

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 21, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) *OH* *S.M.C.*
Division of Engineering (Moses) *DM* *TKS*

RE: Docket No. 20190047-GU – Proposed amendment of Rule 25-12.005, F.A.C., Codes and Standards Adopted.

AGENDA: 04/02/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

On October 17, 2018, a Notice of Development of Rulemaking was published in the Florida Administrative Weekly for Rule 25-12.005, Florida Administrative Code (F.A.C.). Rule 25-12.005, F.A.C., implements the minimum federal safety standards and reporting requirements for pipeline facilities and transportation of natural gas as prescribed by the Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations. The federal regulations are found in 49 Code of Federal Regulations (C.F.R.) Parts 191, 192, and 199. The purpose of the rule amendment is to incorporate by reference into the rule the February 14, 2019, version of the federal standards (49 CFR Parts 191, 192, and 199) that apply to natural gas pipeline operators under the Commission's jurisdiction.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-12.005. No requests for a rule development workshop were made, so no workshop was

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held. The Commission has jurisdiction pursuant to Section 120.54, Florida Statutes (F.S.), and Sections 368.03 and 368.05, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-12.005, F.A.C., Codes and Standards Adopted?

Recommendation: Yes, the Commission should propose the amendment of Rule 25-12.005, F.A.C., as set forth in Attachment A. The Commission should certify that Rule 25-12.005, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S. (Harper, Moses)

Staff Analysis: Rule 25-12.005, F.A.C., implements federal reporting requirements and safety standards, including drug and alcohol employee reporting standards and requirements for employees of natural gas pipeline operators and emergency response persons under the direct authority or control of a gas utility or gas pipeline operator. The rule incorporates by reference the federal regulations that apply to natural gas pipeline operators within the Commission's jurisdiction that are found in 49 C.F.R. Parts 191, 192, and 199. Staff is recommending that Rule 25-12.005, F.A.C., be amended to incorporate by reference the February 14, 2019, version of the C.F.R., as set forth in Attachment A. Specifically, the updated C.F.R. provisions clarify and streamline the standards pertaining to pipeline safety regulations, such as excess flow valves, underground natural gas storage facilities, and accident and incident notification.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption the agency head shall certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Rule 25-12.005, F.A.C., is not a rule for which a violation would be minor because violation of the rule would result in physical harm to a person and have an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Thus, staff recommends that the Commission certify that Rule 25-12.005, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54, F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment C to this recommendation. The SERC analysis also includes whether the rule is likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within five years of implementation.¹

The SERC concludes that the rule will not likely directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule will not likely have an adverse impact on economic growth, private sector job creation or employment, private sector investment, business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. Thus, the rule does not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule will not have an adverse impact on

¹Section 120.541(2), F.S.

small business and will have no impact on small cities or counties. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended amendments.

Conclusion

Based on the foregoing, staff recommends the Commission propose the amendment of Rule 25-12.005, F.A.C., as set forth in Attachment A. In addition, staff recommends that the Commission certify that Rule 25-12.005, F.A.C., is not a rule that the violation of which would be a minor violation pursuant to Section 120.695, F.S.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing or comments are filed, the rule may be filed with the Department of State for adoption, and the docket should be closed. (Harper)

Staff Analysis: If no requests for hearing or comments are filed, the rule may be filed with the Department of State for adoption, and the docket should be closed.

1 **25-12.005 Codes and Standards Adopted.**
2 The Minimum Federal Safety Standards and reporting requirements for pipeline facilities and
3 transportation of gas prescribed by the Pipeline and Hazardous Materials Safety
4 Administration in 49 C.F.R. 191 and 192 (2019) ~~(2017)~~, are adopted and incorporated by
5 reference as part of these rules. 49 C.F.R. 191 (2019) ~~(2017)~~ may be accessed at [insert
6 hyperlink] <http://www.flrules.org/Gateway/reference.asp?No=Ref-07920>. 49 C.F.R. 192
7 (2019) ~~(2017)~~ may be accessed at [insert hyperlink]
8 <http://www.flrules.org/Gateway/reference.asp?No=Ref-07923>. 49 C.F.R. 199 (2019) ~~(2017)~~,
9 “Drug and Alcohol Testing,” is adopted and incorporated by reference to control drug use, by
10 setting standards and requirements to apply to the testing and use of all emergency response
11 personnel under the direct authority or control of a gas utility or pipeline operator, as well as
12 all employees directly or indirectly employed by gas pipeline operators for the purpose of
13 operation and maintenance and all employees directly or indirectly employed by intrastate gas
14 distribution utilities for onsite construction of natural gas transporting pipeline facilities. 49
15 C.F.R. 199 (2019) ~~(2017)~~ may be accessed at [insert hyperlink]
16 <http://www.flrules.org/Gateway/reference.asp?No=Ref-07921>. Part 199 also is adopted to
17 prescribe standards for use of employees who do not meet the requirements of the regulations.
18 *Rulemaking Authority 368.03, 368.05(2), 350.127(2) FS. Law Implemented 368.03, 368.05*
19 *FS. History—New 11-14-70, Amended 9-24-71, 9-21-74, 10-7-75, 11-30-82, 10-2-84, Formerly*
20 *25-12.05, Amended 8-8-89, 1-7-92, 5-13-99, 4-26-01, 12-15-09, 10-11-12, 3-2-17, _____.*
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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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-M-E-M-O-R-A-N-D-U-M-

DATE: January 15, 2019

TO: Lauren Davis, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst II, Division of Economics *SK.G.*

RE: Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-12.005, Florida Administrative Code (F.A.C.), Codes and Standards Adopted

Adoption of the current federal codes is required under the 60105 certification agreement between the Pipeline Hazardous Materials Safety Administration (PHMSA) of the federal government and the Florida Public Service Commission. PHMSA prescribes reporting requirements for pipeline facilities and transportation of natural gas in the 49 Code of Federal Regulations (C.F.R.).

The purpose of the proposed revisions to Rule 25-12.005, F.A.C., is to incorporate by reference the most current edition of 49 C.F.R. Parts 191, 192 and 199, as it pertains to the regulation of natural gas. Parts 191, 192, and 199 address gas safety-related condition reports, minimum safety requirements for transportation of gas, and drug and alcohol testing for gas transportation operators. The proposed revisions to Rule 25-12.005, F.A.C. also include updated hyperlinks to Parts 191, 192, and 199 of 49 C.F.R.

The number of entities required to comply with this rule are 53 natural gas companies (includes investor-owned natural gas companies, municipal gas utilities, gas districts, master meter systems, and transmission operators). The proposed rule revisions are not imposing any new regulatory requirements and only seek to reflect the 2019 version of 49 C.F.R. No workshop was requested by affected parties in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to Section 120.541(1)(a), Florida Statutes (F.S.). None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Chapter 25-12.005, F.A.C.

1. Will the proposed rule have an adverse impact on small business?
[120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes No

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes No

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)1, F.S.]

Economic growth Yes No

Private-sector job creation or employment Yes No

Private-sector investment Yes No

(2) Is likely to have an adverse impact on any of the following in excess of \$1 million in the aggregate within 5 years after implementation of the rule?
[120.541(2)(a)2, F.S.]

Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) Yes No

Productivity Yes No

Innovation Yes No

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes

No

Economic Analysis: The affected entities should benefit from the proposed rule changes; the gas utilities will have clear and consistent rules that reflect the most current federal and state regulations as they pertain to the natural gas industry. Natural gas customers and ratepayers will benefit from continued safety standards by the implementation of this rule.

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

53 natural gas companies (includes investor-owned natural gas companies, municipal gas utilities, gas districts, master meter systems, and gas transmission operators) are likely to be required to comply with Rule 25-12.005, F.A.C.

(2) A general description of the types of individuals likely to be affected by the rule.

Individuals likely to be affected by the rule are 53 natural gas companies and their customers.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

None. To be done with the current workload and existing staff.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

(3) Any anticipated effect on state or local revenues.

None.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

None. The rule will only affect the Commission.

Minimal. Provide a brief explanation.

Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

No adverse impact on small business.

- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

- No impact on small cities or small counties.
- Minimal. Provide a brief explanation.
- Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful.
[120.541(2)(f), F.S.]

- None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

- No regulatory alternatives were submitted.
- A regulatory alternative was received from
 - Adopted in its entirety.
 - Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.