

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-**

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**DATE:** December 28, 2022

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of the General Counsel (Rubottom) *JHR, SMC*  
Division of Economics (Guffey) *JGH*  
Division of Engineering (Kissel, Graves) *TB, RQ*

**RE:** Docket No. 20220182-GU – Proposed amendment of Rule 25-12.005, F.A.C., Codes and Standards Adopted.

**AGENDA:** 01/10/23 – Regular Agenda – Rule Proposal – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Passidomo

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

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## Case Background

Rule 25-12.005, Florida Administrative Code (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 adoption of the federal codes is required by the Commission's certification agreement with the PHMSA pursuant to 49 United States Code (U.S.C.) § 60105.<sup>1</sup> The federal regulations are found in 49 Code of Federal Regulations (C.F.R.) Parts 191, 192, and 199.

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<sup>1</sup> Under 49 U.S.C. § 60105, PHMSA has no regulatory jurisdiction over safety standards and practices of intrastate pipeline facilities and transportation to the extent that a State authority annually certifies that it implements and enforces applicable federal standards through a compliant pipeline safety program.

Docket No. 20220182-GU

Date: December 28, 2022

Staff initiated rulemaking to amend Rule 25-12.005, F.A.C., for the purpose of incorporating by reference into the rule the updated, October 1, 2021, version of the federal standards (49 C.F.R. Parts 191, 192, and 199) that apply to natural gas pipeline operators under the Commission's jurisdiction.

A Notice of Rule Development for this rule appeared in the August 19, 2022, edition of the Florida Administrative Register, Vol. 48, No. 162. No requests for a rule development workshop were made, and no workshop was held. This recommendation addresses whether the Commission should propose the amendment of Rule 25-12.005, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 368.03, and 368.05, Florida Statutes (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 also certify that Rule 25-12.005, F.A.C., is not a rule the violation of which would be a minor violation pursuant to Section 120.695, F.S. (Rubottom, Kissel)

**Staff Analysis:** Rule 25-12.005, F.A.C., implements federal reporting requirements and safety standards, including safety and incident reporting requirements, gas transportation safety standards, and drug and alcohol testing protocols 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 federal regulations found in 49 C.F.R. Parts 191, 192, and 199 that apply to natural gas pipeline operators within the Commission's jurisdiction. Staff recommends that Rule 25-12.005, F.A.C., be amended as set forth in Attachment A to incorporate by reference the updated version of the federal regulations as published in the October 1, 2021, version of the C.F.R.

The updated C.F.R. provisions further clarify and define the standards pertaining to pipeline safety regulations. This includes new requirements for onshore steel transmission lines such as the reconfirmation of maximum allowable operating pressures, the establishment of medium consequence areas, and new requirements for inline inspection tool launcher and receiver safety. The standards for plastic pipe have also been revised to include the use of new material, more stringent standards for plastic fittings and joints, stronger mechanical fitting requirements, and joining tool maintenance and calibration. Other revisions to the C.F.R. include provisions required by the PIPES Act of 2020<sup>2</sup> and an update to the list of documents that are incorporated into the C.F.R. by reference.

### Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., 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.<sup>3</sup> Rule 25-12.005, F.A.C., is not on the Commission's minor violation rule list because violation of the rule would result in physical harm to a person; adverse effects on the public health, safety, or welfare; or would create a significant threat of such harm. Thus, if the Commission proposes the amendment, staff recommends that the Commission certify that Rule 25-12.005, F.A.C., is not a rule 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.<sup>4</sup> Agencies are

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<sup>2</sup> PIPES Act of 2020, Pub. L. No. 116-260, 134 Stat. 2210 (2020).

<sup>3</sup> Section 120.695(2)(c)3., F.S.

<sup>4</sup> Section 120.541(1)(b), F.S.

required to prepare a SERC for any rule that will have an adverse impact on small business or that is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation.<sup>5</sup> The SERC analysis includes whether the rule will, within five years of implementation, have an adverse impact in excess of \$1 million in the aggregate on economic factors such as economic growth, private sector job creation or employment, private sector investments, or business competitiveness, productivity, or innovation.<sup>6</sup> If expected adverse impacts or regulatory costs exceed any of the above criteria, a proposed rule may not take effect until it is ratified by the Legislature.<sup>7</sup>

A SERC was prepared and is appended hereto as Attachment B. The SERC concludes that the rule will not have an adverse impact on small business and that the rule is not likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate 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, or business competitiveness, productivity, or innovation in excess of \$1 million in the aggregate within five years of implementation. None of the adverse impact or regulatory cost criteria set forth in Section 120.541(2)(a), F.S., will be exceeded as a result of the recommended amendments to the rule. 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 have no impact on small cities or counties and will not increase the cost to the Commission to implement and enforce the rule. No regulatory alternatives have been submitted pursuant to Section 120.541(1)(a), F.S.

### **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 the violation of which would be a minor violation pursuant to Section 120.695, F.S.

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<sup>5</sup> *Id.*

<sup>6</sup> Section 120.541(2)(a), F.S.

<sup>7</sup> Section 120.541(3), F.S.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no requests for hearing or JAPC comments are filed, and no proposal for a lower cost regulatory alternative is submitted, the rule may be filed with the Department of State for adoption, and the docket should be closed. (Rubottom)

**Staff Analysis:** If no requests for hearing or JAPC comments are filed, and no proposal for a lower cost regulatory alternative is submitted pursuant to Section 120.541(1)(a), F.S., 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 reporting requirements for operators of natural gas pipeline facilities and  
3 ~~transportation of gas~~ prescribed by the Pipeline and Hazardous Materials Safety  
4 Administration in 49 C.F.R. Part 191 (October 1, ~~2021~~ 2018), are is adopted and incorporated  
5 by reference as part of these rules and may be accessed at [new hyperlink]  
6 ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10790>~~. The ~~m~~Minimum ~~f~~Federal  
7 ~~s~~Safety ~~s~~Standards for natural gas pipeline facilities and the transportation of natural gas  
8 prescribed by the Pipeline and Hazardous Materials Safety Administration in 49 C.F.R. Part  
9 192 (October 1, 2021) Sections 192.121, 192.123, 192.143, 192.145, 192.149, 192.191,  
10 192.204, 192.281, 192.283, 192.285, 192.3, 192.313, 192.321, 192.329, 192.367, 192.375,  
11 192.376, 192.455, 192.513, 192.59, 192.720, 192.756, of 49 C.F.R. 192, as amended by 83  
12 ~~Federal Register 58716, November 20, 2018,~~ are adopted and incorporated by reference as  
13 part of these rules and may be accessed at [new hyperlink]  
14 ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10792>~~. The remaining sections of 49  
15 C.F.R. 192, as of October 1, 2018, are adopted and incorporated by reference as part of these  
16 rules and may be accessed at ~~<http://www.flrules.org/Gateway/reference.asp?No=Ref 10794>~~.  
17 49 C.F.R. 199 (October 1, 2018), “Drug and Alcohol Testing,” is adopted and incorporated by  
18 reference to control drug use, by setting standards and requirements to apply to the testing and  
19 use of all emergency response personnel under the direct authority or control of a gas utility or  
20 pipeline operator, as well as all employees directly or indirectly employed by gas pipeline  
21 operators for the purpose of operation and maintenance and all employees directly or  
22 indirectly employed by intrastate gas distribution utilities for onsite construction of natural gas  
23 transporting pipeline facilities. The drug and alcohol testing requirements prescribed by the  
24 Pipeline and Hazardous Materials Safety Administration in 49 C.F.R. Part 199 (October 1,  
25 2021 2018) are adopted and incorporated by reference as part of these rules and may be

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 accessed at [new hyperlink] <http://www.flrules.org/Gateway/reference.asp?No=Ref-10791>.

2 ~~Part 199 also is adopted to prescribe standards for use of employees who do not meet the~~  
3 ~~requirements of the regulations.~~

4 *Rulemaking Authority 368.03, 368.05(2), 350.127(2) FS. Law Implemented 368.03, 368.05*  
5 *FS. History—New 11-14-70, Amended 9-24-71, 9-21-74, 10-7-75, 11-30-82, 10-2-84, Formerly*  
6 *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, 7-10-19,*  
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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** October 6, 2022  
**TO:** Jon Rubottom, Attorney, Office of the General Counsel  
**FROM:** Sevini K. Guffey, Public Utility Analyst III, Division of Economics *SKG*  
**RE:** Statement of Estimated Regulatory Costs for Proposed Adoption of Rule 25-12.005, Florida Administrative Code (F.A.C.), Codes and Standards Adopted.

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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 58 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 2021 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  
**Rule 25-12.005 F.A.C., Codes and Standards Adopted**

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 rule is being amended to reflect the adoption and incorporation by reference, the current 49 Code of Federal Regulations (CFR) parts 191, 192, and 199 as it pertains to the regulation of natural gas. Adoption of the current federal codes is required under the 60105 certification agreement between the Pipeline Hazardous Materials Safety Administration (PHMSA) and the Florida Public Service Commission. PHMSA guidelines requires that the State periodically adopt changes in the federal rules. Benefits of these proposed revisions would be that gas utilities will have clear and consistent reporting requirements that reflect the most current federal and state gas safety regulations and ratepayers will benefit from operators of natural gas pipeline facilities operating their systems in accordance with the most current safety standards.

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.

58 natural gas operators (including 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 58 natural gas operators and their customers, and staff of the Florida Public Service Commission's Bureau of Safety.

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.