



State of Indiana

Eric J. Holcomb, Governor



Office of Management and Budget
102 State House
Indianapolis, IN 46204

State Budget Agency
212 State House
Indianapolis, IN 46204

September 4, 2024

Jeremy Comeau
Assistant General Counsel
Indiana Utility Regulatory Commission
101 W. Washington St., Ste. 1500 East
Indianapolis, IN 46204

Dear Mr. Comeau,

Pursuant to the provisions of IC 4-22-2-22.8, the Office of Management and Budget and State Budget Agency have reviewed the proposed rule that amends 170 IAC 5-3-0.6 and adds 170 IAC 5-3-6 (OMB #2024-57R) which you submitted on August 1, 2024. After reviewing the proposed rule, the recommendation of OMB and SBA is that the rule changes be approved. Indiana Utility Regulatory Commission is authorized to commence the public comment period(s).

Furthermore, if you revise the proposed rule after this approval, you must resubmit the rule and obtain a new approval pursuant to IC 4-22-2-22.8(e).

IURC may proceed with the rule proposed in its submission.

Cristopher R. Johnston
OMB Director

Date: 8/29/2024

Joe Habig
Acting SBA Director

Date: 9/4/2024

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

Proposed Rule LSA Document #24-____

DIGEST

Amends 170 IAC 5-3-0.6 to incorporate new federal regulations through July 1, 2024. Adds 170 IAC 5-3-6 to set forth the factors in assessing penalties under IC 8-1-22.5. Effective 30 days after filing with the publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

170 IAC 5-3-0.6; 170 IAC 5-3-6

SECTION 1. 170 IAC 5-3-0.6 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-3-0.6 Incorporation of United States Department of Transportation pipeline safety regulations

Authority: IC 8-1-1-3; IC 8-1-22.5-4

Affected: IC 8-1-2; IC 8-1-22.5

Sec. 0.6. The commission hereby incorporates in this rule the pipeline safety regulations of the United States Department of Transportation contained in 49 CFR Parts 40, 191, 192, 193, 194, 195, 198, and 199, as of ~~November 1, 2022~~ **July 1, 2024**, as revised by section 2 of this rule. (*Indiana Utility Regulatory Commission; 170 IAC 5-3-0.6; filed May 27, 2016, 11:39 a.m.: 20160622-IR-170150424FRA; filed Sep 20, 2018, 3:04 p.m.: 20181017-IR-170170448FRA; filed Mar 17, 2022, 12:34 p.m.: 20220413-IR-170210213FRA; filed May 24, 2023, 3:24p.m.:20230621-IR-17022032FRA*)

SECTION 2. 170 IAC 5-3-6 IS ADDED TO READ AS FOLLOWS:

170 IAC 5-3-6 Penalty Considerations

Authority: IC 8-1-22.5-4

Affected: IC 8-1-22.5

Sec. 6. (a) **When imposing a civil penalty under IC 8-1-22.5-7, the commission shall consider the escalating and mitigating factors listed in this section.**

(b) **The commission may impose a civil penalty up to the maximum amount specified in IC 8-1-22.5-7.**

(c) **The commission shall consider the following factors in escalating a civil penalty:**

(1) **Gravity of the violation, including whether and the degree to which the violation resulted in property damage, injury, hospitalization, or fatality.**

(2) **Seriousness of the violation, including whether and the degree to which the violation posed an imminent hazard to public health and safety.**

(3) Culpability of the operator including whether the violation was negligent, reckless, or intentional.

(4) Violation history, such as whether the type of violation has been repeated by the operator one or more times.

(5) Economic advantage for not complying, including to the extent the operator gained an economic benefit by not complying.

(d) The commission shall consider the following factors in mitigating all or part of a civil penalty:

(1) Cooperation, including whether the operator self-reported the violation and took immediate action to rectify the violation.

(2) Operator size and ability to pay, including whether the penalty would cause the operator to be unable to continue to serve customers.

(e) The commission may also consider other factors as justice may require.

(Indiana Utility Regulatory Commission; 170 IAC 5-3-6)

SECTION 3. SECTIONS 1 through 2 of this document take effect 30 days after filing with the publisher.