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**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION**

**Notice of First Public Comment Period**  
LSA Document #24-382

**PIPELINE SAFETY REGULATIONS; PENALTIES**

**PURPOSE OF NOTICE**

The Indiana Utility Regulatory Commission (IURC) is soliciting public comment on amending rules at [170 IAC 5-3-0.6](#) to incorporate new federal regulations through July 1, 2024, and adding new rules at [170 IAC 5-3-6](#) to set forth the factors in assessing penalties under [IC 8-1-22.5](#). IURC seeks comment on the affected citations listed and any other provisions of Title 170 that may be affected by this rulemaking.

**ADDITIONAL DOCUMENTS**

Regulatory Analysis: [20241009-IR-170240382RAA](#)  
Notice of Public Hearing: [20241009-IR-170240382PHA](#)

**CITATIONS AFFECTED:** [170 IAC 5-3-0.6](#); [170 IAC 5-3-6](#)

**AUTHORITY:** [IC 8-1-1-3](#); [IC 8-1-22.5-4](#)

**OVERVIEW**

**Basic Purpose and Background**

This rulemaking has two parts. First, the amendment to [170 IAC 5-3-0.6](#) incorporates federal pipeline safety regulation through July 1, 2024, replacing the previous incorporation through November 1, 2022. Incorporation of new federal pipeline safety regulations at least every two years is required to maintain the pipeline safety division's certification.

Second, this rulemaking adds [170 IAC 5-3-6](#) to set forth the factors in assessing penalties under [IC 8-1-22.5](#). This part of the rulemaking is required under [IC 4-22-2-19.6](#), effective January 1, 2023, requiring that for each fee, fine, or civil penalty imposed by an agency that is not set as a specific amount in a state law, a rule must describe the circumstances for which the agency will assess a fee, fine, or civil penalty, and set forth the amount of the fee, fine, or civil penalty. This rulemaking is intended to comply with that requirement.

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jeremy Comeau  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 East  
Indianapolis, IN 46204  
(317) 232-2102 (Office)  
jcomeau@urc.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Matthew Jaworowski  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 650-0126  
majaworowski@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

**REQUEST FOR PUBLIC COMMENT**

IURC is soliciting public comment on the proposed rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:  
LSA Document #24-382 Pipeline Safety Regulations; Penalties

Jeremy Comeau  
Assistant General Counsel  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 East  
Indianapolis, IN 46204

(2) By email to [urccomments@urc.in.gov](mailto:urccomments@urc.in.gov). PLEASE NOTE: Email comments will not be considered part of the official written comment period unless they are sent to the address indicated in this notice.

(3) Attend scheduled public hearing.

### COMMENT PERIOD DEADLINE

All comments must be postmarked or time stamped not later than November 15, 2024.

The rule, Regulatory Analysis, appendices referenced in the Regulatory Analysis, and materials incorporated by reference (if applicable) are on file at the Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 East, Indianapolis, Indiana and are available for public inspection. Copies of the rule, Regulatory Analysis, and appendices referenced in the Regulatory Analysis are available at the Indiana Utility Regulatory Commission office and at

<https://www.in.gov/iurc/rulemakings/rulemakings-pending-and-effective/rm-24-04-regarding-170-iac-5-3/>.

If IURC does not receive substantive comments during the public comment period or public hearing, the rule may be adopted with text that is the same as or does not substantially differ from the text of the proposed rule published in this notice.

### PROPOSED RULE

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 8-1-22.5-7](#)

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 at least one (1) time.

**(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](#))*

*Posted: 10/09/2024 by Legislative Services Agency*

An [html](#) version of this document.