systems~~ available through a publicly accessible online map viewer. Line attributes available to the public through the online map viewer will include the spatial location, operator, fluid type, pipe material type, and pipe size. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.⁷⁶

The Nygrens propose this change because SB 21-108 requires "mapping of all pipelines within the jurisdiction of the PUC."⁷⁷ The proposed change thus follows the exact language of SB 21-108 as codified at § 40-2-115(1)(d)(II)(C), C.R.S.⁷⁸

75. Finally, the Nygrens believe that the rules should not mandate the public disclosure of pipeline pressures, but that pipelines pressures and higher resolution maps should be available to local governments, provided both are treated as confidential.⁷⁹

d. API

76. API states that the date required by Proposed Rule 11100(c)(II) "does not exist for older pipelines" and requiring operators to collect the data "would add not appreciable benefit to

⁷⁶ Nygrens' Consensus Position on the PUC Rulemaking (filed on July 28, 2023), Attach. at 1.

⁷⁷ *Id.* at 2.

⁷⁸ § 40-2-115(1)(d)(II)(C), C.R.S.

⁷⁹ Nygrens' Comment on PUC Rulemaking at 5-6 (filed on June 12, 2023); Nygrens' Consensus Position on the PUC Rulemaking at 2 (filed on July 28, 2023).

safety.”⁸⁰ “API Colorado urges the Commission to align its rules respecting the data attributes of gathering lines and pipelines to those enumerated by the Oil and Gas Conservation Commission and PHMSA Part 192.”⁸¹

77. As to Proposed Rule 11100(c)(III), API states that “[d]isclosure by the PSP staff of detailed GIS data poses significant security and public health concerns.”⁸² API recommends that the rules “provide that PSP staff may not disclose GIS data to any local government unless and until that local government has entered into an agreement to maintain the GIS data as confidential.”⁸³ API also recommends that Rule 11100(c)(II) “follow the National Pipeline Mapping System federal reporting requirements.”⁸⁴ However, API recognizes that “the Commission does not have the discretion to set confidentiality, security, and public access provisions or limitations on the scale of publicly available images that diverge from those explicitly established by the General Assembly. The Commission must adhere to the clearly stated legislative direction in this regard.”⁸⁵

e. Pipeline Safety Trust

78. The Pipeline Safety Trust supports Proposed Rule 11100(c) because “[r]equiring operators to provide GIS data on the gas pipeline infrastructure in Colorado will promote a more informed public and safer communities.”⁸⁶

⁸⁰ API’s Responsive Comments at 5 (filed on January 3, 2023).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ API’s Comment at 1 (filed on June 16, 2023).

⁸⁶ Comment in Support of Proceeding No. 22R-0491GPS at 2 (filed on April 21, 2023).

4. Analysis

79. The ALJ concludes that a compromise between the positions of Public Service and the Nygrens is in the public interest. The Nygrens are correct that supplying as much information as possible regarding pipelines to the public is of paramount importance. Such information can be used to mitigate damage from leaks and to make informed decisions about major life decisions such as where to rent or purchase a residence. However, Public Service and the other operators are also correct that information regarding pipeline infrastructure can be used for improper purposes, including terrorism. The following changes will be implemented:

Rule 11100

....

- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator;
 - (C) fluid type;
 - (D) designation of pipeline as Transmission, Distribution, or Gathering;
 - (E) for Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator.

- (F) the maximum allowable operating pressure;
 - (G) the testing pressure;
 - (H) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (I) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and identify as HCA/MCA on each segment for class location, as applicable; and
 - (J) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727.
- (III) Disclosure of GIS data.
- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(E) available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(F)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly available, but the information must be treated as confidential and may not be reproduced or published.
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential pursuant to the Colorado Open Records Act and applicable federal law.

- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5- 104.5, C.R.S.⁸⁷

80. Rule 11100(c)(II) includes the data identified by the Commission in the NOPR and the data proposed by Public Service. However, operators will only be required to submit the data to the Commission to the extent it is available. The record reflects that the operators who participated in this proceeding do not possess all of the information specified in Rule 11100(c)(II), at least not in GIS data form. The record further reflects that the cost of acquiring the data so that it could be submitted as GIS data is unknown, but likely significant. As a result, the Rules will not impose the potentially costly obligation on operators of collecting data that they do not currently have. The ALJ reminds operators that they have a duty to operate their pipelines in a safe manner and they should be actively collecting all information necessary for them to do so.

81. Rule 11100(c)(III) specifies that information regarding pipelines available through the online map is limited to the data proposed by Public Service. In addition, the online map will be available at a scale of 1:6,000 because that is the scale of the online map provided by the Colorado Energy & Carbon Management Commission (CECMC) of “off-location flowlines, crude oil transfer lines, and produced water transfer systems.” The adopted rule employs the same language from CECMC’s Rule 1100.e allowing: (a) the remainder of the pipeline data supplied by operators to be disclosed to local governments, who may further share the additional information provided it is treated as confidential and not reproduced or published; and (b) spatial data for individual property parcels to be viewed at the Commission’s office at less than a 1:6,000 scale.

⁸⁷ Public Service’s Reply Comments, Attach. A at 10 (filed on January 3, 2023).

82. As noted above, § 40-2-115(1)(d)(II)(C), C.R.S. requires the Commission’s online map to “incorporate the same standards for confidentiality, security, and public access and limitations on the scale of publicly available images as adopted by the oil and gas conservation commission in 2 CCR 404-1, rule 1101.e.” The ALJ concludes that the adopted language above complies with § 40-2-115(1)(d)(II)(C), C.R.S. but also mitigates as much as reasonably possible the risk of publicly disclosing information that could put pipeline infrastructure and public security at risk.

G. Rule 11100(e) – Leak Reporting

83. The NOPR did not propose any rule changes addressing leak reporting.

1. Comments

a. Nygrens’ Consensus Group

84. The Nygrens propose the following leak reporting requirements:

Rule 11100. Submission of Reports and Notices – General.

(e) Annual Leak Report.

(I) Beginning March 16, 2024, and on an annual basis thereafter, each operator must submit a report to the commission that includes:

(A) The total number of known leaks in pipelines owned by the operator as of January 1st of the year the report is submitted;

(B) The total number of hazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

(C) The total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

(D) The total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted.

(E) The approximate date and location of each leak from the gas pipeline system detected by the operator;

- (F) The type of pipe and facility that was leaking;
 - (G) The method(s) used to detect each leak;
 - (H) The approximate date and location of each leak caused by third-party excavation or other causes not attributable to the normal operation or inspection practices of the operator;
 - (I) The volume of each leak, measured in carbon dioxide equivalents and thousands of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation;
 - (J) Whether the identified cause of each leak was from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes; and
 - (K) The estimated market value of lost gas and the methodology used to measure the loss of gas.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes.
- (III) The commission must use the data reported by operators under this section, as well as other data reported by operators to the commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The commission may request additional information.
- (f) Disclosure of Leak Detection Data
- (I) By March 31, 2024, and on an annual basis thereafter, the commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By March 31, 2024, and on an annual basis thereafter, the commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this section.

85. The Nygrens' proposal is based on a Washington state statute.⁸⁸ As support for their proposal, the Nygrens state that annual leak reporting is essential "to better understand what pipelines may need to be replaced and what technologies are most useful in detecting leaks."⁸⁹ According to the Nygrens, "PHMSA and the PUC currently only require reporting of 'incidents' that either kill one or more people, cause a personal injury resulting in hospitalization, cause property damage of more than \$122,000, or 'unintentionally' releases 3 MMCF of natural gas (enough natural gas to serve 17,000 homes for a day)."⁹⁰ The Nygrens contend that such reporting requirements are insufficient to allow the Commission's Pipeline Safety Program to: (a) "adequately protect public health, safety, welfare of disproportionately impacted communities"; and (b) "quantify methane releases so the state can meet Colorado's greenhouse gas targets."⁹¹ Finally, the Nygrens assert that "[r]eporting of all leaks is already required in other states such as Washington, New York, New Jersey, and Texas"⁹² and Colorado should follow suit.

86. The Nygrens' Consensus Group supports the Nygrens' proposal.

b. Public Service and Black Hills

87. Public Service states that PHMSA's rulemaking will propose "annual reporting on discovered leaks and related to emission reporting."⁹³ For this reason, Public Service and Black Hills request that the issue of leak reporting be deferred until PHMSA's current rulemaking is

⁸⁸ Nygrens' Comment on PUC Rulemaking at 7-8 (filed on May 1, 2023) (citing Wash. Rev. Code § 81.88.160 (2021)).

⁸⁹ Nygrens' Comment on PUC Rulemaking at 5 (filed on June 12, 2023).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Nygrens' Consensus Position on the PUC Rulemaking at 3 (filed on July 28, 2023).

⁹³ Public Service's Comments in Response to Interim Decision No. R23-0328-I at 9 (filed on June 16, 2023).

completed.⁹⁴ Public Service also has not researched the “Commission’s authority or the wisdom of promulgating reporting rules that mirror another state statute or whether the Washington statute conflicts with federal law.”⁹⁵ For this additional reason, Public Service recommends deferring consideration of a Commission rule addressing leak reporting.

c. Atmos and CNG

88. Both Atmos and CNG stated that they are not opposed to annual leak reporting. Atmos positively cited the annual leak reporting rules of the Railroad Commission of Texas that require leak reports “that include a list of all leaks identified and repaired on the operator’s pipeline facilities, and the number of unrepaired leaks remaining on the operator’s system by leak grade.”⁹⁶ According to Atmos, the rules require the following information for each repaired leak: (a) leak location; (b) facility type; (c) leak classification; (d) pipe size; (e) pipe type; (f) leak cause; and (g) leak repair method.⁹⁷ “Atmos [] recommends that [leak] reports be required on an annual basis if adopted in Colorado.”⁹⁸

89. CNG states that Commission Rule 11103(a)(II) and (V) already require the annual filing of PHMSA “7100.1-1 reports” that are “are large, comprehensive forms that include the reporting of leaks.”⁹⁹ Specifically,

Parts C and D of the 7100 Distribution System report lists the number of leaks discovered, eliminated, and repaired, and the determined cause. Part M of the

⁹⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9 (filed on June 16, 2023); Black Hills Comments to Decision No. R23-0328-I at 3 (filed on June 16, 2023).

⁹⁵ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9-10 (filed on June 16, 2023).

⁹⁶ Atmos’ Additional Comments at 3 (filed on June 16, 2023).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CNG’s Response Comments at 4 (filed on June 16, 2023).

7100 Transmission report lists the number of leaks discovered and the determined cause.

Pursuant to the Pipeline Safety Rule 11201 (b), 4 CCR 723-11, CNG provides an annual Damage Report that is filed each March 15 and summarizes excavation damages by date and their root causes. With that filing, CNG also provides the Utility Notification Center of Colorado (UNCC) Locate Summary Activity Sheet that provides an even greater level of detail about damage incidents by month.

. . . .

CNG . . . currently submits emissions reports to the Environmental Protection Agency (EPA) through the Greenhouse Gas Reporting Program (GHGRP) for 40 CFR Part 98 Subpart W (related to methane) and Subpart NN (related to Carbon Dioxide). This annual report is also provided to the Air Quality Control Division (AQCD) within the Colorado Department of Public Health and Environment (CDPHE). This is public information that may be shared by the AQCD to any other state agency through existing channels.

The foregoing discussion demonstrates that much of what [the Nygrens are] proposing in proposed Rule 11100(e) is already being produced to a large extent through reports being submitted to the Commission.¹⁰⁰

CNG nevertheless concedes that the Nygrens' "recommendations in proposed Rule 11100(e)(III) . . . are valuable for consideration."¹⁰¹ If the Commission adopts some form of annual leak reporting, CNG recommends that "the Commission require gas utilities provide a general narrative discussion for each leak identified in the PHMSA Form 7100 that is submitted to the Commission each March 15."¹⁰² Such a narrative According to CNG, such a format "would allow flexibility based on the nature of the leak, its root cause, and other factors."¹⁰³

2. Analysis

90. The ALJ finds that the leak reporting proposed by the Nygrens is in the public interest. Accordingly, the Nygrens' Proposed Rules 11100(d) & (e) will be adopted. The ALJ

¹⁰⁰ *Id.* at 4-6.

¹⁰¹ *Id.* at 6.

¹⁰² *Id.*

¹⁰³ *Id.*

understands that the PHMSA rulemaking may address leak reporting. If so, and the direction of the PHMSA rulemaking on leak reporting appears to conflict with the rules here, operators may seek a waiver of these rules in 2024 to give the Commission time to address any such conflicts in a rulemaking. The ALJ does not place weight on Public Service’s request that the Commission hold off on implementing leak reporting rules because Public Service did not analyze whether “the Washington statute conflicts with federal law”¹⁰⁴ Public Service had more than enough time to conduct the analysis. Based on the foregoing, the ALJ finds and concludes that the Nygrens’ proposed Rule 11100(e) is in the public interest and shall be adopted.

H. Rule 11100(f) – Gas Infrastructure Planning Maps

1. Background

91. Proceeding No. 21R-0449G was a rulemaking that addressed, among other things, Gas Infrastructure Planning Rules at 4 CCR 723-4-4550 *et seq.*, on October 1, 2021.¹⁰⁵ CEO participated in that proceeding and proposed that the Commission adopt a rule within the Gas Infrastructure Planning Rules that system maps with type and age of pipe be required as part of gas infrastructure plans and clean heat plans for the purpose of facilitating the Commission’s review and understanding of NPA analysis. As justification, CEO stated that a system-wide understanding of the locations and ages of pipes will help the Commission consider where new gas infrastructure investments are prudent based on age of existing infrastructure, where new gas infrastructure may be imprudent due to the feasibility of cost-effective DSM and electrification measures, and where strategic gas decommissioning may be possible.

¹⁰⁴ Public Service’s Comments in Response to Interim Decision No. R23-0328-I at 9-10 (filed on June 16, 2023).

¹⁰⁵ Decision No. C21-0610.

92. In Decision No. C22-0760, the Commission adopted new and amended rules that issued on December 1, 2022, but declined to adopt CEO's proposed rule. In so doing, the Commission stated that "[t]he utilities have indicated they do not have such information for their entire systems or that it would require a significant effort to compile. The Commission agrees such information requirements, if applied across the system, would require significant effort,"¹⁰⁶

93. Subsequently, the Commission issued Decision No. C23-0117 on February 24, 2023 that addressed, among other things, CEO's Application for Rehearing, Reargument, and Reconsideration (RRR) of Decision No. C22-0760. In its RRR Application, CEO argued that the Commission should reverse its decision not to adopt CEO's proposed rule. The Commission declined to do so, reiterating that "[w]e do not have the record before us to implement mapping requirements to show age or type of pipe in this proceeding."¹⁰⁷ However, the Commission also stated:

The Commission recently issued a NOPR in 22R-0491GPS to implement SB 21-108; this proceeding is before an administrative law judge. . . . CEO or others may consider providing relevant comments in the pipeline docket 22R-0491GPS, where the Commission is considering implementing similar requirements. Accordingly, we deny CEO's request at this juncture. However, the Commission expects that general and specific improvements in a utility's mapping capabilities, including the comprehension of pipeline material and age, due to separate GPS proceedings pursuant to 22R-0491GPS, or other efforts, should reasonably be incorporated into the utility's subsequent GIP filing in order to further the broad goals of the GIP process.¹⁰⁸

94. On June 16, 2023, CEO stated in this proceeding that it planned to propose a rule

¹⁰⁶ Decision No. C22-0760 at 90-91 (¶ 207).

¹⁰⁷ Decision No. C23-0117 at 33 (¶ 88).

¹⁰⁸ *Id.*

equivalent to the rule it proposed in Proceeding No. 21R-0449G. CEO reiterated this point at the second continued remote public comment hearing on June 29, 2023. As a result of CEO's intention to file a proposed rule, the ALJ continued the public comment hearing and set a schedule for further written comments.

95. On July 12, 2023, CEO filed its Rule Proposal, which was then discussed at the third continued public comment hearing on August 3, 2023.

2. Comments

a. CEO

96. CEO proposes the following rule language:

11100. Submission of Reports and Notices – General.

.....

- (f) Any operator that is an investor-owned gas utility must provide in a Gas Infrastructure Plan, or as otherwise directed by the Commission, a map showing system-wide locations, ages, and materials or types of distribution system pipes, consistent with 49 CFR 191 and section 40-2-115(1)(d). As part of the filing, the investor-owned gas utility must also provide information about pipes that may need to be upgraded or replaced within ten years after the date that the utility files the plan, unless otherwise ordered by the Commission.
- (l) Any investor-owned gas utility may designate any map or associated information provided pursuant to rule 11100(f) as containing critical infrastructure information and request extraordinary protections subject to Commission rules 1100-1103. Except that any critical infrastructure information given highly confidential protection under rule 1103 must be available to all state agencies that are interveners in the proceeding, subject to the approved nondisclosure agreement.¹⁰⁹

¹⁰⁹ CEO's Rule Proposal Comments at 3 (filed on July 12, 2023).

97. CEO states that its proposed rule is required by § 40-3.2-104.4(3), C.R.S., which became effective on August 7, 2023. Section 40-3.2-104.4(3), C.R.S. does not define “critical infrastructure information” or “critical infrastructure facilities or systems.” While FERC has defined both terms, CEO argues against adopting these definitions because they are “overly broad” and could limit parties access to the information.¹¹⁰

98. Section 40-3.2-104.4(3)(c), C.R.S. requires the Commission to:

ensure that the content of the map provided to the commission and sharing procedures are in compliance with the parameters related to critical infrastructure reporting standards of the California Institute for Energy and Environment, or its successor organization, and the safety and system integrity standards of the American Petroleum Institute, or its successor organization.

However, neither the referenced “critical infrastructure reporting standards” nor the “safety and system integrity standards” are a part of the record in this rulemaking. Both Public Service and CEO conducted searches for them without success. The representative for API participating at the August 3, 2023 second continued remote public comment hearing stated that she believed API has safety and system integrity standards.¹¹¹

99. CEO believes that its proposed rule language should be added as standalone subsection (f), and not to subsection (c)(II), in Rule 11100. The requirements of § 40-3.2-104.4(3), C.R.S. apply to investor-owned utilities. In contrast, Proposed Rule 11100(c)(II) applies to operators. While there is overlap between the two, CEO believes that the requirements for investor-owned utilities and operators should be kept separate for the sake of clarity.¹¹²

¹¹⁰ *Id.* at 9.

¹¹¹ Transcript of August 3, 2023 Second Continued Remote Public Comment Hearing at 39-41.

¹¹² *Id.* at 7-8.

b. Public Service

100. Public Service does not support CEO's proposed language for four primary reasons. First, Public Service asserts that CEO's proposed language is not within the scope of this rulemaking. Specifically, the NOPR in this rulemaking "proposed no amendments to the GIP rules and no requirement that GIP mapping or filing information be included in the Gas Pipeline Safety rules."¹¹³ As evidence of the lack of notice, Public Service states that "there were large number of participants who were involved in the Gas Infrastructure Planning rulemaking that are not involved in the instant rulemaking."¹¹⁴ Public Service concludes that "CEO's proposed Rule 11100(d) exceeds the notice in the NOPR of the subject-matter of this rulemaking, violates the notice requirements of the APA, improperly broadens the scope of this rulemaking, and should be rejected."¹¹⁵

101. Second, Public Service argues that if the subject matter of CEO's proposed rule is promulgated into a Commission, rule, it should be done so within the Commission's Gas Infrastructure Planning Rules that are part of the Rules Regulating Gas Utilities, not in the Gas Pipeline Safety Rules. While the former apply to planning capital investment by gas distribution utilities, the latter focus on the safety of gas pipeline facilities.¹¹⁶ Public Service concludes that "the subject matter [of CEO's proposed rule] more appropriately fits within the Commission's Rules Regulating Gas Utilities and specifically the Gas Infrastructure Planning Rules, as opposed to the Gas Pipeline Safety Rules."¹¹⁷

¹¹³ Public Service's Reply to CEO's Comment at 9 (filed on July 27, 2023).

¹¹⁴ *Id.* at 5-6.

¹¹⁵ *Id.* at 10.

¹¹⁶ Public Service's Reply to CEO's Comment at 5 (filed on July 27, 2023).

¹¹⁷ *Id.*

102. Third, Public Service notes that the Commission’s statement in Decision No. C23-0117 was not a directive that CEO’s proposed rule be addressed in this rulemaking. Instead, the Commission stated that CEO and others “may consider providing relevant comments” in this proceeding. Public Service asserts that this language does not require either CEO to request the implementation of its proposed rule in this proceeding, or the ALJ to do so.¹¹⁸

103. Fourth, CEO waited almost four months after the issuance of Decision No. C23-0117 to inform the ALJ that it planned to request the addition of the mapping proposal in this proceeding that the Commission declined to adopt in the Gas Planning Rulemaking (Proceeding No. 21R-0449G). Another almost four weeks elapsed before CEO proposed its rule language, which was approximately three weeks before the final public comment hearing. Public Service recommends that the ALJ decline to consider CEO’s proposed rule at this late juncture in this rulemaking.¹¹⁹

c. API, Atmos, and Black Hills

104. API, Atmos, and Black Hills do not support CEO’s proposal. Atmos agrees with Public Service that CEO’s proposed rule should be promulgated, if at all, in the Gas Infrastructure Planning rules, not in the Pipeline Safety Rules.¹²⁰ API argues that CEO’s proposal should be rejected because it “could be outside the scope of this proceeding, which may lead to the joinder of additional stakeholders and delays in completing this rulemaking.”¹²¹ And, Black Hills asserts that “[t]he Commission should not attempt to shoehorn in this rulemaking changes

¹¹⁸ *Id.* at 7-8.

¹¹⁹ *Id.* at 6-8.

¹²⁰ Atmos’ Post-Hearing Comments at 1-2 (filed on July 27, 2023).

¹²¹ API’s Responsive Comments at 1-2 (filed on July 14, 2023).

that are not fully developed, conflict with the statutory basis for this rulemaking, and are not intended to strengthen gas pipeline safety.”¹²²

d. CNG

105. CNG believes that CEO’s proposal does not provide sufficient protection to the maps and the information contained therein that the proposed rule requires the investor-owned gas utilities to provide to the Commission. CNG thus proposes a “compromise solution” to address that problem in which

attributes identified by CEO including age and type of pipe be provided in a list in a document separate from a map, without specifying location in a way that could be used by bad actors. For example, the Company could provide the number of miles of pipe, including the age, type and material, by service territory and perhaps by county, municipality, or other border designation so long as the attributes cannot be attributed to specific locations.¹²³

Otherwise, CNG states that CEO should “pursue its policy objectives [] in the litigated GIP proceedings for each utility.”¹²⁴

3. Analysis

106. The ALJ declines to adopt CEO’s proposed Rule 11100(f). CEO made its proposal far too late in this rulemaking for it to receive the attention it needs. As in Proceeding No. 21R-0449G, there is an insufficient record in this proceeding to support CEO’s proposed rule, particularly given the investor-owned utilities’ statements in this proceeding that they do not have the types and ages of pipe for their entire pipeline systems and that it would require

¹²² Black Hills’ Response Comments at 3 (filed on July 27, 2023).

¹²³ Reply Comments of CNG at 6 (filed on July 27, 2023).

¹²⁴ *Id.*

significant time and resources to compile. Further, Public Service has raised a serious question as to whether CEO’s proposal is beyond the scope of the notice in this proceeding. This conclusion is reinforced by the fact, as stated by Public Service, “there were large number of participants who were involved in the Gas Infrastructure Planning rulemaking that are not involved in the instant rulemaking.”¹²⁵ Based on the foregoing, CEO’s proposed Rule 11100(f) will not be adopted.

I. Rule 11504(c)(II)(C) – Mitigation of Civil Penalty

1. NOPR

107. In the NOPR, the Commission proposed to add the following:

Rule 11504. Notice of Probable Violation.

....

(c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.

....

(II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:

....

(C) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:

(i) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;

(ii) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied; and

¹²⁵ Public Service’s Reply to CEO’s Comment at 5-6 (filed on July 27, 2023).

- (iii) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000.

2. Comments

108. Public Service proposes to add the following to the list of mitigating factors at Rule 11504(c)(II)(C): “whether or not the violation was self-reported by the operator.”¹²⁶ Public Service states that this proposed change is supported by public policy, which encourages legal provisions that incentivize self-reporting of violations. It is also supported by the facts that; (a) self-reporting “protects the public from continuing or hidden probable violations representing moderate to severe risks to public safety;” (c) penalty reduction in the presence of self-reporting is not mandatory because “the Commission will retain the discretion to reduce that penalty if it finds advance notice reduced the risk to public safety or pipeline integrity; and “ (c) the proposed change is “consistent with Federal Energy Regulatory Commission’s Penalty Guidelines and PHMSA’s assessment considerations under 29 C.F.R. 190.225.”¹²⁷

3. Analysis

109. The ALJ will adopt Public Service’s proposed change. Self-reporting is in the public interest for the reasons stated by Public Service. In addition, the fact that a reduction in penalty in the presence of self-reporting is not mandatory is important. The Commission will maintain its discretion to reduce the penalty or not depending on consideration of all factors. Accordingly, Public Service’s proposed language will be adopted.

¹²⁶ Public Service’s Initial Comments at 20 (filed on December 12, 2022).

¹²⁷ *Id.* at 20-21.

110. The ALJ will move Proposed Rule 11504(c)(II)(C) to Rule 11504(f). The plain language of the Proposed Rule indicates that it does not apply solely to offers of compromise by operators. Instead, the Proposed Rule states that the Commission's discretion to reduce a civil penalty based on the factors listed applies to "[a]ny civil penalty authorized by this rule." Accordingly, Proposed Rule 11504(c)(II)(C) is better placed as Rule 11504(f).

111. Pursuant to the provisions of § 40-6-109, C.R.S., the ALJ recommends that the Commission adopt the attached rules.

V. **ORDER**

A. **The Commission Orders That:**

1. The Rules Regulating Pipeline Operators and Gas Pipeline Safety attached to this Recommended Decision are adopted.

2. The rules in redline legislative format (showing changes to current rules) are attached to this Recommended Decision as Attachment A. The rules in final format are attached to this Recommended Decision as Attachment B. They are also available in 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

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall

become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

- b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.
5. Response time to any exceptions that may be filed is shortened to ten (10) days.
6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

Rebecca E. White,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11 RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in ~~intrastate~~interstate commerce, as defined in 49 C.F.R. § 191.3.

* * *

[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and eCommission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- ~~(k)~~ “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- ~~(l)~~ “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- ~~(m)~~ “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- ~~(n)~~ “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- ~~(o)~~ “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- ~~(p)~~ “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- ~~(q)~~ “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- ~~(r)~~ “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- ~~(s)~~ “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (~~tr~~) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (~~us~~) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (~~vt~~) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (~~wu~~) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (~~xv~~) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (~~yw~~) “Municipality” means a city, town, or village in the state of Colorado.
- (~~zx~~) “NRC” means the National Response Center of the United States Coast Guard.
- (~~aa~~) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (~~bbz~~) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (~~ccaa~~) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (~~ddb~~) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (~~eee~~) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (~~ffed~~) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (~~ggee~~) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (~~hhf~~) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (~~iig~~) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- ~~(jjh)~~ “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- ~~(kk)~~ “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- ~~(llj)~~ “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- ~~(mmk)~~ “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- ~~(nn)~~ “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- ~~(oom)~~ “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- ~~(pp)~~ “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- ~~(qqe)~~ “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- ~~(rre)~~ “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(sse)~~ “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(ttr)~~ “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(uus)~~ “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- ~~(vvt)~~ “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
- (I) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
- (III) an unsafe ignition of intended gas release in an area accessible to the public;
- (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
- (V) any other hazardous situation that results in an immediate or imminent hazard to the public.

~~(ww)~~ “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.

~~(xxuu)~~ “Roadway” means a main public artery, highway, or interstate highway.

~~(yyvv)~~ “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.

~~(zzwww)~~ “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).

~~(xx)~~ “Rural gathering pipeline” means any gathering pipeline located in a Class 1 location and defined in 49 C.F.R. § 192.5 or a Type B gathering pipeline located in a Class 2 area that the operator determines does not meet the Area 2 dwelling density definition in 49 C.F.R. § 192.8.

~~(aaayy)~~ “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:

- (I) a low-pressure gas distribution system;
- (II) is comprised wholly of above-ground piping/appurtenances; and
- (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.

~~(bbbzz)~~ “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.

~~(cccaaa)~~ “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.

~~(dddbbb)~~ “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

~~(eeeeee)~~ “UNCC/Colorado 811” means the Utility Notification Center of Colorado.

~~(fff)~~ “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. ~~1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (fe) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

* * *

[indicates omission of unaffected rules]

11010. Interpretation.

* * *

[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefor~~e~~, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11012. Waiver – Emergency.

* * *

[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.

(b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site.

(c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (de) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
- (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.
- (ee) After an inspection, the PSP Chief will pursue one of the following:
- (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.
- (fe) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.
- (gf) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

* * *

[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet ~~A~~annual ~~R~~report submittal deadlines will result in issuance in a ~~W~~warning ~~N~~notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a ~~W~~warning ~~N~~notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as Transmission, Distribution, or Gathering;
 - (E) for Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

(III) Disclosure of GIS data.

- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.
- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.

(de) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

(e) Annual leak report.

- (I) Beginning June 15, 2024 and annually on March 15 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known leaks in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

- (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted.
 - (E) the approximate date and location of each leak from the gas pipeline system detected by the operator;
 - (F) the type of pipe and facility that was leaking;
 - (G) the method(s) used to detect each leak;
 - (H) the approximate date and location of each leak caused by third-party excavation or other causes not attributable to the normal operation or inspection practices of the operator;
 - (I) the volume of each leak, measured in carbon dioxide equivalents and thousands of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation;
 - (J) whether the identified cause of each leak was from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes; and
 - (K) the estimated market value of lost gas and the methodology used to measure the loss of gas.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes.
- (III) The Commission must use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
- (f) Disclosure of leak detection data.
- (I) By June 30, 2024 and annually on March 31 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 30, 2024 and annually on March 31 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and ~~of~~ locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with ~~sub~~paragraph 1204(a)(~~III~~) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

(a) On or before June 15, 2024 and March 15 of each year thereafter:

- (~~I~~a) ~~On or before March 15 of each year, e~~Each operator shall file with the Commission an annual report for the preceding calendar year. The reports shall be filed in accordance with ~~sub~~paragraph 1204(a)(~~III~~) of the Commission’s Rules of Practice and Procedure.
- (~~II~~b) Each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
- (~~III~~e) Each operator of an MMO/LPG system shall submit the ~~MMO/LPG Small Operator~~ ~~a~~Annual ~~r~~Report (~~PSP SOAR~~) to the Commission through its E-Filings System in the repository proceeding opened for annual reports.
- (~~IV~~) Each operator of a transmission or Type A or Type B ~~or Type C~~ gathering system (i.e., ~~excepting accepting Type R as defined in 49 CFR 191.3 rural gathering~~), shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.2-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
- (~~V~~e) Each operator of a LNG facility shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
- (VI) Each operator shall submit GIS data according to paragraph 11100(c).
- (VII) Each operator shall submit a list of advanced leak detection technology being used and their descriptions according to paragraph 11100(d).

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) ~~All~~An operator, including operators ~~of MMO/LPG and rural gathering pipeline systems,~~ must be a ~~members~~Tier 1 Member ~~of at~~ the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.
- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.

- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and ~~rural~~ gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- (e) Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- (fe) The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or
 - (III) were found to represent an excessive risk to the operator’s pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

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[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.

- (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
- (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.
 - (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.
- (c) Standards applied to SSAG systems.
- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:

- (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
- (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
- (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.
- (d) Standards applied to LPG systems.
- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
 - (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.
- (e) Standards applied to Major MMO/LPG systems.
- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
 - ~~(II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).~~
- (f) Standards applied to Minor MMO/LPG systems.
- ~~(I) Except as provided in subparagraph 11203(h)(VII),~~ Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (g) Standards applied to threshold MMO/LPG systems.
- ~~(I) Except as provided in subparagraph 11203(h)(VII),~~ Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.

- (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:
 - (A) number of affected persons;
 - (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
 - (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
- (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
- (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
- (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

* * *

[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine the impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
 - (I) civil penalties shall not exceed ~~\$200100~~,000 per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$2,000,000.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
 - (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i ,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an Incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$$B \times F_{\text{impact}}, \text{ where}$$

$$B = \$5,000 \text{ base penalty per instance of violation}$$

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:

- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
- (ii) the penalty amount is calculated by the equation:

B x F_{impact}, where

B = \$5,000 base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(C) Rule 11201 violations:

- (i) the penalty is assessed per applicable paragraph of rule 11201;
- (ii) the penalty amount is calculated by the equation:

B x F_{impact}, where:

B = \$5,000 base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(D) Missing or incomplete records:

- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
- (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
- (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:

~~(1a-)~~ Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;

~~(2b-)~~ Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and

~~(3e-)~~ Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety	1

impact	
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator’s documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
 - (I) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
 - (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
 - (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final

written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;

- (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
- (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

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[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief will issue a ~~W~~arning ~~N~~otice to an operator. The ~~W~~arning ~~N~~otice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:
 - (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;

- (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule [1150841507](#), resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).
- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.

- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
- (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

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[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP Staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.
- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11 RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in intrastate commerce, as defined in 49 C.F.R. § 191.3.

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[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and Commission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- (k) “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- (l) “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- (m) “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- (n) “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- (o) “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- (p) “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- (q) “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- (r) “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- (s) “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (t) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (u) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (v) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (w) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (x) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (y) “Municipality” means a city, town, or village in the state of Colorado.
- (z) “NRC” means the National Response Center of the United States Coast Guard.
- (aa) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (bb) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (cc) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (dd) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (ee) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (ff) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (gg) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (hh) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (ii) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- (jj) “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- (kk) “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- (ll) “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- (mm) “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- (nn) “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- (oo) “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- (pp) “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- (qq) “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- (rr) “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (ss) “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (tt) “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (uu) “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- (vv) “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
 - (l) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
 - (III) an unsafe ignition of intended gas release in an area accessible to the public;
 - (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
 - (V) any other hazardous situation that results in an immediate or imminent hazard to the public.
- (ww) “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.
- (xx) “Roadway” means a main public artery, highway, or interstate highway.
- (yy) “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.
- (zz) “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).
- (aaa) “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:
- (I) a low-pressure gas distribution system;
 - (II) is comprised wholly of above-ground piping/appurtenances; and
 - (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.
- (bbb) “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.
- (ccc) “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.
- (ddd) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.
- (eee) “UNCC/Colorado 811” means the Utility Notification Center of Colorado.
- (fff) “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (f) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

* * *

[indicates omission of unaffected rules]

11010. Interpretation.

* * *

[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefore, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

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[indicates omission of unaffected rules]

11012. Waiver – Emergency.

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[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.
- (b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site.
- (c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (d) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
 - (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.
- (e) After an inspection, the PSP Chief will pursue one of the following:
 - (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.
- (f) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.
- (g) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

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[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet annual report submittal deadlines will result in issuance in a warning notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a warning notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for Transmission, Distribution, and Gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as Transmission, Distribution, or Gathering;
 - (E) for Transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

- (III) Disclosure of GIS data.
 - (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office.
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
 - (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.
- (d) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.
- (e) Annual leak report.
 - (I) Beginning June 15, 2024 and annually on March 15 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known leaks in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;

- (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted.
 - (E) the approximate date and location of each leak from the gas pipeline system detected by the operator;
 - (F) the type of pipe and facility that was leaking;
 - (G) the method(s) used to detect each leak;
 - (H) the approximate date and location of each leak caused by third-party excavation or other causes not attributable to the normal operation or inspection practices of the operator;
 - (I) the volume of each leak, measured in carbon dioxide equivalents and thousands of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation;
 - (J) whether the identified cause of each leak was from: Corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes; and
 - (K) the estimated market value of lost gas and the methodology used to measure the loss of gas.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; or other causes.
- (III) The Commission must use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
- (f) Disclosure of leak detection data.
- (I) By June 30, 2024 and annually on March 31 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 30, 2024 and annually on March 31 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with paragraph 1204(a) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

- (a) On or before June 15, 2024 and March 15 of each year thereafter:
- (I) Each operator shall file with the Commission an annual report for the preceding calendar year. The reports shall be filed in accordance with paragraph 1204(a) of the Commission’s Rules of Practice and Procedure.
 - (II) Each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the annual report (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
 - (III) Each operator of an MMO/LPG system shall submit the MMO/LPG annual report to the Commission through its E-Filings System in the repository proceeding opened for annual reports.
 - (IV) Each operator of a transmission or Type A or Type B or Type C gathering system (i.e., accepting Type R as defined in 49 CFR 191.3), shall submit the annual report (PHMSA F 7100.2-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
 - (V) Each operator of a LNG facility shall submit the annual report (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.
 - (VI) Each operator shall submit GIS data according to paragraph 11100(c).
 - (VII) Each operator shall submit a list of advanced leak detection technology being used and their descriptions according to paragraph 11100(d).

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) All operators must be members of the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.
- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.

- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- (e) Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- (f) The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or
 - (III) were found to represent an excessive risk to the operator’s pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

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[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.

- (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
- (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.
 - (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.
- (c) Standards applied to SSAG systems.
- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:

- (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
- (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
- (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.
- (d) Standards applied to LPG systems.
- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
 - (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.
- (e) Standards applied to Major MMO/LPG systems.
- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
 - (II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (f) Standards applied to Minor MMO/LPG systems.
- (I) Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (g) Standards applied to threshold MMO/LPG systems.
- (I) Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.
 - (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:

- (A) number of affected persons;
- (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
- (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
- (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
- (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
- (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

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[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine the impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
 - (I) civil penalties shall not exceed \$200,000 per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$2,000,000.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
 - (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i ,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an Incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$$B \times F_{\text{impact}}, \text{ where}$$

$$B = \$5,000 \text{ base penalty per instance of violation}$$

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:

- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(C) Rule 11201 violations:

- (i) the penalty is assessed per applicable paragraph of rule 11201;
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where:

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(D) Missing or incomplete records:

- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
- (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
- (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:
 - (1) Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;
 - (2) Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and
 - (3) Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety	1

impact	
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator's documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
- (I) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
- (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
- (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final

written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;

- (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
- (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

* * *

[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief will issue a warning notice to an operator. The warning notice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:
 - (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;

- (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule 11508, resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).
- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.

- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
- (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

* * *

[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP Staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.
- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

Decision No. C24-0058

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 DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R23-0744 AND ADOPTING RULES**

Mailed Date: January 29, 2024
Adopted Date: January 17, 2024

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of the exceptions filed to Recommended Decision No. R23-0744, issued November 8, 2023, by Administrative Law Judge (ALJ) Conor F. Farley (Recommended Decision) that adopts amendments to the Commission’s Rules Regulating

Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* (CCR) 723-11 (Proposed Rules).

2. The Commission opened this proceeding through its Notice of Proposed Rulemaking (NOPR) issued November 9, 2022,¹ 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.

3. The Proposed Rules represent an affirmative and essential step forward in the Commission’s goal to increase pipeline safety across Colorado. Proposed Rules build on rules adopted by this Commission in 2020, effective in 2021, which significantly altered the Commission’s processes to better ensure public access and transparency to Pipeline Safety Information and processes (2021 GPS Rules).² With these Proposed Rules, the Commission further increases transparency regarding pipeline leak and annual reporting, in addition to doubling the Commission’s fining authority thresholds, consistent with SB21-108 and updated

¹ Decision No. C22-0701, issued November 9, 2022.

² See, e.g., Decision No. C20-0917, issued December 28, 2020, in Proceeding No. 19R-0703GPS.

federal regulations. The Proposed Rules also clarify and make ongoing improvements to the 2021 GPS Rules.³

3. In addition to doubling the Commission's fining authority from a maximum of penalties issued of one million dollars to two million dollars,⁴ these Proposed Rules require industry-operators to, among other things, submit detailed information and annual reports to the Commission regarding pipeline leaks, and to provide the Commission with detailed mapping data. Improvements provided in the Proposed Rules are instrumental in the Commission's effort to enhance pipeline safety and will provide critical information for the Commission's pipeline monitoring and inspection activities.

4. Consistent with the discussion below, we address exceptions, including to clarify required reporting information and timelines. The Commission remains committed to continuous improvements in pipeline safety oversight and transparency, while maintaining regulatory efficiencies and improvements of the Commission's Pipeline Safety Program. While the Proposed Rules do not include explicit definition requirements at this time for Advanced Leak Detection Technology (ALDT), given recently initiated federal rulemaking considerations, Staff of the Colorado Public Utilities Commission (Staff) is directed to continue its stakeholder outreach that began last year regarding ALDT and further improvements to the rules to bring

³ Following the issuance of the NOPR, the Commission received helpful and necessary feedback via state audit in July of 2023 regarding its pipeline safety program that was critical of record retention practices and the lack of fining. See, Colorado Office of the State Auditor, Gas Pipeline Safety Program, Performance Audit 2256P (2023), <https://leg.colorado.gov/audits/gas-pipeline-safety-program>. The Commission continues to address these concerns and has received feedback from the United States Pipeline and Hazardous Materials Safety Administration (PHMSA) that it is appropriately pursuing its state authority. In addition, the Commission continues to emphasize that it is currently engaging in stakeholder outreach regarding Advanced Leak Detection Technology. As discussed further in this Decision, the Commission intends to bring forward a subsequent notice of proposed rulemaking that, among other continuous improvements, will address Advance Leak Detection Technology following stakeholder input.

⁴ As included in the NOPR maximum penalties increased consistent with changes made in SB21-108, § 40-7-117, C.R.S.

forward an anticipated follow-on rulemaking. We continue to encourage robust participation from the public and stakeholders to help move rulemaking efforts forward expeditiously.⁵

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 activities primarily under §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S. In particular, § 40-2-115, C.R.S. allows 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. On November 9, 2022, the Commission commenced this rulemaking through its NOPR,⁶ which established deadlines for comments and response comments, scheduled a public comment hearing to be held on January 19, 2023, and referred this proceeding to an ALJ.

8. After receiving initial and responsive comments from rulemaking participants, the ALJ held the scheduled remote public comment hearing on January 19, 2023. Based on the input of the participants at the hearing, the ALJ ordered another round of comments by February 9, 2023, addressing specific issues and continued the remote public comment hearing to May 2, 2023.⁷ On May 2, 2023, the ALJ held the continued hearing, and again ordered another round of comments due by June 16, 2023.⁸

⁵ To participate in stakeholder outreach efforts regarding further improved revisions to the Gas Pipeline Safety Rules, contact Pipeline Safety Program Manager, Casey Hensley at casey.hensley@state.co.gov.

⁶ Decision No. C22-0701, issued November 9, 2022.

⁷ Decision No. R23-0054-I, issued January 24, 2023.

⁸ Decision No. R23-0328-I, issued May 17, 2023.

9. Concurrent with the ongoing receipt of public comments in this proceeding, on May 18, 2023, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published its Notice of Proposed Rulemaking proposing amendments to the Federal pipeline safety regulations, including a proposed rule addressing an “Advanced Leak Detection Program” that provided a proposed standard that advanced leak detection technology would have to satisfy.⁹

10. On June 29, 2023, the ALJ held the continued remote public comment hearing. Based on the input of the participants at the hearing, the ALJ ordered another round of comments due by July 13, 2023, and response comments due by July 27, 2023.¹⁰

11. During the Commissioners’ Weekly Meeting on August 2, 2023, separate from ongoing comment processes in this proceeding, Dr. Pam Fischhaber, Deputy Director of Public Safety Sections and Interim Deputy Director of Fixed Utilities Sections, announced that the Commission intends to engage in a stakeholder process in advance of opening a new rulemaking that will address the rapid development of Advanced Leak Detection Technology (ALDT) and Commission requirements for its use by operators within Colorado. Dr. Fischhaber noted that Staff would engage in ongoing stakeholder processes, with the intent of bringing forward proposed rules as early as calendar-year 2024.

12. On August 3, 2023, the ALJ held the continued remote public comment hearing regarding the NOPR and rule proposals in this proceeding. The ALJ discussed with the participants the new rule changes proposed by CEO. At the conclusion of the August 3, 2023 public comment hearing, the ALJ adjourned the hearing.

13. On November 8, 2023, the ALJ issued his Recommended Decision.

⁹ Pipeline Safety: Gas Pipeline Leak Detection and Repair, 88 FR 31890, (proposed May 18, 2023) (to be codified at 49 CFR Parts 191, 192, and 193), <https://www.federalregister.gov/d/2023-09918>.

¹⁰ Decision No. R23-0453-I, issued July 13, 2023.

14. Between November 27 and November 29, 2023, Public Service Company of Colorado (Public Service), the Colorado Oil & Gas Association (COGA), Colorado Springs Utilities (Springs Utilities), Mark and Julie Nygren (the Nygrens), Colorado National Gas, Inc. (CNG), Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy (collectively Black Hills), Atmos Energy Corporation (Atmos Energy), the Office of Utility Consumer Advocate (UCA), and the Southern Ute Indian Tribal Nation with Red Cedar Gathering Company (collectively Tribal Nation), each filed limited exceptions to the Recommended Decision. Several parties also submitted responses to the filed exceptions.

15. As discussed below, we address exceptions to clarify reporting requirements, and adopt the Proposed Rules with modifications as discussed. Where modifications are not made, we otherwise adopt the Recommended Decision, including its recommendation for Proposed Rules that significantly increase reporting and double filing thresholds.

C. Exceptions to Recommended Decision Proposed Pipeline Safety Rules

1. Tribal Nation Sovereignty

16. In response to the NOPR, the Southern Ute Indian Tribal Nation and Red Cedar Gathering Company (jointly referred to as the “Tribal Nation”) filed a comment in which it expressed concern with the state legislature and Commission’s lack of engagement with the Tribal Nation regarding the implementation of SB21-108 and these proposed rules. Specifically, the Tribal Nation raised the issue that, without proper engagement, the Commission could be at risk of exceeding its jurisdiction by attempting to regulate pipeline safety on Tribal Nation lands. This issue was not addressed in the Recommended Decision and as such, the Tribal Nation filed an exception.

a. Exception

17. In its exceptions filed November 28, 2023, the Tribal Nation expresses concern that by not expressly addressing their comments in the Recommended Decision, the ruling could be construed to overstep the Commission’s jurisdiction over the Tribal Nation’s land. The Tribal Nation requests that the Commission acknowledge that the NOPR does not expand the Commission’s jurisdiction over pipeline operations located wholly within the Tribal Nation’s reservation. The Tribal Nation also requested that the Commission work with the Tribal Nation “in a cooperative manner” to review the jurisdictional question.

18. The Tribal Nation additionally requested that the Commission stay the Recommended Decision to the extent it could be construed to apply to pipelines on the Tribal Nation’s land.

b. Findings and Conclusions

19. We grant the Tribal Nation’s exceptions to clearly and unequivocally confirm that the NOPR and the Proposed Rules do not expand Commission jurisdiction over sovereign nations. The Proposed Rules in no way expand Commission jurisdiction over Tribal Nation land. The Commission recognizes tribal sovereignty in the area of pipeline safety and remains committed to working cooperatively with the Tribal Nation.

20. Commission rules cannot impose or expand Commission jurisdiction over Tribal Nation lands. Therefore, there is no need to stay the implementation of the Proposed Rules, applicable to operators in Colorado, that significantly move reporting and fining abilities forward in the state. The Tribal Nation’s request to stay the application of the recommended decision as to Tribal Nation pipelines is denied as moot. Additionally, no rules or other changes are needed to offer ongoing conversations with Staff and federal counterparts if requested by the Tribal

Nation. The Commission welcomes the opportunity to coordinate with the Tribal Nation on any question or issue related to pipeline safety, as appropriate. However, through this Decision in granting the Tribal Nation's exceptions, we make it explicit that the Commission's updated rules are not expanding the Colorado Commission's jurisdiction to tribal lands, nor could they apply to or infringe on tribal sovereignty.

2. Rules 11001(a) and 11100(d) – Advanced Leak Detection Technology

21. The NOPR proposed rules defining “advanced leak detection technology” (ALDT) and requiring operators to submit all ALDT being used as part of annual reporting requirements. However, considering the PHMSA rulemaking that issued in May of 2023 during the pendency of this rulemaking and statements in August of 2023 that Commission Staff would pursue expansive state ALDT stakeholder processes, the Recommended Decision rejected the Commission's proposed rules regarding ALDT. The ALJ reasoned that ALDT technology is in an early developmental stage and, importantly, that the PHMSA ALDT rulemaking processes are currently ongoing.

22. The ALJ therefore expressed concern that PHMSA's final rules would differ significantly from the Commission's proposed rules which could result in inefficiencies wherein operators would be forced to comply with two sets of rules. Additionally, the ALJ noted that a future ALDT rulemaking by the Commission would have a more robust record developed as PHMSA's rulemaking progresses.

a. Exceptions and Responses

23. The Nygrens filed exceptions to the Recommended Decision arguing that it was improper to rely on the federal rulemaking and requesting that the Commission affirmatively set

a rulemaking beginning no later than February 15, 2024, to address the use of ALDT and timely repairs of leaks.

24. Industry-operator participants including Public Service, Springs Utilities, CNG, and Atmos Energy filed responses opposing the Nygrens' exceptions and supporting the ALJ's decision regarding ALDT. Industry-operators argued that the Commission should wait to promulgate ALDT rules until PHMSA completes its rulemaking process in which it will address and define ALDT before beginning its own rulemaking process which, industry argues, could result in conflicting state and federal rules.

b. Findings and Conclusions

25. We understand and acknowledge the concerns raised by the Nygrens, but we agree with the ALJ that given the recently-opened PHMSA rulemaking and state ALDT stakeholder processes that could be more expansive than considerations here, adopting a definition in these rules is premature. The annual leak reporting requirements contained in the Proposed Rules as modified in our rulings on exceptions provide important public safety information and benefits. Even without defining ALDT here, the rules make clear the expectation that regulated operators must provide robust information on the technology, processes, and safety implementations used to ensure safety, including through leak detection.

26. Importantly, the Commission is also currently engaged in stakeholder outreach regarding ALDT concurrent with PHMSA's rulemaking processes. Implementing rule updates through this proceeding to increase the information provided, and at the same time pursuing continued improvements to the rules in the near term after further public and stakeholder discussions, strikes the appropriate balance and allows us to best align future updates with federal changes as those processes develop. However, we disagree with the ALJ that a follow-on

rulemaking regarding ALDT will necessarily wait until the PHMSA processes are complete. While we decline to set a date certain as requested here, the Commission has full discretion to bring forward rule proposals as it deems appropriate following stakeholder outreach. The exceptions on this point are therefore denied with that clarification and given the understanding that operators will provide fulsome reporting going forward.

3. Rule 11008(e) – Incorporation by Reference

27. Rule 11008(e) incorporates by reference the National Pipeline Mapping System (NPMS) Operator Standards Manual, updated October 2017, to outline standards that will apply to the mapping efforts required by SB21-108. Public Service initially raised a concern about this incorporation in its comment¹¹ because it was concerned that the NPMS data requirements and mapping standards could create confusion or conflict with the Commission's rules. American Petroleum Institute of Colorado (API Colorado) also raised the issue in its comment and requested that the Commission issue guidance or a clarification about the extent to which the manual would be incorporated. The ALJ did not find either argument to be persuasive and retained the incorporation in the Recommended Decision.

a. Exceptions

28. Springs Utilities raises the issue of incorporation by reference of the NPMS Standards Manual in its exceptions. Springs Utilities argues that the inclusion of the manual creates confusion and possible conflict with the GIS data submission requirements of Rule 11000.

¹¹ Public Service's Initial Comment at p. 17, filed December 12, 2022.

b. Findings and Conclusion

29. We are unconvinced by the argument that the incorporation by reference of the NPMS Standards Manual creates any real possibility of confusion for industry-operators and therefore deny this exception. Springs Utilities' exception is unsupported and does not point to anything in the manual or Proposed Rules which would cause confusion. We find that the information and standards contained in the NPMS manual are important for operator reference and accountability. We find that any "possible conflict" with GIS scaling or other data submissions between the Proposed Rules and the manual are clearly governed by the more specific state rules.

4. Rule 11013(b) – Qualifications and Verifiable Credentials

30. Proposed Rule 11013(b) gives 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. In their comments, industry-operators raised concerns about how the rule would be interpreted because the operators may not have the ability to provide verifiable credentials on site. The ALJ found that it was more important to have "verifiable credentials" available on site rather than "qualifications." The ALJ therefore amended the rule to require verifiable credentials to be provided on site but allowed for operator qualifications to be provided at a different time and location if they could not be provided on site. Industry-operators raised issues with the new language in their exceptions.

a. Exceptions

31. In its exception Springs Utilities asserts that the rule should be amended to include language requiring verifiable credentials to be provided in the form of "government

issued identification,” and to include an additional sentence which would specify that provision of an office phone number and point of contact would ensure compliance with the rule.

32. CNG also filed an exception arguing that the rule was vague as it applies to smaller operators.¹² CNG proposed language which it argues creates greater flexibility for smaller operators by allowing personnel to provide government-issued identification and a phone number to inspectors in lieu of a license or certification.

b. Findings and Conclusions

33. We find that the rule, as modified by the Recommended Decision, allows for workforce flexibility, including for a person who does not have government issued identification but is otherwise authorized to be on the worksite. We find that limiting verifiable credentials to “government issued identification” as requested by the operators, limits the flexibility intended by this rule. We therefore deny the requests proposed.

34. However, we find that additional language can better clarify participant concerns regarding flexibility for smaller operators, as requested by CNG. Thus, Rule 11013(b) shall include the following language: “Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, including that the qualifications can be provided through an office phone number and point of contact.”

5. Rule 11100(c) – GIS Pipeline Reporting and Mapping

35. As proposed in the NOPR, Proposed Rule 11100(c) provides for the development of GIS data within the context of the Pipeline Safety Program. This data will be used to develop a risk-based inspection program, so that the Pipeline Safety Program can perform more targeted

¹² Colorado Natural Gas, Inc.’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at p. 3.

and efficient inspections throughout Colorado. Rule 11100(c)(II) specifies the data that industry-operators are required to submit to the Commission.

36. The Recommended Decision adopted Proposed Rule 11100(c)(II) but modified the rule to only require industry-operators to submit the required data to the extent that the data was available. This modification was based on the record which demonstrated that operators may not possess all the information specified in the rule.¹³

37. The Recommended Decision also requires operators to publish specific information regarding pipelines available through online maps. The Recommended Decision limited the required information to that proposed by Public Service and set the scale of the online map at 1:6,000 or greater based on the map proved by the Colorado Energy & Carbon Management Commission.¹⁴

a. Exceptions

38. The Nygrens argue that the language of proposed Rule 11100(c)(II) which states that the GIS data submitted by operators must include certain enumerated data attributes “to the extent available,” creates a loophole by which industry-operators may submit incomplete data or none.¹⁵ The Nygrens therefore argued that the Rule should be modified to remove the phrase. In response to the Nygrens, Public Service urges the Commission to keep the “to the extent available” language which the Company cited as a realistic “public interest compromise.”¹⁶ Springs Utilities also responded to the Nygrens and argued that the plain language of

¹³ Decision No. R23-0744, issued November 28, 2023, at ¶ 80.

¹⁴ Decision No. R23-0744, issued November 28, 2023, at ¶ 81.

¹⁵ Mark and Julie Nygren’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 3-6.

¹⁶ Public Service Company of Colorado’s Response to Exceptions to Recommended Decision No. R23-0744, filed December 8, 2023, at pp. 4-8.

§ 40-2-115(1)(d)(II)(C) requires submittal of current GIS systems but does not require that the submittal include each of the rule's enumerated data attributes.

39. Springs Utilities, CNG, Atmos Energy, and Black Hills each raised concerns regarding the 1:6,000 scale for the GIS data submission requirement and proposed changing the scale to 1:24,000. The industry-operators cited potential security threats such as terrorism as a reason for changing the scale to 1:24,000.¹⁷ Black Hills raised four key concerns regarding 1:6,000 mapping details being available to the public: (1) GIS data will be available through a publicly accessible online map viewer at scales equal to 1:6,000; (2) any person may view the data at scales less than 1:6,000 at the Commission's office; (3) local governments may share more specific data in-person than that which the Commission makes publicly-available; and (4) the confidentiality of GIS data is subject to the Colorado Open Records Act. CNG echoed the general sentiment of the industry-operator concerns and added that requiring a 1:24,000 scale would align the rule with the NPMS and PHMSA standards.

40. The Nygrens expressed support for the 1:6,000 mapping scale and emphasized that SB21-108 requires the Commission to use the same scale as used by the ECMC.¹⁸

b. Findings and Conclusions

41. We agree with the Nygrens that the 1:6,000 scale is consistent with the scale used by other state agencies, and is consistent with the intent of these rules to provide the agency with robust and detailed pipeline data.¹⁹ However, the Commission takes seriously the concerns raised by industry-operators regarding the potential security threat that could be created by

¹⁷ See Colorado Springs Utility's Exception filed November 28, 2023, at p. 2; Colorado Natural Gas's Exception filed November 28, 2023, at pp. 4-5; Black Hills Colorado Gas, Inc.'s Exception filed November 28, 2023, at p. 3.

¹⁸ Mark and Julie Nygren's Response to Exceptions filed December 8, 2023, at p. 11.

¹⁹ §40-2-115(d)(II)(C), C.R.S., requires the Commission to use the same scale as the Colorado Energy and Carbon Management Commission.

having too detailed pipeline data available to the public in some circumstances. We therefore continue to require industry-operators to submit GIS data to the Commission in a 1:6,000 scale or greater; however, operators may provide detailed mapping confidentially so long as they also provide a public version at a more appropriate scale. Therefore, and consistent with the Commission's Rules of Practice and Procedure, operators may provide a public and a confidential version or otherwise avail themselves of the Commission's long-standing confidentiality rules if they believe critical infrastructure would be too exposed in a public document. If confidential filings are made or otherwise sought, the public version should include GIS information and mapping, but can be at a more appropriate scale. Rule 11100(c)(III)(A) is therefore modified to clarify that it permits confidential filings consistent with this Decision.²⁰

42. We also maintain the language in Proposed Rule 11100(c)(II) "to the extent available." We are unpersuaded that this language creates a "loophole." It is in the public interest for the Commission to collect robust reporting information through rules of general applicability without the need for numerous and significant filings or waivers from the operators as expectations change on the information collected. GIS systems and operations differ. Inclusion of the language provides flexibility for smaller operators that may not yet have access to some of the enumerated information. At the same time, industry-operators cannot circumvent the rules' data submission requirements. In the event investigators determine that information was available but not reported, operators could be found in violation of the Commission's rules. We continue to expect robust reporting. For any excluded information, operators should be prepared to explain and support why the enumerated data attributes are unavailable.

²⁰ Subpart B of the Proposed Rule already includes confidentiality agreements that must be executed for additional GIS data sought by local governments from the Commission in any information it maintains.

6. Rules 11100(e)/11103(e) – Timing of Initial and Subsequent Leak Report and Disclosure of GIS Data Submittals

43. Proposed Rules 11100(e) and 11103(a)(VI) of the Recommended Decision require operators to submit annual leak reports and GIS data, respectively, on or before June 15, 2024, and March 15 of each year thereafter.

a. Exceptions

44. Industry-operators filed exceptions to the filing deadlines arguing that they were unworkable given new data submission requirements. Industry-operators asserted that reporting for 2023-2024 was too difficult because operators have not had time to collect and maintain information required under the recommended rule, and that operators should be given a reasonable opportunity to develop, validate, and cybersecurity test their GIS data files. Industry-operators also argued that requiring a mid-month filing (March 15) was unworkable because it overlapped with the PHMSA reporting requirement deadline.

45. Springs Utilities specifically filed an exception regarding Proposed Rule 11103(a)(VI) arguing that instead of a June 15, 2024 deadline, operators should be given a reasonable opportunity to develop, validate, and cybersecurity test their GIS data files. Springs Utilities proposed March 2025 as an alternative submittal date for its GIS Data.

46. The Nygrens, in their response, state they agree that a March 2025 filing deadline is acceptable.

b. Findings and Conclusions

47. We grant the industry-operator exceptions regarding the timing of leak report and GIS data submittals, in part. Because rules adopted through this proceeding are likely to be effective in early 2024, we agree that the current filing deadline of June 15, 2024, may not be

workable for industry-operators who are adjusting to new filing requirements. Given the proximity of the filing deadline to the promulgation of these rules, we find that moving the deadline to 2025 will give industry-operators sufficient time to collect the data required by the Recommended Decision. We emphasize that with this timing implemented, industry-operators should have no excuse to exclude all available information required, and we fully expect fulsome reports that comport with the robust data requirements of the adopted rules.

48. We therefore modify Rule 11100(e) regarding leak reporting and corresponding Rule 11103 filing deadlines before the Commission regarding leak detection technologies and GIS data to begin on March 31, 2025, and to occur on March 31 every year thereafter. We recognize that PHMSA is currently engaged in a rulemaking process, however we find that the March 31, 2025 deadline gives industry-operators sufficient notice of what information they are required to provide and will prepare them to comply with the Commission’s rules as well as PHMSA’s requirements.²¹ Commission timelines for providing disclosure of data annually is updated to correspond with the revised timeframe, and included as June 1 of each year starting in 2025.²²

7. Rule 11100(e) – Annual Leak Reporting and Substantive Requirements

49. The Recommended Decision adopted language proposed by the Nygrens which requires industry-operators operators in Colorado to submit robust reports that provide an annual tally of: (A) the total number of known leaks; (B) the total number of hazardous leaks and (C)

²¹ For clarity, and as revised in the rule updates, PHMSA form filing deadlines remain on required March 15 annual timelines, included in Proposed Rule 11103(a); however, GIS data and listed leak detection technology information shall be provided to the Commission under modified Rule 11103, as indicated in the revised paragraph (b) as updated to begin March 31, 2025.

²² Because the Commission revises the proposed rules to make clear that confidential information could be provided in annual operator filings, receiving reports by March 31 with public disclosures by June 1 each year best ensures that Staff can provide appropriate versions of reported information publicly. See revised Proposed Rule 11100(f).

non-hazardous leaks eliminated or repaired; (D) the total number of leaks scheduled for repair in the next year; (E) the total number of leaks scheduled for repair in the next year; (F) the approximate date and location of each leak detection by the operator; (G) the type of pipe and facility that was leaking; (H) the methods used to detect each leak; (I) the volume of each leak; (J) the identified cause of the leak; and (K) the estimated market value of lost gas. The Recommended Decision declined to go further to include specific ALDT definition language, but opined that the scope of the reporting requirements established here were appropriate in the interim before federal rules on advanced leak detection technology conclude.²³

a. Exceptions

50. COGA, Public Service, Springs Utilities, and Black Hills filed exceptions in which they argued that the annual leak reporting requirements should be delayed on the state level until PHMSA establishes federal standards. The exceptions contend that the proposed requirements may not be compatible with forthcoming PHMSA federal standards.²⁴

51. COGA, Public Service, CNG, and Springs Utilities argue that the Commission must ensure that state rules are compatible with PHMSA federal regulations, which is impossible until the federal rulemaking is concluded and because: (1) annual leak reporting in the rule for “hazardous and non-hazardous leaks” is not defined; (2) reporting from March 2023 through March 2024 is impossible because operators have not had time to collect and maintain information required under the recommended rule; and (3) reporting from March 2023 is “likely retroactive” with respect to reporting on transactions that have already passed.

²³ Decision No. R23-0744, issued November 28, 2023, at ¶ 21.

²⁴ See Black Hills’ Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 6-7; Colorado Oil & Gas Association’s Exceptions to Recommended Decision No. R23-0744, filed November 29, 2023, at pp. 2-4; Colorado Springs Utilities’ Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at p. 3-4; Public Service’s Exceptions at pp. 6-11.

52. COGA also requests a clarification that, because the ALJ declined to adopt a definition of Advanced Leak Detection Technology in Rule 11100(d), the rule should instead require reporting on the definition used by PHMSA at the time of the report. Springs Utilities also points out this error in cross-reference.

53. Springs Utilities also argues that implementation of annual leak reporting be deferred until a standardized reporting form is developed to assist with uniform information. The utility argues that deferring to adopt rules until federal rules are established is preferred to the Recommended Decision's suggested waiver option for 2024 reporting that "opens the door for non-uniform application of the leak detection reporting requirement" in the coming year as federal rules develop.

54. Springs Utilities agrees with COGA that the reporting for March 2024 would be a burdensome and retroactive requirement. It instead requests that the applicable rules be prospective in collection and reporting, such that first reports would be due in March 2026 based on 2025 data so that operators can develop and implement data collection and procedures. Public Service similarly requests that initial reports not be filed until March 2025 at the earliest.

55. Springs Utilities and Public Service²⁵ also argue that volume and market data is problematic, claiming measurement of leaks would require unnecessary excavations, and that market value data is unrelated to pipeline safety. In sum, the utility recommends that leak detection reporting be "[held] off" in this proceeding.

56. If the Commission is not satisfied with removing the annual reporting entirely, Public Service, Atmos Energy, and CNG propose some revisions, including modifying portions

²⁵ Public Service Exceptions, at pp. 11-13.

of the rules to remove ambiguity; removing subparts (I) and (K),²⁶ and adding clarity to the rules, including an initial reporting to be due in March 2025 as noted above.²⁷

57. In their Response, the Nygrens proposed a variety of modifications to the leak reporting requirements intended to make the requirements more workable for industry-operators.²⁸

b. Findings and Conclusions

58. Consistent with the discussion below, we grant, in part, and deny, in part, the exceptions regarding the substantive annual leak reporting requirements. We find that certain modifications are required to clarify the requirements and make them workable for industry-operators. Specifically, we grant the exceptions requesting that the Commission remove subsection 11100(e)(I)(K). This subsection was proposed to require operators to include the market value of gas lost due to leaks. We agree with industry-operators that this subsection relates to financial ramifications and is not pertinent to the other requirements contained in subsection (e).

59. We deny striking any other requirement, but make modifications to the rules consistent with those outlined below in Rule 11100(e)(I)

- (a) – Clarify that operators are to report the total number of pending leaks, excluding those repaired. We find that the Commission needs to monitor pending leaks. At this time, we will not require information on leaks that are quickly and appropriately resolved.
- (b) – Clarify that the definition used for “hazardous leaks” is the definition used by DOT F7100.1-1 reporting instructions. We are unconvinced that this is unclear to the industry and these reporting instructions are incorporated by

²⁶ Colorado Natural Gas, Inc.’s Exceptions to Recommended Decision No. R23-0744, filed on November 28, 2023, at p. 2; Atmos Energy’s Exceptions to Recommended Decision No. R23-0744, filed November 28, 2023, at pp. 2-5.

²⁷ Public Service Exceptions, at pp. 15-20.

²⁸ See Nygren’s Response to Exceptions, Ex. 1.

reference, but including the reference within this rule may provide additional clarification.

- (d) – Clarify that operators’ reporting of the number of scheduled leak repairs does not prevent operators from prioritizing newly identified leaks. We adopt Public Service's clarification, which ensures operators do not think they are prevented from addressing more serious safety situations simply because of previously-filed reports.
- (e) – Clarify that the approximate date and time of *identified* leaks which were identified through leak survey and pending as of January 1 are required to be reported. We find that this clarification will provide necessary certainty for industry-operators. This clarification aligns the requirement with existing leak reporting processes and narrows the requirement to make it workable.
- (f) – Clarify that the report must include the material type of pipe that was leaking for *repaired leaks*. We find that it is important for the Commission to be informed regarding the material type of pipe. However, we agree with Public Service that this language makes the requirement clearer because the type of pipe would be unknown if the leak was “pending.”
- (g) – Clarify that the report must include the *leak survey* method used to detect each pending leak. We find that this added information will help investigators better understand how information was collected and identified for pending leaks, which may need continued follow up from the Commission’s pipeline safety program team.
- (h) – Continue to require the approximate date and location of each leak caused by third-party excavation, but remove “or other causes not attributable to the normal operation or inspection practices of the operator.” We agree with Public Service that normal operations and inspections do not cause leaks and therefore this language is not necessary. Additionally, we find that if more information is required regarding the cause of the leak, subsection (J), which requires reporting on leaks due to “incorrect operations,” should provide the relevant information.
- (i) – Clarify that the leak volume is to be measured in millions of cubic feet rather than carbon dioxide equivalents. We find that although CO2 considerations in utility and other regulations are important, the measurement above for millions of cubic feet provides a clearer and more direct reporting standard for purposes of these rules at this time.
- (j) – Add “incorrect operations” to the list of identifiable causes which operators must report on; and clarify that reporting of identifiable causes is required for repaired leaks. We agree with both the Nygrens and Public Service that this is a necessary change to bring the rule into alignment with the Department of Transportation Gas Distribution Annual Reporting requirements.

60. We deny all exceptions related to delaying the implementation of these rules until federal rules are fully adopted. We find that the required reporting information is clear and not in conflict with current federal requirements. Under federal statute, states may adopt additional and even more stringent safety measures if they are not incompatible with federal requirements.²⁹ Regarding any inconsistencies with the ongoing updates in federal reporting rules, the Commission's rules as recommended and revised above are in no way *incompatible* with federal reporting. The Commission will certainly be committed to making updates once federal rules are finalized, but the Commission is not required to halt all reporting efforts while federal requirements are in flux.

61. By expanding leak reporting requirements, the Commission is complying with and promoting the intent of SB21-108 to strengthen Colorado's laws governing gas pipeline safety. SB21-108 explicitly states that the pace of expansion of natural gas infrastructure has "outstripped" the Commission's ability to keep up with vital safety inspections. This statutory imperative – aimed at promoting and protecting public health and safety – necessarily requires the Commission to act quickly and affirmatively. The arguments requesting that the Commission delay this rulemaking until the federal process is completed directly contravene the state statutory directives and neglect the need for rapid expansion of pipeline safety requirements.

62. We also deny exceptions asking for delayed implementation until a standardized reporting form is developed. Commission Staff may develop a form as a courtesy to help industry-operators comply with the reporting requirements, but industry-operators are expected to submit a robust reporting document regardless of the existence of a standard form.

²⁹ 49 U.S.C. § 60104(c). See also *Regular Route Common Carrier Conf. of Colorado Motor Carriers Ass'n v. Pub. Utilities Comm'n of State of Colo.*, 761 P.2d 737, 743 (Colo. 1988) ("Rules adopted pursuant to a statutory rulemaking proceeding are presumed valid...").

8. Rules 11103(a)(I) and (II) and (IV) – Submission of Annual Reports

63. Rule 11103(a)(I) requires operators to file an annual report with the Commission for the preceding calendar year. Rule 11103(a)(II) requires operators of distribution pipeline systems to file annual reports with PHMSA using PHMSA's 7100.1-1 reporting form. Rule 11103(a)(IV) requires operators of specified gathering systems to file annual reports with PHMSA using PHMSA's F 7100.2-1 reporting form.

a. Exceptions

64. UCA, in its exceptions, argues that Rules are vague regarding which reports are required to be filed and when they are required to be filed, and that Rule 111003(a)(I) is specifically unclear because it does not state what type of annual report filings are to be made or the content of such filings. UCA goes on to argue that Proposed Rules 11103(a)(II) and (IV) should be modified to require industry-operators to file PHMSA's federal reporting forms with the Commission, in addition to PHMSA. Specifically, UCA requests that the Commission open a repository proceeding specifically for the filing of such reports on an annual basis.

65. CNG agrees with UCA that the Rules are unclear regarding when the Commission reports are to be filed and when the PHMSA reports are to be filed. However, CNG disagrees with UCA regarding its proposed modification and states that neither the existing rule nor the proposed rule require that PHMSA reporting files be filed with the Commission.

66. Public Service argues that UCA's proposed modification will unnecessarily burden the Commission because it will be required to open annual repository dockets and will additionally burden the Colorado operators for redundant future annual reporting requirements with this Commission at the same time annual reports are filed with PHMSA.

b. Findings and Conclusions

67. We find unpersuasive UCA's arguments regarding filing PHMSA annual reports with the Commission. We agree with Public Service that duplicative reporting will unnecessarily burden the Commission and its staff. PHMSA Annual Reports are publicly accessible on PHMSA's website which renders UCA's request unnecessary because a duplicate filing requirement would not accomplish UCA's goals of making the reports readily accessible.

68. We also find that Rule 11103(a)(I) should be removed as it is inconsistent with the Commission's electronic filing system.

9. Typographic Corrections

69. The Recommended Decision modified Proposed Rule 11103(a)(IV) to read: "Each operator of a transmission or Type A or Type B or Type C gathering system (i.e., ~~excepting~~ ~~accepting~~ Type R as defined in 49 CFR 191.3~~rural-gathering~~), shall submit the aAnnual rReport (PHMSA F 7100.2-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>."

70. No participant has filed an exception to the modification made by the Recommended Decision. However, we find that the modification is unclear and should be modified to make clear that Type R gathering lines are required to submit annual reports to PHMSA. This is required under federal regulations which were promulgated shortly after the NOPR was issued in June 2022.³⁰ We revise to require that Type A, B, C, *and* R gathering lines be included in the annual reporting requirement, consistent with federal directives. The federal standards also require that Type R reporting be filed using a distinct form. Therefore, the Rule should include both type 7100.2-1 and 2.3 form references for clarity. These revisions remove

³⁰ 49 CFR 191.17

the ambiguity created by the Recommended Decision’s modification and align the rules with the federal requirements.

71. We adopt the following revised language, consistent with 49 CFR 191.17

(IV) each operator of a transmission or ~~Type A or Type B or Type C~~ gathering line (i.e., ~~accepting Type R as defined in 49 CFR 191.3 Types A, B, C, and R~~), shall submit the Annual Report (PHMSA F 7100.2-1 ~~or PHMSA F 7100.2-3, as appropriate~~) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and

72. In addition, Proposed Rule 11103, as modified by the Recommended Decision, makes a cross reference to Rule 11100(d) regarding submission of ALDT being used by operators. However, Rule 11100(d) no longer relates to ALDT. We therefore modify to cross reference 11100(e) for clarity. Rule 11100(e) lists the data that industry-operators are required to submit in their annual leak reports. Under the rule, operators are required to include the method used to detect each leak. This is therefore an appropriate cross reference for Rule 11103 because advanced leak detection technology may be a method used by operators to detect leaks.

10. Conclusion and Stakeholder Process Direction

73. As modified by our determinations on exceptions through this Decision, we otherwise adopt the Recommended Decision and the Proposed Rules. Importantly, these rules significantly increase the Commission’s fining threshold calculations in line with increased state and federal amounts. In addition, these rules move the Commission forward by enhancing reporting requirements and continuing to impart the expectation on industry-operators to collect and provide necessary data.

74. As we move forward with implementation of the Proposed Rules as revised here, we recognize that ongoing technological and process updates will continue to be needed. Consistent with our emphasis in 2023, Staff shall continue stakeholder engagement with the aim

of bringing forward additional proposed rules. These rules will address ALDT requirements and definitions, and we encourage further improvements to the rules that were significantly updated in 2021, and again through this proceeding. We also encourage staff and public stakeholders to explore ongoing reporting improvements, which include encouraging self-reporting of issues with reduced or removed fining amounts to better maintain safety updates. Stakeholder processes on the state level should continue to consider federal updates that are ongoing. However, we reiterate that this Commission will determine an appropriate time to move forward with further improvements to the Gas Pipeline Safety Rules, which may be before federal processes are fully complete.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R23-0744, filed by the Southern Ute Indian Tribal Nation and Red Cedar Gathering Company (Tribal Nation) on November 28, 2023, are granted, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R23-0744, filed by Public Service Company of Colorado (Public Service) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R23-0744, filed by Mark and Julie Nygren (the Nygrens) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R23-0744, filed by Black Hills Colorado Gas Inc. (Black Hills) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

5. The exceptions to Recommended Decision No. R23-0744, filed by the Office of the Utility Consumer Advocate (UCA) on November 27, 2023, are granted in part, and denied in part, consistent with the discussion above.

6. The exceptions to Recommended Decision No. R23-0744, filed by Atmos Energy Corporation (Atmos Energy) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

7. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Springs Utility (Springs Utilities) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

8. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Natural Gas, Inc. (CNG) on November 28, 2023, are granted in part, and denied in part, consistent with the discussion above.

9. The exceptions to Recommended Decision No. R23-0744, filed by Colorado Oil & Gas Association (COGA) on November 29, 2023, are granted in part, and denied in part, consistent with the discussion above.

10. The adopted rules 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

11. The Commission adopts the Rules Regulating Pipeline Operators And Gas Pipeline Safety, 4 *Code Of Colorado Regulations* 723-11, recommended by the Administrative Law Judge in Recommended Decision No. R23-0744, in their entirety, except for the modifications identified in this Decision and shown in redline in Attachment A, and in final format in Attachment B to this Decision.

12. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State.

13. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

14. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 17, 2024.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11

RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in ~~intrastate~~interstate commerce, as defined in 49 C.F.R. § 191.3.

* * *

[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and eCommission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- ~~(k)~~ “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- ~~(l)~~ “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- ~~(m)~~ “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- ~~(n)~~ “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- ~~(o)~~ “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- ~~(p)~~ “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- ~~(q)~~ “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- ~~(r)~~ “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- ~~(s)~~ “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (~~tr~~) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (~~us~~) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (~~vt~~) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (~~wu~~) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (~~xv~~) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (~~yw~~) “Municipality” means a city, town, or village in the state of Colorado.
- (~~zx~~) “NRC” means the National Response Center of the United States Coast Guard.
- (~~aa~~) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (~~bb~~) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (~~ccaa~~) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (~~ddbb~~) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (~~eeee~~) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (~~ffdd~~) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (~~ggee~~) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (~~hhff~~) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (~~iigg~~) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- ~~(jjh)~~ “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- ~~(kk)~~ “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- ~~(llj)~~ “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- ~~(mmk)~~ “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- ~~(nn)~~ “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- ~~(oom)~~ “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- ~~(pp)~~ “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- ~~(qqe)~~ “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- ~~(rre)~~ “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(sse)~~ “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(ttr)~~ “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(uus)~~ “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- ~~(vvt)~~ “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
- (I) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
- (III) an unsafe ignition of intended gas release in an area accessible to the public;
- (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
- (V) any other hazardous situation that results in an immediate or imminent hazard to the public.

~~(ww)~~ “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.

~~(xxuu)~~ “Roadway” means a main public artery, highway, or interstate highway.

~~(yyvv)~~ “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.

~~(zzww)~~ “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).

~~(xx)~~ “Rural gathering pipeline” means any gathering pipeline located in a Class 1 location and defined in 49 C.F.R. § 192.5 or a Type B gathering pipeline located in a Class 2 area that the operator determines does not meet the Area 2 dwelling density definition in 49 C.F.R. § 192.8.

~~(aaayy)~~ “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:

- (I) a low-pressure gas distribution system;
- (II) is comprised wholly of above-ground piping/appurtenances; and
- (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.

~~(bbbzz)~~ “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.

~~(cccaaa)~~ “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.

~~(dddbbb)~~ “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

~~(eeeeee)~~ “UNCC/Colorado 811” means the Utility Notification Center of Colorado.

~~(fff)~~ “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. ~~1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (fe) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

* * *

[indicates omission of unaffected rules]

11010. Interpretation.

* * *

[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefor~~e~~, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

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[indicates omission of unaffected rules]

11012. Waiver – Emergency.

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[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.

(b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, such as an office phone number and point of contact.

(c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (de) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
- (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.
- (ee) After an inspection, the PSP Chief will pursue one of the following:
- (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.
- (fe) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.
- (gf) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

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[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet ~~A~~annual ~~R~~report submittal deadlines will result in issuance in a ~~W~~warning ~~N~~notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a ~~W~~warning ~~N~~notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for transmission, distribution, and gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as transmission, distribution, or gathering;
 - (E) for transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

(III) Disclosure of GIS data.

- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office, with the exception of map viewer data filed confidentially. Any data provided confidentially must be filed with a publicly accessible version at a scale greater than or equal to 1:24000.
- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.

(de) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

(e) Annual leak report.

- (I) Beginning March 31, 2025 and annually on March 31 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known pending leaks, excluding those repaired in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks, as defined by DOT F7100.1-1 reporting instructions, eliminated or repaired during the previous one-year period ending December 31st;

- (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted;
 - (E) the approximate date and location of each identified leak from the gas pipeline system detected by the operator through leak survey and pending as of January 1 of the reporting calendar year;
 - (F) for repaired leaks, the material type of the pipe and facility that was leaking;
 - (G) the leak survey method(s) used to detect each pending leak;
 - (H) the approximate date and location of each leak caused by third-party excavation;
 - (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation; and
 - (J) whether the identified cause of each repaired leak was from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operations; or other causes.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operation; or other causes.
- (III) The Commission must use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
- (IV) The data provided in this section, including the total number of leaks scheduled for repair under subsection 11100(e)(I)(D), does not prevent the operator from prioritizing its repair schedule based on new information and newly identified leaks.
- (f) Disclosure of leak detection data.
- (I) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and ~~of~~ locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with ~~sub~~paragraph 1204(a)(~~III~~) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

(a) On or before March 15 of each year:

~~(Ia) On or before March 15 of each year, each operator shall file with the Commission an annual report for the preceding calendar year. The reports shall be filed in accordance with subparagraph 1204(a)(III) of the Commission’s Rules of Practice and Procedure.~~

~~(Ib) Each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the aAnnual rReport (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>;~~

~~(Ic) Each operator of an MMO/LPG system shall submit the MMO/LPGSmall Operator aAnnual rReport (PSP SOAR) to the Commission through its E-Filings System in the repository proceeding opened for annual reports;~~

~~(Id) Each operator of a transmission or Type A or Type B gathering system (i.e., excepting rural gathering Types A, B, C, and R), shall submit the aAnnual rReport (PHMSA F 7100.2-1 or PHMSA F7100.2-3, as appropriate) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and;~~

~~(Ie) Each operator of a LNG facility shall submit the aAnnual rReport (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.~~

(b) On or before March 31, 2025, and March 31 of each year thereafter:

~~(I) each operator shall submit to the Commission GIS data according to paragraph 11100(c);~~

~~(II) each operator shall submit to the Commission a list of leak detection technology, including narrative of any advanced technologies, being used and their descriptions according to paragraph 11100(e).~~

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) ~~All~~An operator, including operators of MMO/LPG and rural gathering pipeline systems, must be a ~~members~~Tier 1 Member of at the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.
- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.
- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and ~~rural~~ gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- ~~(e)~~ Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- ~~(f)~~ The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or

- (III) were found to represent an excessive risk to the operator's pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

* * *

[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.
- (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
- (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.

- (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.

(c) Standards applied to SSAG systems.

- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:
 - (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
- (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
- (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.

(d) Standards applied to LPG systems.

- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
- (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.

(e) Standards applied to Major MMO/LPG systems.

- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
- (II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).

(f) Standards applied to Minor MMO/LPG systems.

- (I) ~~Except as provided in subparagraph 11203(h)(VII),~~ Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).

(g) Standards applied to threshold MMO/LPG systems.

- (I) ~~Except as provided in subparagraph 11203(h)(VII),~~ Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.
 - (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:
 - (A) number of affected persons;
 - (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
 - (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
 - (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
 - (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
 - (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

* * *

[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine **the** impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
- (I) civil penalties shall not exceed **\$2400,000** per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed **\$24,000,000**.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
- (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i ,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an Incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

B = \$5,000 base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:
- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
 - (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

$B = \$5,000$ base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (C) Rule 11201 violations:
- (i) the penalty is assessed per applicable paragraph of rule 11201;
 - (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where:

$B = \$5,000$ base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (D) Missing or incomplete records:
- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
 - (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
 - (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:

~~(1a-)~~ Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;

~~(2b-)~~ Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and

~~(3e.)~~ Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety impact	1
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator’s documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
 - (l) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted

- liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
- (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
 - (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

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[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief may issue a ~~W~~arning ~~N~~otice to an operator. The ~~W~~arning ~~N~~otice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:

- (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;
 - (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule [1150841507](#), resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant

information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).

- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.
- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
 - (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

* * *

[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP ~~S~~staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.

- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11 RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in intrastate commerce, as defined in 49 C.F.R. § 191.3.

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[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and Commission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- (k) “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- (l) “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- (m) “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- (n) “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- (o) “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- (p) “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- (q) “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- (r) “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- (s) “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (t) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (u) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (v) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (w) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (x) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (y) “Municipality” means a city, town, or village in the state of Colorado.
- (z) “NRC” means the National Response Center of the United States Coast Guard.
- (aa) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (bb) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (cc) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (dd) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (ee) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (ff) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (gg) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (hh) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (ii) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- (jj) “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- (kk) “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- (ll) “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- (mm) “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- (nn) “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- (oo) “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- (pp) “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- (qq) “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- (rr) “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (ss) “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (tt) “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (uu) “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- (vv) “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
 - (l) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
 - (III) an unsafe ignition of intended gas release in an area accessible to the public;
 - (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
 - (V) any other hazardous situation that results in an immediate or imminent hazard to the public.
- (ww) “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.
- (xx) “Roadway” means a main public artery, highway, or interstate highway.
- (yy) “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.
- (zz) “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).
- (aaa) “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:
- (I) a low-pressure gas distribution system;
 - (II) is comprised wholly of above-ground piping/appurtenances; and
 - (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.
- (bbb) “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.
- (ccc) “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.
- (ddd) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.
- (eee) “UNCC/Colorado 811” means the Utility Notification Center of Colorado.
- (fff) “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (f) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

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[indicates omission of unaffected rules]

11010. Interpretation.

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[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefore, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

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[indicates omission of unaffected rules]

11012. Waiver – Emergency.

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[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.
- (b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, such as an office phone number and point of contact.
- (c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (d) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
 - (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.
- (e) After an inspection, the PSP Chief will pursue one of the following:
 - (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.
- (f) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.
- (g) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

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[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet annual report submittal deadlines will result in issuance in a warning notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a warning notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for transmission, distribution, and gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as transmission, distribution, or gathering;
 - (E) for transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

- (III) Disclosure of GIS data.
- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office, with the exception of map viewer data filed confidentially. Any data provided confidentially must be filed with a publicly accessible version at a scale greater than or equal to 1:24000.
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
 - (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.
- (d) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.
- (e) Annual leak report.
- (I) Beginning March 31, 2025 and annually on March 31 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known pending leaks, excluding those repaired in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks, as defined by DOT F7100.1-1 reporting instructions, eliminated or repaired during the previous one-year period ending December 31st;

- (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted;
 - (E) the approximate date and location of each identified leak from the gas pipeline system detected by the operator through leak survey and pending as of January 1 of the reporting calendar year;
 - (F) for repaired leaks, the material type of the pipe and facility that was leaking;
 - (G) the leak survey method(s) used to detect each pending leak;
 - (H) the approximate date and location of each leak caused by third-party excavation;
 - (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation; and
 - (J) whether the identified cause of each repaired leak was from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operations; or other causes.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operation; or other causes.
 - (III) The Commission must use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
 - (IV) The data provided in this section, including the total number of leaks scheduled for repair under subsection 11100(e)(I)(D), does not prevent the operator from prioritizing its repair schedule based on new information and newly identified leaks.
- (f) Disclosure of leak detection data.
- (I) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with paragraph 1204(a) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

- (a) On or before March 15 of each year:

- (I) each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the annual report (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>;
- (II) each operator of an MMO/LPG system shall submit the MMO/LPG annual report to the Commission through its E-Filings System in the repository proceeding opened for annual reports;
- (III) each operator of a transmission or gathering system (i.e., Types A, B, C, and R), shall submit the annual report (PHMSA F 7100.2-1 or PHMSA F7100.2-3, as appropriate) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and
- (IV) each operator of a LNG facility shall submit the annual report (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.

- (b) On or before March 31, 2025, and March 31 of each year thereafter:

- (I) each operator shall submit to the Commission GIS data according to paragraph 11100(c);
- (II) each operator shall submit to the Commission a list of leak detection technology, including narrative of any advanced technologies, being used and their descriptions according to paragraph 11100(e).

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) All operators must be members of the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.

- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.
- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- (e) Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- (f) The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or
 - (III) were found to represent an excessive risk to the operator's pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

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[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.
 - (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
 - (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.
 - (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.
- (c) Standards applied to SSAG systems.

- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:
 - (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
 - (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
 - (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.
- (d) Standards applied to LPG systems.
- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
 - (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.
- (e) Standards applied to Major MMO/LPG systems.
- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
 - (II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (f) Standards applied to Minor MMO/LPG systems.
- (I) Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (g) Standards applied to threshold MMO/LPG systems.
- (I) Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.

- (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:
 - (A) number of affected persons;
 - (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
 - (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
- (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
- (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
- (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

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[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine the impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
- (I) civil penalties shall not exceed \$200,000 per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$2,000,000.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
- (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$$B \times F_{\text{impact}}, \text{ where}$$

$$B = \$5,000 \text{ base penalty per instance of violation}$$

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:

- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(C) Rule 11201 violations:

- (i) the penalty is assessed per applicable paragraph of rule 11201;
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where:

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(D) Missing or incomplete records:

- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
- (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
- (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:
 - (1) Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;
 - (2) Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and
 - (3) Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety	1

impact	
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator's documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
- (I) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
- (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
- (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final

written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;

- (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
- (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

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[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief may issue a warning notice to an operator. The warning notice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:
 - (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;

- (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule 11508, resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).
- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.

- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
- (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

* * *

[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.
- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

Decision No. C24-0172

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 DECISION GRANTING, IN PART, AND DENYING, IN PART, APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C24-0058 AND ADOPTING RULES

Mailed Date: March 19, 2024

Adopted Date: March 13, 2024

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the Applications for Rehearing, Reargument, or Reconsideration of Decision No. C24-0058 (RRR) filed pursuant to § 40-6-114, C.R.S., on February 20, 2024, by rulemaking participants Public Service Company of Colorado (Public Service) and Colorado Springs Utilities (Springs Utilities).

2. As discussed below, we maintain reporting expectations for actual or estimated volume of any reported gas leak, but agree to modify the rule to permit a narrative explaining any estimated volumetric calculations, or for the operator to provide its associated reasoning if no estimate could be made with sufficient accuracy. We also continue to recognize the Commission's need to provide transparency and reporting as appropriate to sister agencies, but clarify that appropriate Commission rules aimed at addressing state emission goals and other agency rules, including those from the Air Pollution Control Division, will necessarily spearhead emission reduction targets and related considerations.

3. The revised adopted rules are provided, in their entirety, in legislative format (*i.e.*, strikeout/underline) as Attachment A to this Decision, and in final format as Attachment B to this Decision. These attachments are publicly 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

B. Background

4. On November 9, 2022, the Commission commenced this rulemaking by issuing a Notice of Proposed Rulemaking (NOPR)¹, which established deadlines for comments and

¹ Decision No. C22-0701.

response comments, scheduled a public comment hearing to be held on January 19, 2023, and referred this proceeding to an Administrative Law Judge (ALJ).

5. After receiving initial and responsive comments from rulemaking participants, ALJ Farley held public comment hearings and fielded multiple rounds of public comments. After robust public participation, the ALJ issued his Recommended Decision on November 8, 2023.²

6. Between November 27 and November 29, 2023, nine different rulemaking participants³ each filed exceptions to the Recommended Decision. Several parties also submitted responses to the filed exceptions.

7. On January 29, 2024, after reviewing the record and considering the many exceptions and responses to the Recommended Decision, the Commission issued its decision addressing the exceptions in Decision No. C24-0058 (Exceptions Decision). Through the rules proposed for adoption modifying the Commission's Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code of Colorado Regulations* 723-11 (Gas Pipeline Safety Rules) through the Recommended Decision, as modified and further explained in the Exceptions Decision, the Commission's rules updated in this proceeding further increase transparency regarding pipeline leak and annual reporting, in addition to doubling the Commission's fining authority thresholds, consistent with Senate Bill (SB) 21-108 and updated federal regulations. In addition, the Commission directed further stakeholder outreach to continue improvements to the Commission's rules and processes, in particular with regard to advanced leak detection.⁴

² Decision No. R23-0744, issued November 8, 2023 (Recommended Decision). The Recommended Decision provides procedural and related background information regarding this rulemaking.

³ The participants filing exceptions included: Public Service Company of Colorado, the Colorado Oil & Gas Association, Colorado Springs, Mark and Julie Nygren, Colorado National Gas, Inc., Black Hills Colorado Gas, Inc., d/b/a Black Hills Energy, Atmos Energy Corporation, the Office of Utility Consumer Advocate, and the Southern Ute Indian Tribal Nation with Red Cedar Gathering Company.

⁴ Exceptions Decision at ¶¶4, 25-26, and 74.

8. Public Service and Springs Utilities are the sole participants to file applications for RRR of the Commission's Exceptions Decision. The two operators raise similar requests regarding proposed rules concerning leak volume estimations in addition to alleged uncertainty with respect to correlation between gas pipeline safety reporting requirements and emission reductions considerations.

C. Volumetric Reporting Requirements

1. Arguments Raised in Rehearing, Reargument, or Reconsideration

9. In their Applications for RRR, Public Service and Springs Utilities assert that accurately measuring the volume of a gas leak quantitatively is difficult given current technologies and industry-wide practices. Because of this difficulty, the two applicants argue that the Commission should strike proposed rules that require owner operators to annually report the volume of each leak, measured in millions of cubic feet.

10. Specifically, Public Service claims that operators cannot accurately determine leak volume because of the difficulties in assessing both the duration of a leak (*i.e.*, when the leak started) and the rate at which a leak occurs.⁵ Public Service asserts that measuring the "duration" of a leak is problematic because operators generally do not know when a leak began with sufficient certainty to assess how long the pipeline has been leaking.⁶ Public Service states that it only surveys approximately 33 percent of its pipeline system annually and that its surveys are not designed to identify when a leak started, to quantify leak rates, or to determine the duration of a leak.⁷ Public Service also notes that even if it could determine the duration of a leak, it still would not be able to accurately measure the volume of gas lost because leaks may not have linear rates

⁵ Public Service Application for RRR at 3.

⁶ *Id.*

⁷ *Id.* at 3-4.

of progression. Public Service therefore argues that it is impossible for it to comply with proposed Rule 11100(e)(I)(I) and argues that the rule should be stricken to avoid protracted disputes regarding enforcement actions against operators who do not comply with the Rule.⁸ Springs Utilities similarly argues that the Commission should strike the volumetric reporting requirements because any quantitative leak volume reporting would be a rough estimate at best.⁹ It states that volumetric measuring technologies and calculations lack accuracy and emphasizes that knowing the volume of a leak is not as important as knowing the location and cause of the leak.¹⁰

2. Findings and Conclusions

11. Consistent with the discussion below, we grant, in part, and deny, in part the RRR applications regarding the volumetric reporting requirements of the proposed rules. We recognize the operators' concerns regarding potentially inaccurate leak volume estimates and understand that providing accurate and useful estimates may be difficult in certain circumstances. However, we disagree with the operators' claim that these current uncertainties require the removal of reporting estimates and related information altogether. Estimated information, for example, may be useful in assisting investigators in determining the magnitude of a leak in addition to potentially helping the Commission make informed decisions regarding future use of advanced leak detection technologies. The Commission is committed to receiving robust reporting information that can further improve gas pipeline safety throughout the state. Volumetric reporting is one of several data points that will give the Commission as detailed and robust an understanding of the operators' pipeline systems as possible.

⁸ *Id.* at 5.

⁹ Springs Utilities Application for RRR at 2.

¹⁰ *Id.*

12. We find it appropriate to modify proposed Rule 11100(e)(I)(I) to give operators the discretion to provide quantitative estimates, when possible, but also qualitative reasoning explaining the estimates provided or explaining why estimates could not be made with necessary accuracy. This allowance gives proper weight to the operators' concerns while furthering the Commission's pipeline safety reporting goals. To that end we modify Rule 11100(e)(I)(I) as follows:

- (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation, if available, and narrative explanation of its calculations and regarding its estimation; and

13. We deny RRR requests that ask to strike the volumetric reporting rules, or to wholly excuse operators from complying with the volumetric reporting rules. We are not persuaded by Public Service's or Springs Utilities' arguments seeking to strike these rules entirely. Difficulty in identifying leak volumes is not a compelling reason to wholly exclude the operators from providing vital leak-related information to the Commission.

D. Emissions Reductions and Sister Agency Information Sharing

1. Arguments Raised on Rehearing, Reargument, and Reconsideration

14. Public Service and Springs Utilities each claim that the rules noting potential environmental ramifications of gas pipeline leaks are not sufficiently related to pipeline safety and therefore should not be included in this rulemaking. While both operators raise this issue, they raise it regarding distinct rules. Springs Utilities claims that Rule 11100(e)(I)(I) – referenced above - concerns the environmental rather than the safety ramifications of leaks and that therefore

it is misplaced in these rules.¹¹ Public Service, on the other hand, specifically argues that Rule 11000(e)(III) and Rules 11100(f)(I) and (II) are misplaced in this proceeding.¹²

15. Both operators argue that environmental and emissions goals and ramifications are not the focus of the Gas Pipeline Safety Rules and therefore the rules referencing leak volume and emissions should be removed entirely. Public Service further claims that it is unclear how the leaked gas volume estimates compiled pursuant to Rule 11100(e)(III) would interact and could potentially conflict with the verification workbook processes in the Clean Heat Rules.¹³ Public Service also contends that it is unclear how the Commission will use the leak volume and emissions data collected by the Commission under these rules and raises concerns with the Commission engaging in interagency data sharing in coordination with Commission sister agencies such as the Air Pollution Control Division and the Energy and Carbon Management Commission (ECMC).¹⁴

2. Findings and Conclusions

16. Consistent with the discussion below, we grant, in part, and deny, in part, the RRR applications regarding rules concerning emissions reductions and interagency information sharing. We recognize that aspects of state regulation, including the Commission's own Clean Heat Rules and sister agency regulations at the Air Pollution Control Division and ECMC, among other regulations, appropriately and directly address and guide the state towards its emission reduction goals. However, we disagree and are unpersuaded by the operators' contentions that this shared oversight of emission reduction goals justifies removing the reporting requirements entirely, or otherwise prohibits the Commission from sharing potentially pertinent information with the

¹¹ Springs Utilities Application for RRR at 2.

¹² Public Service Application for RRR at 6-7.

¹³ Rules 4725(a) and 4731(a)(I)(D) of the Rules Regulating Gas Utilities, 4 CCR 723-4 (2023).

¹⁴ Public Service Application for RRR at 6-7.

appropriate state or federal counterparts. Moreover, the Commission is empowered by statute to engage in exactly this kind of interagency cooperation.¹⁵ We find that it is clear under these rules that reported leak information may be provided to sister agencies with tangential jurisdiction and that this information sharing is in line with the Commission's pipeline safety goals.

17. We also recognize that the appropriate agency processes and further review would be needed whenever the Commission engages in interagency information sharing. The rules here do not indicate otherwise and in no way circumvent important state regulations regarding emissions required by this Commission and its counterparts. With that in mind, we find that Rule 11100(e)(III) should be modified to clarify that the Commission may use the leak volume and emissions estimates provided by operators to both the Commission and its sister agencies, but that it is not compelled to do so. Rule 11100(e)(III) is revised as follows:

(III) The Commission ~~must~~may use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.

18. We therefore grant the operators' RRR applications to the extent that they seek clarity regarding the Commission's interagency cooperation. Particularly given our decision to permit further narrative and clarity in estimated reporting regarding the volume of leaked gas reported, reporting referred to sister agencies can of course be considered in context. Reported leak information alone is just one of many data points that can assist in better understanding system concerns as a whole. Agency and other appropriate processes would necessarily be followed should reporting lead to further inquiry.

¹⁵ Sections 40-2-115(1)(a) and (b), C.R.S., which authorizes the Commission's natural gas pipeline safety authority, also expressly authorize the Commission to cooperate with other agencies regarding its jurisdictional duties. Pursuant to these sections, the Commission is directed to confer and exchange information with either state or federal agencies in its enforcement of its authority under Title 40.

19. We remain unpersuaded that the sharing of information is inappropriate or confusing and deny any requests to strike entirely or otherwise excuse the operators from complying with the volumetric reporting requirements. The rules appropriately recognize that transparent and robust reporting is needed, and note that there might be related, but separate, concerns regarding emissions reductions or environmental ramifications that may need appropriate follow up.

E. Conclusion

20. The statutory authority for the rules adopted by this Decision is found at §§ 40-1-103, 40-2-115, and 40-7-117, C.R.S.

21. Through this Decision we make two modifications to the proposed pipeline safety rules. We modify Rule 11100(e)(I)(I) to give operators the discretion to provide qualitative narrative support regarding required leak volume estimates where it is difficult or impossible to achieve accurate measurements. We also modify Rule 11100(e)(III) to clarify that the Commission may, but does not have to, share leak and emissions information collected under these rules with its sister agencies. In addressing the operators' concerns, the improved reporting rules remain clear in their effort to further bolster collecting robust and transparent information for gas pipeline safety regulation, and that the Commission will continue that effort, including in ongoing and future rulemakings.

22. In light of our decision to grant, in part, Public Service and Springs Utilities' applications for RRR, we adopt the rule revisions shown in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) attached to this Decision, consistent with the discussion above.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration filed by Public Service Company of Colorado (Public Service) on February 20, 2024, is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration filed by Colorado Springs Utilities (Springs Utilities) on February 20, 2024, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Rules Regulating Pipeline Operators and Gas Pipeline Safety, 4 *Code Of Colorado Regulations* 723-11, contained in legislative format in Attachment A to this Decision and final format in Attachment B to this Decision, are adopted. The attachments are publicly 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

4. Subject to a filing of a further application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted.

5. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

6. The 20-day period provided for in § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration begins on the first day after the effective date of this Decision.

7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 13, 2024.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11 RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in ~~intrastate~~interstate commerce, as defined in 49 C.F.R. § 191.3.

* * *

[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and eCommission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- ~~(k)~~ “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- ~~(l)~~ “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- ~~(m)~~ “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- ~~(n)~~ “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- ~~(o)~~ “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- ~~(p)~~ “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- ~~(q)~~ “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- ~~(r)~~ “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- ~~(s)~~ “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (~~tr~~) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (~~us~~) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (~~vt~~) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (~~wu~~) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (~~xv~~) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (~~yw~~) “Municipality” means a city, town, or village in the state of Colorado.
- (~~zx~~) “NRC” means the National Response Center of the United States Coast Guard.
- (~~aa~~) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (~~bbz~~) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (~~ccaa~~) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (~~ddb~~) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (~~eee~~) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (~~ffed~~) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (~~ggee~~) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (~~hhf~~) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (~~iig~~) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- ~~(jjh)~~ “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- ~~(kk)~~ “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- ~~(llj)~~ “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- ~~(mmk)~~ “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- ~~(nn)~~ “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- ~~(oom)~~ “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- ~~(pp)~~ “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- ~~(qqe)~~ “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- ~~(rre)~~ “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(sse)~~ “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(ttr)~~ “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- ~~(uus)~~ “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- ~~(vvt)~~ “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
- (I) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
- (III) an unsafe ignition of intended gas release in an area accessible to the public;
- (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
- (V) any other hazardous situation that results in an immediate or imminent hazard to the public.

(ww) “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.

(xxuu) “Roadway” means a main public artery, highway, or interstate highway.

(yyvv) “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.

(zzww) “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).

~~(xx)~~ “Rural gathering pipeline” means any gathering pipeline located in a Class 1 location and defined in 49 C.F.R. § 192.5 or a Type B gathering pipeline located in a Class 2 area that the operator determines does not meet the Area 2 dwelling density definition in 49 C.F.R. § 192.8.

(aaayy) “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:

- (I) a low-pressure gas distribution system;
- (II) is comprised wholly of above-ground piping/appurtenances; and
- (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.

(bbbzz) “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.

(cccaaa) “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.

(dddbbb) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

(eeeeee) “UNCC/Colorado 811” means the Utility Notification Center of Colorado.

(fff) “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. ~~1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. ~~October 1, 2019.~~ This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (fe) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

* * *

[indicates omission of unaffected rules]

11010. Interpretation.

* * *

[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefor~~e~~, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

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[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

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[indicates omission of unaffected rules]

11012. Waiver – Emergency.

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[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.

(b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, such as an office phone number and point of contact.

(c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (de) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
- (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.
- (ee) After an inspection, the PSP Chief will pursue one of the following:
- (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.
- (fe) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.
- (gf) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

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[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet ~~A~~annual ~~R~~report submittal deadlines will result in issuance in a ~~W~~warning ~~N~~notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a ~~W~~warning ~~N~~notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for transmission, distribution, and gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as transmission, distribution, or gathering;
 - (E) for transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

(III) Disclosure of GIS data.

- (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office, with the exception of map viewer data filed confidentially. Any data provided confidentially must be filed with a publicly accessible version at a scale greater than or equal to 1:24000.
- (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
- (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
- (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.

(de) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.

(e) Annual leak report.

- (I) Beginning March 31, 2025 and annually on March 31 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known pending leaks, excluding those repaired in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks, as defined by DOT F7100.1-1 reporting instructions, eliminated or repaired during the previous one-year period ending December 31st;

- (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted;
 - (E) the approximate date and location of each identified leak from the gas pipeline system detected by the operator through leak survey and pending as of January 1 of the reporting calendar year;
 - (F) for repaired leaks, the material type of the pipe and facility that was leaking;
 - (G) the leak survey method(s) used to detect each pending leak;
 - (H) the approximate date and location of each leak caused by third-party excavation;
 - (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation, if available, and narrative explanation of its calculations and regarding its estimation; and
 - (J) whether the identified cause of each repaired leak was from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operations; or other causes.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operation; or other causes.
- (III) The Commission may use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
- (IV) The data provided in this section, including the total number of leaks scheduled for repair under subsection 11100(e)(I)(D), does not prevent the operator from prioritizing its repair schedule based on new information and newly identified leaks.
- (f) Disclosure of leak detection data.
- (I) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and ~~of~~ locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with ~~sub~~paragraph 1204(a)(~~III~~) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

(a) On or before March 15 of each year:

~~(Ia) — On or before March 15 of each year, each operator shall file with the Commission an annual report for the preceding calendar year. The reports shall be filed in accordance with subparagraph 1204(a)(III) of the Commission’s Rules of Practice and Procedure.~~

~~(Ib) e~~Each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>;

~~(Ic) e~~Each operator of an MMO/LPG system shall submit the ~~MMO/LPG Small Operator a~~Annual ~~r~~Report ~~(PSP SOAR)~~ to the Commission through its E-Filings System in the repository proceeding opened for annual reports;

~~(Id) e~~Each operator of a transmission or ~~Type A or Type B~~ gathering system (i.e., ~~excepting rural gathering Types A, B, C, and R~~), shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.2-1 or PHMSA F7100.2-3, as appropriate) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and;

~~(Ie) e~~Each operator of a LNG facility shall submit the ~~a~~Annual ~~r~~Report (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.

(b) On or before March 31, 2025, and March 31 of each year thereafter:

(I) each operator shall submit to the Commission GIS data according to paragraph 11100(c); and

(II) each operator shall submit to the Commission a list of leak detection technology, including narrative of any advanced technologies, being used and their descriptions according to paragraph 11100(e).

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) ~~All~~An operator, including operators of MMO/LPG and rural gathering pipeline systems, must be a ~~members~~Tier 1 Member of at the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.
- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.
- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and ~~rural~~ gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- ~~(e)~~ Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- ~~(f)~~ The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or

- (III) were found to represent an excessive risk to the operator's pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

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[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.
- (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
- (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.

- (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.

(c) Standards applied to SSAG systems.

- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:
 - (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
- (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
- (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.

(d) Standards applied to LPG systems.

- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
- (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.

(e) Standards applied to Major MMO/LPG systems.

- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
- (II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).

(f) Standards applied to Minor MMO/LPG systems.

- (I) ~~Except as provided in subparagraph 11203(h)(VII),~~ Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).

(g) Standards applied to threshold MMO/LPG systems.

- (I) ~~Except as provided in subparagraph 11203(h)(VII),~~ Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.
 - (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:
 - (A) number of affected persons;
 - (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
 - (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
 - (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
 - (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
 - (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

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[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine **the** impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
- (I) civil penalties shall not exceed **\$2400,000** per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed **\$24,000,000**.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
- (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i ,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an Incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

B = \$5,000 base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:
- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
 - (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

$B = \$5,000$ base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (C) Rule 11201 violations:
- (i) the penalty is assessed per applicable paragraph of rule 11201;
 - (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where:

$B = \$5,000$ base penalty per instance of violation

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

- (D) Missing or incomplete records:
- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
 - (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
 - (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:

~~(1a-)~~ Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;

~~(2b-)~~ Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and

~~(3e.)~~ Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety impact	1
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator’s documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
 - (l) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted

- liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
- (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
- (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
- (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
 - (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

* * *

[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief may issue a ~~W~~arning ~~N~~otice to an operator. The ~~W~~arning ~~N~~otice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:

- (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;
 - (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule [1150841507](#), resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant

information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).

- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.
- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
- (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

* * *

[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP ~~S~~staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.

- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-11

PART 11 RULES REGULATING GAS PIPELINE SAFETY

GENERAL PROVISIONS

11000. Scope and Applicability.

- (a) Absent a specific statute, rules or Commission order that provides otherwise, all rules in this Part 11 (the 11000 series) shall apply to all public utilities and all municipal or quasi-municipal corporations transporting natural gas or providing natural gas service, all operators of master meter systems, and all operators or pipelines transporting gas in intrastate commerce, as defined in 49 C.F.R. § 191.3.

* * *

[indicates omission of unaffected rules]

11001. Definitions.

The following definitions apply throughout this Part 11, except where a specific rule or statute provides otherwise or where the context otherwise indicates. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) “C.F.R.” means the Code of Federal Regulations.
- (b) “Confirmed discovery” means a discovery defined, as of the effective date of these rules, in 49 C.F.R. § 191.3.
- (c) “Continuing violation” or “time-dependent violation” means any violation of these rules for which a timeframe of non-compliance can be established through physical evidence and/or records that include, but are not limited to: operator annual reports; operator compliance, operations, and maintenance records; and Commission inspection, compliance and proceeding records.
- (d) “Delivered system pressure” means the system operating pressure measured at the outlie of the furthest downstream appurtenance maintained by the pipeline system operator, e.g., regulator, meter, valve, or the terminal connection of the service riser in low-pressure distribution systems.
- (e) “De minimis gas system” means a non-utility underground pipeline system used for transport and distribution of natural gas to less than ten customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort) and that does not cross a public right-of-way.
- (f) “Direct sales meter” means a meter that measures the transfer of gas to a direct sales customer purchasing gas for consumption.

- (g) “Direct sales pipeline” means a pipeline not under the jurisdiction of the Federal Energy Regulatory Commission and that runs from an intrastate or interstate transmission pipeline, a production facility, or a gathering pipeline to a direct sales meter, a pressure regulator, or an emergency valve, whichever is the furthest downstream.
- (h) “Excavation damage” means any impact that results in the need to repair or replace an underground facility due to a weakening or the partial or complete destruction of a facility, including, the protective coating; plastic pipe tracer wire; lateral support; cathodic protection; or the housing for the line device or facility
- (i) “Gas” means any material specified in these rules, including natural gas, flammable gas, toxic or corrosive gas, and petroleum gas.
- (j) “Gathering pipeline” means any pipeline determined through the use of 49 C.F.R. § 192.8.
- (k) “Geographic Information Systems (GIS)” means a computer-based system for capturing, storing, checking, displaying, and analyzing data related to positions on Earth’s surface.
- (l) “Hazardous facility” means a pipeline facility that, if allowed to go into operation or to remain in operation, would pose a severe or imminent risk to public safety.
- (m) “Inactive/Idle” means a pipeline or pipeline segment that has ceased normal operations and will not resume service for a period of not less than 180 days; has been isolated from all sources of hazardous liquid, natural gas, or other gas; and has been purged of combustibles and hazardous materials and maintains a blanket of inert, non-flammable gas at low pressure or has not been purged but the volume of gas is so small that there is no potential hazard, as defined in 49 U.S.C. § 60143.
- (n) “Incident” means an event defined as of the effective date of these rules, in 49 C.F.R. § 191.3, for a pipeline facility covered by 49 C.F.R. Part 192 or an emergency, as defined in § 193.2007 for an LNG facility.
- (o) “Liquefied natural gas” (LNG) means natural or synthetic gas that has methane (CH₄) as its major constituent and that has been converted to liquid form for purposes of storage or transport.
- (p) “Liquid petroleum gas (LPG) system” means the liquid petroleum (LP) tanks and/or the pipeline system used to transport and distribute LP fuel gas to ten or more customers within a definable private (i.e. non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way. LPG systems may have multiple operators if the supplying tank(s) is/are operated and maintained distinctly from the pipeline system by a different owner.
- (q) “Low-pressure distribution system” means a gas distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer, i.e., the low-pressure gas burning equipment of the customer may be safely and continually operated at the delivered system pressure.
- (r) “LPG Tank – CDLE OPS Inspected” means any LPG tank inspected by the Colorado Department of Labor and Employment, Division of Oil and Public Safety under the authority of the OPS rules.
- (s) “LNG facility” means a pipeline facility that is used for liquefying natural or synthetic gas and/or for transferring, storing, or vaporizing liquefied natural gas.

- (t) “Main” means a distribution line that serves, or is designed to serve, as a common source of supply for more than one service line.
- (u) “Major master meter operator (MMO)/LPG system” refers to any MMO or LPG pipeline system serving 100 or more customers.
- (v) “Mechanical excavation” means any operation in which earth is moved or removed by means of any tools, equipment, or explosives and includes auguring, backfilling, boring, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, hydro-excavating, post/postholing, and tunneling.
- (w) “MMO gas system” means a non-utility pipeline system used for transport and distribution of natural gas to ten or more customers within a definable private (i.e., non-municipal or public) area (e.g., a mobile home park or resort), or less than ten customers if the system crosses a public right-of-way.
- (x) “Minor MMO/LPG system” means any MMO or LPG pipeline system serving between 20 and 99 customers.
- (y) “Municipality” means a city, town, or village in the state of Colorado.
- (z) “NRC” means the National Response Center of the United States Coast Guard.
- (aa) “NTSB” means the National Transportation Safety Board, an independent federal agency.
- (bb) “Natural Gas Pipeline Act” means the federal statute found at 49 U.S.C. §§ 60101 et seq., as amended.
- (cc) “No immediate safety impact” refers to action or inaction by operator/operator contractors on jurisdiction pipeline facilities that resulted in no immediate or imminent hazard to either the public, operator/operator contractor personnel, or pipeline system integrity.
- (dd) “Operator” means a person who is engaged in the transportation of gas, or who has the right to bury underground pipeline, or who is both engaged in the transportation of gas and has the right to bury underground pipeline, and may include an owner, such as a pipeline corporation.
- (ee) “Operator contractor” means any person or entity empowered by an operator to perform any action covered by 49 C.F.R. Part 192 and these rules.
- (ff) “Operator endangerment” refers to action or inaction by operator/operator contractors on pipeline facilities that resulted in an immediate or imminent hazard to operator/operator contractor personnel.
- (gg) “OPS” means the Office of Pipeline Safety, a unit of the PHMSA.
- (hh) “Part 192” means 49 C.F.R. Part 192 – Transportation of natural and other gas by pipeline: Minimum Federal safety standards.
- (ii) “Person” means an individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

- (jj) “Petroleum gas” means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominately of these gases having a vapor pressure not exceeding 208 psi (1434 kPa) gage at 100 °F (38 °C).
- (kk) “PHMSA” means the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation.
- (ll) “Pipeline” or “pipeline system” means all parts of those physical intrastate facilities through which gas moves in transportation, including, but not limited to, pipes, valves, and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies that start downstream beyond the farthest most point of oil and gas production. Flowlines that are regulated by the COGCC and used for oil and gas production are not included in this definition.
- (mm) “Pipeline excavation damage prevention program” means an operator’s written program and processes to prevent damage to a pipeline by excavation, as defined in 49 C.F.R. § 192.614.
- (nn) “Pipeline facility” means new and existing intrastate pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas, or in the treatment of gas during transportation.
- (oo) “Pipeline integrity” means the ability of a pipeline system to operate as it was verifiably designed and constructed.
- (pp) “Pipeline safety program” (PSP) means the Commission’s 49 U.S.C. § 60105(a) certified pipeline safety program.
- (qq) “Production facility” means flowline and associated equipment used at a wellsite in producing, extracting, recovering, lifting, stabilizing, initial separating, treating, initial dehydrating, disposing, and/or above ground storing, of liquid hydrocarbons, associated liquids, and associated natural hydrocarbon gases. A production facility may include flowlines up to a central delivery point directly associated with a specific producing field. To be a production facility under this rule, a flowline must be used in the process of extracting hydrocarbons and associated liquids from the ground or from facilities where hydrocarbons are produced or must be used for disposal or injection in reservoir maintenance or recovery operations.
- (rr) “PSP Chief” means the program manager of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (ss) “PSP Lead Engineer” means the senior technical staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (tt) “PSP Staff” means a staff member of the PHMSA certified PSP of the Colorado Public Utilities Commission.
- (uu) “Program certification obligations” means the pipeline safety program obligations required under 49 U.S.C. § 60105(a).
- (vv) “Public endangerment” means an action or inaction by an operator/operator contractor on pipeline facilities that results in:
 - (l) interruption or delay of make safe actions designed to protect human life;

- (II) unintended gas release requiring emergency (versus precautionary) evacuation of the public;
 - (III) an unsafe ignition of intended gas release in an area accessible to the public;
 - (IV) system overpressurization event/failure of system overpressure protection requiring emergency (versus precautionary) evacuation of the public; or
 - (V) any other hazardous situation that results in an immediate or imminent hazard to the public.
- (ww) “Records” means information created, manipulated, communicated or stored in physical, digital, or electronic form. Records relate, but are not limited, to functions, policies, decisions, procedures, operations, or other activities of the utility.
- (xx) “Roadway” means a main public artery, highway, or interstate highway.
- (yy) “Related violation” for purposes of informing the Commission authority pursuant to § 40-7-117, C.R.S., means a violation of these rules that has been proven to be directly linked with a PUC rule violation or violations by time, place, activity, and/or personnel.
- (zz) “Request for Information (RFI)” means any request from the PSP Chief or assignee to a jurisdictional operator for information associated with PSP inspection activities authorized by paragraph 11013(a).
- (aaa) “Single structure, above-ground MMO/LPG system” or “SSAG System” means any MMO or LPG system that is:
- (I) a low-pressure gas distribution system;
 - (II) is comprised wholly of above-ground piping/appurtenances; and
 - (III) is contained wholly within or on a single continuous structure such as an apartment building, hotel, mall, etc.
- (bbb) “Small operator” means any gas distribution system operator that operates less than 1000 natural gas distribution services in the state of Colorado.
- (ccc) “Threshold MMO/LPG system” means any MMO or LPG pipeline system serving less than 20 customers.
- (ddd) “Transportation of gas” means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas within the State of Colorado that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.
- (eee) “UNCC/Colorado 811” means the Utility Notification Center of Colorado.
- (fff) “U.S.C.” means the United States Code.

11002. – 11007. [Reserved].

11008. Incorporation by Reference.

- (a) The Commission incorporates by reference the federal standards for reporting safety-related conditions associated with the transportation of natural gas and other gas by pipeline published in 49 C.F.R. § 191.23 (reporting safety-related conditions) and § 191.25 (filing safety-related condition reports); effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 191.
- (b) The Commission incorporates by reference the federal safety standards for the transportation of natural gas and other gas by pipeline published in 49 C.F.R. Part 192 effective October 5, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 192.
- (c) The Commission incorporates by reference the federal safety standards for liquefied natural gas facilities that are published in 49 C.F.R. Part 193 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Part 193.
- (d) The Commission incorporates by reference the drug and alcohol testing regulations and procedures of PHMSA published in 49 C.F.R. Parts 40 and 199 effective May 16, 2022. This incorporation by reference does not include later amendments to, or editions of, 49 C.F.R. Parts 40 and 199.
- (e) The Commission incorporates by reference the NPMS Operator Standards Manual, updated October 2017.
- (f) Any material incorporated by reference in this Part 11 may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, during normal business hours, Monday through Friday, except for state holidays. Incorporated standards shall be available electronically and provided in certified copies, at cost, upon request. Restrictions on the provision of physical copies due to copyright protections may apply. The Director or the Director's designee will provide information regarding how the incorporated standards may be examined at any state public depository library. The standards and regulations are also available from the agency, organization or association originally issuing the code, standard, guideline or rule as follows: Code of Federal Regulations: www.govinfo.gov/help/cfr.

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[indicates omission of unaffected rules]

11010. Interpretation.

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[indicates omission of unaffected rules]

- (c) If the petition requires interpretation of a federal regulation incorporated by reference into these rules and the Commission accepts the petition, PHMSA must review the Commission's interpretation of the federal regulation. The Commission's decision interpreting the federal regulation, and the reasons therefore, shall issue as an interim decision that shall be provided to

the Office of Pipeline Safety for final review. Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11011. Waiver – Non-emergency.

- (d) PHMSA Review: If the Commission grants a petition filed by an owner/operator for a waiver of a federal rule that is incorporated into the Commission rules, PHMSA must review the Commission's decision, except for petitions for waiver covered by paragraph (c) above. The Commission's decision granting a waiver request that requires PHMSA review, and the reasons therefore, shall issue as an interim decision that shall be provided to the Office of Pipeline Safety for final review pursuant to 49 U.S.C. § 60118(d). Any response by the Office of Pipeline Safety shall be incorporated into the Commission's final decision.

* * *

[indicates omission of unaffected rules]

11012. Waiver – Emergency.

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[indicates omission of unaffected rules]

- (b) An emergency waiver request will be granted if it is in the public interest, is not inconsistent with pipeline safety, and is necessary to address an actual or impending emergency involving pipeline transportation, including emergencies caused by natural or manmade disasters.

* * *

[indicates omission of unaffected rules]

11013. Inspections and Investigations.

- (a) Upon presenting appropriate credentials, a representative of the PSP may enter upon, inspect, and examine, at reasonable times, and in a reasonable manner, the records, facilities, and properties of pipeline operators to the extent such records, facilities, and properties are relevant to determining the compliance of such operators with the requirements of these rules or Commission orders.
- (b) Verifiable credentials for personnel engaged in pipeline construction, inspection, and repair activities are required to be provided on site at the time that the activities are taking place. Operator qualifications for the same personnel may be provided at a different time and location by request if they cannot be provided on site, such as an office phone number and point of contact.
- (c) Prior to an inspection or investigation, the PSP Chief or assignee shall notify an operator. Except in emergency situations, the operator shall have an opportunity to respond to the notification prior to the initiation of an inspection or investigation relating to any jurisdictional pipeline facility, including the operator's right of way or easement, new and existing piping, valves, and other

above ground appurtenances attached to pipes, or, upon request of PHMSA, an interstate pipeline to determine compliance with 49 U.S.C. §§ 60101 et. seq., with these rules, and with applicable Commission orders.

- (d) Inspections and investigations are necessitated by the existence of one or more of the following circumstances:
 - (I) routine scheduling by the PSP Chief, PSP Lead Engineer, or other designee;
 - (II) pipeline-related incidents and events reported to the PSP in accordance with rules 11101 through 11103;
 - (III) a complaint received from a member of the public and verified by the PSP Chief or Lead Engineer as related to a jurisdictional pipeline facility and involving a discrete and auditable matter potentially impacting public safety;
 - (IV) information obtained from a previous inspection; or
 - (V) when deemed appropriate by the Commission or PHMSA under their respective authorities.

- (e) After an inspection, the PSP Chief will pursue one of the following:
 - (I) an inspection close-out indicating that no further action will be taken on final inspection findings;
 - (II) a RFI indicating that the inspection is ongoing without final inspection findings, to be answered within the timeframe requested in the RFI, typically 30 calendar days from the operator's receipt of the RFI unless otherwise indicated and agreed to by the PSP Chief and the operator; or
 - (III) a compliance action taken on final inspection findings as described in rules 11502 and 11503.

- (f) If a representative of the PSP investigates an incident involving a pipeline facility, the PSP Chief of the Commission may request that the operator make available to the representative all records and information that directly or indirectly pertain to the incident, including integrity management plans and test results, and that the operator afford all reasonable assistance in the investigation.

- (g) To the extent necessary to carry out the responsibilities of the Program Certification Obligations, the PSP may require testing of portions of pipeline facilities that have been involved in, or affected by, an incident. However, before exercising this authority and accepting responsibility, the PSP shall make every effort to negotiate a mutually acceptable plan with the owner of those facilities and, where appropriate, other local and state fire and safety authorities, PHMSA, the NTSB, and any known third parties for performing the testing.

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[indicates omission of unaffected rules]

INFORMATION REQUIRED OF OPERATORS

11100. Submission of Reports and Notices - General.

- (a) For all annual reporting, the PSP will access the PHMSA Pipeline Data Mart beginning on March 16 of every year to confirm operator submittals. Failure to meet annual report submittal deadlines will result in issuance in a warning notice; failure to meet submittal deadlines in two successive calendar years will result in the issuance of a NPV against the operator.
- (b) For all specialized reporting, failure to meet submittal deadlines and requirements will result in issuance in a warning notice or a NPV against the operator.
- (c) Geographic Information System (GIS) data listed in subparagraph (II) below shall be submitted to the PSP. GIS data shall be submitted in the North American Datum of 1983 (NAD 83) approved in writing by the PSP Chief. Data may be submitted in zipped geodatabase (GDB), zipped shapefile (SHP), or google keyhole markup language (KML), with preference for GDB and SHP.
 - (I) Data shall be submitted electronically and can be submitted through a form available on the Commission's website. Commission staff may update the form periodically. Whether annual filings are provided through the Commission-provided form or separately, operators shall ensure that all information required is included in any submitted report filings.
 - (II) Data specifications. The following data attributes for transmission, distribution, and gathering pipelines shall be submitted to the extent available:
 - (A) spatial location of the pipeline;
 - (B) operator name;
 - (C) fluid type;
 - (D) designation of pipeline as transmission, distribution, or gathering;
 - (E) for transmission pipelines only, the additional data provided to the National Pipeline Mapping System (NPMS) by the operator;
 - (F) abandoned as defined in 49 CFR 192.3 and inactive pipelines. Include abandonment and inactive dates as applicable, as defined in 49 CFR 192.727;
 - (G) the maximum allowable operating pressure;
 - (H) the testing pressure;
 - (I) the pipe description (i.e., nominal diameter, coating, standard dimension ratio, and material);
 - (J) description of corrosion protection (i.e., Galvanic, Rectified/Impressed Current, or NA); and
 - (K) identify as HCA/MCA on each segment for class location, as applicable.

- (III) Disclosure of GIS data.
 - (A) The PSP Chief will make the GIS data in subparagraphs (II)(A)-(F) above available through a publicly accessible online map viewer. Online map viewer data only will be available at scales greater than or equal to 1:6,000. Any person may view spatial data at scales less than 1:6,000 for an individual parcel at the Commission's office, with the exception of map viewer data filed confidentially. Any data provided confidentially must be filed with a publicly accessible version at a scale greater than or equal to 1:24000.
 - (B) Upon request from a local governmental designee(s), and subject to executing a confidentiality agreement and the provisions of the Colorado Open Records Act and applicable federal law, the Commission will allow the local government to view in the Commission's offices the GIS data (including the data described in subparagraphs (II)(G)-(J) above) for transmission, distribution or gathering pipeline systems within the Commission's jurisdiction. The local government may only reproduce or publish data that the Commission makes publicly available through its website. A local government may share more specific data in-person than that which the Commission makes publicly-available, but the information must be treated as confidential and may not be reproduced or published.
 - (C) Except as provided in subparagraphs (III)(A) and (B) above, the Commission will keep all such GIS data confidential to the extent allowed by the Colorado Open Records Act.
 - (D) This data will not be used in lieu of Colorado 811 locates and is subject to civil penalties set forth in and fines assessed pursuant to §§ 9-1.5-104.4 or 9-1.5-104.5, C.R.S.
- (d) For all electronic reporting to PHMSA, if this reporting method imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to: Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington, DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075; electronically to informationresourcesmanager@dot.gov; or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received.
- (e) Annual leak report.
 - (I) Beginning March 31, 2025 and annually on March 31 of each year thereafter, each operator must submit a report to the Commission that includes:
 - (A) the total number of known pending leaks, excluding those repaired in pipelines owned by the operator as of January 1st of the year the report is submitted;
 - (B) the total number of hazardous leaks, as defined by DOT F7100.1-1 reporting instructions, eliminated or repaired during the previous one-year period ending December 31st;

- (C) the total number of nonhazardous leaks eliminated or repaired during the previous one-year period ending December 31st;
 - (D) the total number of leaks scheduled for repair in the next one-year period beginning January 1st of the year the report is submitted;
 - (E) the approximate date and location of each identified leak from the gas pipeline system detected by the operator through leak survey and pending as of January 1 of the reporting calendar year;
 - (F) for repaired leaks, the material type of the pipe and facility that was leaking;
 - (G) the leak survey method(s) used to detect each pending leak;
 - (H) the approximate date and location of each leak caused by third-party excavation;
 - (I) the volume of each leak, measured in millions of cubic feet, except that where an exact volume of gas leaked cannot be identified, an operator may provide its best approximation, if available, and narrative explanation of its calculations and regarding its estimation; and
 - (J) whether the identified cause of each repaired leak was from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operations; or other causes.
- (II) Natural gas leaks include all confirmed discoveries of unintentional leak events, including leaks from: corrosion failure; natural force damage; excavation damage; other outside force damage; pipe, weld, or joint failure; equipment failure; incorrect operation; or other causes.
 - (III) The Commission may use the data reported by operators under this section, as well as other data reported by operators to the Commission and to the Air Pollution Control Division and spill and incident data reported by operators to Carbon and Energy Management Commission to estimate the volume of leaked gas and associated greenhouse gas emissions from operational practices in the state. The Commission may request additional information.
 - (IV) The data provided in this section, including the total number of leaks scheduled for repair under subsection 11100(e)(I)(D), does not prevent the operator from prioritizing its repair schedule based on new information and newly identified leaks.
- (f) Disclosure of leak detection data.
- (I) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will provide on its public internet website aggregate data, as submitted by operators under this section, concerning the volume and causes of gas leaks.
 - (II) By June 1, 2025 and annually on June 1 of each year thereafter, the Commission will transmit to the Air Pollution Control Division and Energy and Carbon Management Commission information on gas leakage in the state, as submitted by operators under this rule.

11101. Submission of Reports and Notices.

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[indicates omission of unaffected rules]

- (d) Pipeline damage and locate information reporting. Each operator subject to the requirements of these rules and Colorado Revised Statutes Title 9, Article 1.5 (the “Colorado One-call Law”) shall submit the PSP Damage and Locate Report (PSP DLR) to the Commission through its E-Filings System in accordance with paragraph 1204(a) of the Commission’s Rules of Practice and Procedure in the repository proceeding opened for such reporting purposes.

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[indicates omission of unaffected rules]

11103. Submission of Annual Reports.

- (a) On or before March 15 of each year:

- (I) each operator of a distribution pipeline system, excepting MMO/LPG systems, shall submit the annual report (PHMSA F 7100.1-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>;
- (II) each operator of an MMO/LPG system shall submit the MMO/LPG annual report to the Commission through its E-Filings System in the repository proceeding opened for annual reports;
- (III) each operator of a transmission or gathering system (i.e., Types A, B, C, and R), shall submit the annual report (PHMSA F 7100.2-1 or PHMSA F7100.2-3, as appropriate) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>; and
- (IV) each operator of a LNG facility shall submit the annual report (PHMSA F 7100.3-1) to PHMSA using its electronic portal at <https://portal.phmsa.dot.gov>.

- (b) On or before March 31, 2025, and March 31 of each year thereafter:

- (I) each operator shall submit to the Commission GIS data according to paragraph 11100(c); and
- (II) each operator shall submit to the Commission a list of leak detection technology, including narrative of any advanced technologies, being used and their descriptions according to paragraph 11100(e).

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[indicates omission of unaffected rules]

11201. Pipeline Excavation Damage Prevention.

- (a) All operators must be members of the UNCC/Colorado 811 if any part of the pipeline system is located in any public or railroad right-of-way.

- (b) An operator, excluding operators of MMO/LPG pipeline systems but including operators of rural gathering pipeline systems, must report underground facility damages to the UNCC/Colorado 811 in accordance with § 9-1.5-103(7), C.R.S.
- (c) Operators of MMO/LPG and rural gathering pipeline systems must install and maintain pipeline markers, labeled according to § 192.707(d), at each crossing of a public road or railroad right-of-way.
- (d) An operator, excluding operators of MMO/LPG and gathering pipeline systems, must have written guidelines regarding when and how civil penalties are pursued under § 9-1.5-104.5, C.R.S. against persons damaging their pipeline facilities, and when and how penalty alternatives are implemented. At a minimum, the collection of data on and subsequent analysis of the causes of excavation damages to comply with 49 C.F.R. § 192.614 (a). These guidelines must provide for:
 - (I) recording information about pipeline damages that includes identification of the responsible party and the probable cause of each excavation damage in the following categories:
 - (A) inadequate excavation practices;
 - (B) no locate requested;
 - (C) inaccurate/missing locate – Operator located; and
 - (D) inaccurate/missing located – Contractor located.
 - (II) Analysis of the information in (a) above that allows for the identification of acute risk parties that have caused multiple pipeline damages in the preceding 18 months; and
 - (III) analysis of the information in (a) above that allows for the identification of chronic risk parties that have caused multiple pipeline damages over (a) time period(s) greater than 18 months.
- (e) Each operator must provide documentation of the deactivation and abandonment of pipelines to the PSP consistent with rule 11100.
- (f) The PSP will pursue compliance action against an operator under § 192.614(c)(5) whose excavation damages due to inaccurate or missing locates:
 - (I) were found through investigation to be contributory to a pipeline incident;
 - (II) were found through investigation to be contributory to a pipeline event that, in the opinion of the PSP, represented a major threat to public safety; or
 - (III) were found to represent an excessive risk to the operator's pipeline by the analyses required by subparagraphs 11201(d)(II) and (III).

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[indicates omission of unaffected rules]

11203. Small Operator Systems.

- (a) General requirements.
 - (I) Unless otherwise specified in this rule, a small operator system is subject to these rules and all applicable 49 C.F.R. Part 192 rules, as incorporated.
 - (II) Unless otherwise specified in this rule, any operator of a small operator system may opt into the prescriptive distribution integrity management provisions of paragraph (h) of this rule via written request to the PSP Chief or PSP Lead Engineer.
- (b) Standards applied to de minimis gas systems.
 - (I) Unless otherwise specified in this rule, de minimis gas systems are exempt from these rules and 49 C.F.R. Part 192 rules, as incorporated.
 - (II) System expansion.
 - (A) Operators of de minimis gas systems must apply for Commission approval prior to any system expansion.
 - (B) Operators of de minimis gas systems are prohibited from expanding the system unless proper permits are issued by the appropriate plumbing inspection authority.
 - (III) Leak surveys.
 - (A) De minimis gas systems must be leak surveyed with equipment using instruments and techniques suitable for detecting fugitive natural gas, or LPG in gaseous/vapor form, as applicable, once every two years.
 - (B) Records and results of all leak surveys will be kept for the life of the system.
 - (IV) System repairs.
 - (A) An operator of a de minimis gas system must repair all hazardous pipeline leaks immediately upon discovery.
 - (B) An operator of a de minimis gas system must repair all other pipeline system leaks within 45 days of discovery.
 - (C) All system repairs must be completed by a plumber, gas utility technician, or utility contractor qualified to install and repair underground gas systems.
 - (D) Prior to any leak repair, the operator of a de minimis gas system must acquire a plumbing permit issued by the appropriate plumbing inspection authority. If a leak has been repaired immediately due to a public safety hazard, the repair must be permitted after the fact and will be left exposed for inspection by the appropriate plumbing inspection authority or a PSP Inspector.
- (c) Standards applied to SSAG systems.

- (I) Any SSAG system is compliant with these rules if the system has been inspected and passed a system safety inspection within the last five years by one of the following means:
 - (A) inspection by the PSP;
 - (B) inspection by the Fire Department or Fire Marshall using NFPA 54 (National Fuel Gas Code), NFPA 101 (Life Safety Code), or a written equivalent standard; or
 - (C) inspection by the plumbing entity using the International Fuel Gas Code or a written equivalent standard.
 - (II) Record of the final, approved inspection of the gas system installation shall be kept for the life of the system.
 - (III) Records of all subsequent inspections shall be maintained and available for PSP inspection for a minimum of ten years from the date of inspection.
- (d) Standards applied to LPG systems.
- (I) The PSP will deem any LPG tank – CDLE OPS Inspected to be compliant with these rules, subject to the following restrictions:
 - (A) the tank has passed the CDLE OPS inspection; and
 - (B) the tank has been inspected within the last five calendar years.
 - (II) Leak surveys and leak pinpointing must use instruments and techniques suitable for detecting fugitive LPG in gaseous/vapor form.
- (e) Standards applied to Major MMO/LPG systems.
- (I) Major MMO/LPG systems must acquire a PHMSA Operator Identification Number.
 - (II) Major MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (f) Standards applied to Minor MMO/LPG systems.
- (I) Minor MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (g) Standards applied to threshold MMO/LPG systems.
- (I) Threshold MMO/LPG systems are subject to the P-DIMP of paragraph 11203(h).
- (h) Prescriptive distribution integrity management program (P-DIMP).
- (I) Operators subject to this rule shall be subject to a P-DIMP consisting of an evaluation and a plan.
 - (II) Operators subject to this rule shall have a P-DIMP evaluation performed by the PSP at least once every five years; sooner when system history or PSP inspection indicates a change in any operating condition that necessitates a new P-DIMP evaluation.

- (III) The P-DIMP shall explicitly consider, prioritize, and rank system risks based on the following:
 - (A) number of affected persons;
 - (B) physical system parameters including but not limited to:
 - (i) materials;
 - (ii) delivered system pressure, including whether the system is a low-pressure distribution system; and
 - (iii) leak and leak repair history.
 - (C) Operational system parameters including, but not limited to:
 - (i) compliance history of the current legal operator;
 - (ii) system records;
 - (iii) availability of appropriate tools and equipment to operate gas pipeline system;
 - (iv) availability of trained and/or qualified personnel to operate and maintain the system during normal operations; and
 - (v) availability of trained and/or qualified personnel to operate the system during emergencies.
- (IV) All physical and operational parameters that are unknown at the time of the P-DIMP evaluation shall be considered by the PSP to pose the maximum public safety risk that is reasonably associated with the unknown parameter.
- (V) Following a completed P-DIMP evaluation, all operators of a Threshold MMO/LPG system or Minor MMO/LPG system shall be subject to P-DIMP unless the operator opts out of a P-DIMP as allowed in subparagraph 11203(h)(VII).
- (VI) The P-DIMP shall prescribe operations and maintenance activities appropriate to maximize system integrity and minimize the public safety risk posed by the operation of the system.

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[indicates omission of unaffected rules]

RULE VIOLATIONS, CIVIL PENALTIES, AND COMPLIANCE ACTIONS

11500. Violations - General.

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[indicates omission of unaffected rules]

- (b) Violations will be examined by the PSP Chief to determine the impact category resulting from the violation: no immediate safety impact, incident, public endangerment, operator endangerment, or a loss/reduction of pipeline integrity.

11501. Violations – Civil Penalties.

- (a) This rule shall apply to violation(s) that would have otherwise been discovered by a prudent operator in the normal course of business. This is the lowest degree of culpability for which operators may be penalized and does not limit the Commission from penalizing operators for higher degrees of culpability.
- (b) An operator who violates these rules or an order of the Commission issued under these rules may be subject to civil penalties as follows:
 - (I) civil penalties shall not exceed \$200,000 per instance of violation;
 - (II) each day of a continuing violation constitutes a separate instance of violation; and
 - (III) in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$2,000,000.
- (c) Civil penalties – general. The PSP Chief may propose that the Commission assess civil penalties against an operator following a PSP inspection and/or investigation that has established specific pipeline safety rule violation(s) and a time-dependent or time-independent nature of the violations(s).
- (d) Civil penalties – calculation. To provide consistency and specificity, civil penalties shall be calculated through the formulaic method as follows.
 - (I) Time-dependent/history based activity violations.
 - (A) Violations determined by an action or activity not performed or failure to be performed in accordance with rule or procedure:
 - (i) the penalty is assessed by individual action or activity required by rule or procedure;
 - (ii) the penalty amount is calculated by the equation:

$$B \times t \times F_{ph} \times F_{hh} \times F_i ,$$

where:

B = Base penalty of \$1 per day for the activity associated with the violation

t = Timeframe of non-compliance, in days

F_{ph} = Pertinent/related system history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_{hh} = Hazardous history factor, as determined in the Time-Dependent Violation Impact Factor Table

F_i = Incident history factor, as determined in the Time-Dependent Violation Impact Factor Table

(B) Time-dependent violation impact factor table:

Time-Dependent Violation Impact Factor Table			
FACTOR	THRESHOLD	Factor multiplier if threshold <i>NOT</i> met	Factor multiplier if threshold met
F_{ph}	The violation was associated with other inspection findings that indicated related effects on pipeline system integrity (e.g., leaks, corrosion, PHMSA Advisory Bulletin, missing records, etc.)	1	5
F_{hh}	The violation was associated with other inspection findings that indicated related effects on public safety (e.g., hazardous leaks, safety-critical activity, safety-related condition, etc.)	1	10
F_i	The violation was associated with other inspection findings that indicated the violation contributed to an incident	1	20

(II) Time-independent/outcome-based violations.

(A) Violations determined by a failure to follow or inadequate/missing operator procedures:

- (i) the penalty is assessed by individual or group actions or activities required by rule or procedure;
- (ii) the penalty amount is calculated by the equation:

$$B \times F_{\text{impact}}, \text{ where}$$

$$B = \$5,000 \text{ base penalty per instance of violation}$$

F_{impact} = Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(B) Violations determined by an unqualified worker performing operations, maintenance, or construction tasks:

- (i) the penalty is assessed per worker and specific individual qualification required by rule or procedure; and
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(C) Rule 11201 violations:

- (i) the penalty is assessed per applicable paragraph of rule 11201;
- (ii) the penalty amount is calculated by the equation:

$B \times F_{\text{impact}}$, where:

$B = \$5,000$ base penalty per instance of violation

$F_{\text{impact}} =$ Time-independent Impact Factor as determined in the Time-Independent Violation Impact Factor Table

(D) Missing or incomplete records:

- (i) the penalty is assessed by grouped action or activity required by rule or procedure;
- (ii) the penalty is assessed by applicable inspection focus, i.e., district operating area, operating unit, or total operator system;
- (iii) the penalty is calculated based on the estimated volume of missing or incomplete records:
 - (1) Gross Incompletion (Record incompleteness/absence ≥ 10 percent for complete record absence for a required code segment) = \$10,000/code/segment/calendar year;
 - (2) Major Incompletion (Record incompleteness/absence ≥ 5 percent and < 10 percent for a required code segment) = \$5,000/code/segment/calendar year; and
 - (3) Significant Incompletion (Record incompleteness/absence ≥ 2 percent and < 5 percent for a required code segment) = \$2,500/code/segment/calendar year.

(E) Time-independent violation impact factor table:

Time-Independent Violation Impact Factor Table	
THRESHOLD	Factor multiplier if threshold met
The violation resulted in no immediate safety	1

impact	
The violation resulted in operator endangerment; operator property loss > \$10,000; or emergency (versus precautionary) actions by the operator necessary to protect system integrity	5
The violation resulted in public endangerment; non-operator property loss > \$10,000; or a loss of pipeline integrity	10
The violation resulted in an Incident	20

- (e) Multiple calculated penalties will be summed to compute a final civil penalty.
- (f) The PSP Chief may propose to the Commission the assessment of a revised final civil penalty lower than the summed calculated penalties based on the operator’s documented and verifiable efforts to mitigate the violations(s) and improve overall system safety and integrity.
- (g) The calculated and final civil penalty amounts shall be illustrated in the NPV to the operator.
- (h) Nothing in this rule shall prohibit the Commission from the calculation and/or assessment of a new final civil penalty during a formal hearing process.
- (i) The Commission may assess doubled or tripled civil penalties against any public utility, as provided by § 40-7-113.5(3), C.R.S., § 40-7-113.5(4), C.R.S., and this rule.
 - (I) The Commission may assess any public utility a civil penalty containing doubled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final written decision to be liable for, engaging in prior conduct that constituted an intentional violation of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;
 - (B) the conduct for which doubled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable; and
 - (C) the conduct for which doubled civil penalties are sought occurred within one year after conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.
 - (II) The Commission may assess any public utility a civil penalty containing tripled penalties only if:
 - (A) the public utility has admitted liability by paying the proposed final civil penalty for, or has been adjudicated by the Commission in an administratively final

written decision to be liable for, engaging in prior conduct that constituted two or more intentional violations of a statute in Articles 1 to 7 and 15 of Title 40, C.R.S., a Commission rule, or a Commission order;

- (B) the conduct for which tripled civil penalties are sought violates the same statute, rule, or order as conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or conduct for which the public utility has been adjudicated by the Commission in an administratively final written decision to be liable, in at least two prior instances; and
- (C) the conduct for which tripled civil penalties are sought occurred within one year after the two most recent instances of conduct for which the public utility has either admitted liability by paying the civil penalty assessment, or been adjudicated by the Commission in an administratively final written decision to be liable.

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[indicates omission of unaffected rules]

11503. Compliance Action – Warning Notice.

In the instance of a probable violation of these rules that has no previous enforcement history and poses a low risk to public safety and/or pipeline/LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, or if the operator provides advance notice, the PSP Chief may issue a warning notice to an operator. The warning notice will advise the operator of the probable violation, require the operator to correct the probable violation or be subject to further enforcement action under these rules, and may require a formal written response from the operator on their corrective action plan so that a follow-up inspection can be scheduled.

11504. Notice of Probable Violation (NPV).

- (a) In the instance of a probable violation of these rules that has a previous enforcement history or poses a moderate to severe risk to public safety or pipeline or LNG facility integrity, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may issue a NPV to an operator. The NPV will advise the operator of the probable violation and include the following sections:
 - (I) a statement of inspection findings that incorporates the requirements of rule 11502, above;
 - (II) a statement of the regulatory interpretation upon which the determination of probable violation is based;
 - (III) a civil penalty calculation using rule 11501 stating separately for each probable violation the maximum penalty amount provided and a total penalty;
 - (IV) the PSP Chief's civil penalty assessment evaluation consistent with § 40-7-117, C.R.S. that includes a conclusion for or against assessment of the civil penalty in whole or in part;
 - (V) a final recommended civil penalty assessment;

- (VI) as appropriate, the NPV will offer the operator a proposed alternative enforcement in lieu of the civil penalties, in whole or in part. The proposed alternative enforcement will describe the process in sufficient detail to explain how it will provide for the improvement of public safety;
 - (VII) as appropriate, the NPV will include a compliance directive that prescribes specific actions to be taken by the operator within a specific timeframe to correct the violation; and
 - (VIII) a description of the operator's response options.
- (b) The NPV shall be filed in a new proceeding and shall serve as notice of the alleged probable violation and potential actions to be taken by the Commission.
- (c) Within 30 days after receipt of a NPV issued pursuant to the rule, an operator shall file in the proceeding its response with one of the following options.
- (I) The operator may admit the NPV through the following filings and actions:
 - (A) the operator shall pay any proposed final civil penalty in full; and
 - (B) the operator shall agree to any proposed compliance directive.
 - (II) The operator may request the Commission consider an offer in compromise to the NPV through the following filings and actions:
 - (A) the operator may request reconsideration, reissuance, or dismissal of the initial NPV through submittal of a written explanation, information, or other material in response to the allegations contained in the NPV; in objection to the proposed compliance directive; or in mitigation of the proposed final civil penalty; or
 - (B) the operator and the PSP Chief may jointly file a stipulation and settlement agreement pursuant to rule 11508, resolving the allegations in the NPV for the Commission's consideration.
 - (III) The operator may oppose the NPV, or any part thereof. The operator shall file its response opposing the allegations in the NPV in the proceeding and provide all relevant information it finds addresses the issues raised. If an operator opposes any alleged violation in the NPV, the matter shall be set for hearing. When applicable and appropriate, such appeal will stay the duration of the noncompliance for purposes of any penalty calculation contingent upon interim operator actions to cure the alleged violation(s).
- (d) If the operator fails to respond as provided in this rule within 30 days of the NPV, the NPV shall be deemed opposed by the operator and shall be set for hearing as prescribed by subparagraph (c)(III) above.
- (e) If a violator does not remit the assessed penalty or the lesser amount agreed upon pursuant to this rule, the Commission may recover the amount due plus court costs in a civil action in any court of competent jurisdiction.

- (f) Any civil penalty authorized by this rule may be reduced by the Commission based on consideration of factors and metrics, as follows:
- (I) an evaluation of the severity of the violation, in terms of its actual or potential effects on the public safety or pipeline system integrity;
 - (II) the extent to which the violation and any underlying conditions that may have contributed to the likelihood or severity of the violation have been remedied;
 - (III) the extent to which the violator agrees to spend, in lieu of the payment of part of the civil penalty, a specified amount on Commission-approved measures to reduce the overall risk to the pipeline system safety or integrity; except that the amount of the penalty payable to the Commission shall be no less than \$5,000; and
 - (IV) whether or not the violation was self-reported by the operator.
- (g) The remedy provided in this rule is an addition to any other remedies available to the Commission under the constitution or laws of the state or of the United States.

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[indicates omission of unaffected rules]

11507. Compliance Action – Hazardous Facilities Order (HFO).

- (a) If an inspection, audit, investigation, or test reveals that the continued operation of a pipeline or LNG facility may pose a severe and imminent risk to public safety, as determined by current regulation, industry standard, or other relevant objective technical standard, the PSP Chief may consider the pipeline or LNG facility to be a hazardous facility and file a formal complaint with the Commission against the operator of the facility. The complaint shall allege facts sufficient to establish the existence of a hazardous facility and to support an HFO issued upon conclusion of a Commission proceeding, or, if justified, a summary HFO pursuant to paragraph (i) of this rule.
- (b) A formal complaint by PSP staff shall be issued, and a hearing shall be conducted in accordance with the Commission's Rules of Practice and Procedure and Article 6 of Title 40, C.R.S.
- (c) Except as provided in paragraph (i) of this rule, if the Commission finds, after hearing, that a pipeline facility or a LNG facility is hazardous to life or property, the Commission shall issue an order directing the operator to take corrective action. Corrective action may include, without limitation, suspension or restriction of the use of the pipeline facility or LNG facility, physical inspection, testing, repair, or replacement.