

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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Little Rock, Arkansas 72201-1094

(501) 682-5070

www.sos.arkansas.gov



For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency _____

Department _____

Contact _____ E-mail _____ Phone _____

Statutory Authority for Promulgating Rules _____

Rule Title: _____

Intended Effective Date

(Check One)

Date

☐

Emergency (ACA 25-15-204)

Legal Notice Published _____

☐

10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment _____

☐

Other _____

(Must be more than 10 days after filing date.)

Reviewed by Legislative Council _____

Adopted by State Agency _____

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)



Signature

Phone Number

E-mail Address

Title

Date

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

Proposed Rulemaking

Title

Promulgated by:
Oil and Gas Commission

Title 15. Natural Resources and Economic Development

Chapter XV. Oil and Gas Commission, Department of Energy and Environment

Subchapter A. Generally

Part 275. General Rules

Subpart 5. Transportation

15 CAR § 275-501. Pipelines, purchasers, and transporters.

(a) No carrier by pipeline and no gathering system shall transport oil from any lease or wells if the said pipeline or gathering system has reason to believe the owner or operator of said lease or wells to which it is connected has violated any rule or order of the Oil and Gas Commission or any conservation laws of the state with reference to oil and gas.

(b)(1) No pipeline company shall transport oil from any gathering system which the said pipeline company has reason to believe has violated any rule or order of the commission or any conservation law of this state with reference to oil and gas.

(2) It shall be the duty of the pipeline company to suspend transportation of any oil from said gathering system until such time as such pipeline company is notified in writing by the agent of the commission that the violation on the part of the gathering system has been discontinued and that the gathering system is complying with the rules and orders of the commission and the conservation laws of the State of Arkansas.

(c)(1) In order to carry out the spirit and purposes of this and other rules tending to provide orderly production of crude oil without waste and to give equal opportunity

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for marketing oil to all operators bringing wells into production in said field, all pipeline companies are hereby directed to make connection of their lines to the lease tanks on properties or leases in rotation as wells are completed, regardless of ownership.

(2) Connections shall be accepted and taken by the pipeline which by geographical location and least expense is the logical connection unless some other line is willing to accept the same.

(3) All wells which are at the present time unconnected shall be given connection by the pipeline to which the same are or may be allocated before the owners of such pipelines make connections to their own wells or wells of affiliated companies.

15 CAR § 275-502. Reports from oil pipelines, transporters, and storers.

(a) Each transporter of oil within the State of Arkansas shall furnish for each calendar month a Transporter's and Storer's Monthly Report, containing complete information and data indicated by such form respecting stocks of oil on hand and all movements of oil by pipeline within the State of Arkansas, and all movements of oil:

(1) By watercraft, or by trucks or other conveyances except railroads, from leases to storers or refiners;

(2) Between transporters within the state;

(3) Between storers within the state;

(4) Between refiners within the state; and

(5) Between storers and refiners within the state.

(b) Each storer of oil within the State of Arkansas shall furnish for each calendar month a Transporter's and Storer's Monthly Report, containing complete information and data indicated by such form respecting the storage of oil within the State of Arkansas.

(c) The Transporter's and Storer's Monthly Report for each month shall be prepared and filed according to instructions on the form, on or before the fifteenth day of the next succeeding month.

15 CAR § 275-503. Exploration and production fluid gathering, handling, and transportation.

(a) **Definitions.** As used in this section:

(1) "Class II fluids" means:

(A) Produced water and/or other fluids brought to the surface in connection with drilling, completion, or fracture treatments, workover or recompletion and plugging of oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, or natural gas storage operations; or

(B) Produced water and/or other fluids from subdivision (a)(1)(A) of this section, which prior to reinjection have been used on site for purposes integrally associated with well drilling, completion or fracture treatments, workover or recompletions or plugging oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, natural gas storage operations, or chemically treated or altered to the extent necessary to make them usable for purposes integrally related to well drilling, completion, workover or recompletions or plugging oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, natural gas storage operations, or commingled with fluid wastes resulting from fluid treatments outlined above, provided the commingled fluid wastes do not constitute a hazardous waste under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(2) "Exploration and production fluid" means crude oil bottom sediments and all Class II fluids, to the extent those fluids are now or hereafter exempt from the provisions of Subtitle C of the Federal Resource Conservation Recovery Act of 1976, Pub. L. No. 94-580;

(3) "Exploration and production fluid transportation system" means any motor vehicle licensed for highway use on a public highway or used on a public highway, that is equipped for either carrying or pulling a transportation tank containing exploration

and production fluids, from the point of any fluid generation or collection site to any subsequent off-site:

- (A) Storage facility;
- (B) Surface disposal facility; or
- (C) Injection well disposal facility;

(4) "Exploration and production fluid transporter" means an operator of an exploration and production fluid transportation system; and

(5) "Transportation tank" means an assembly, compartment, tank, or other container that is used for transporting or delivering exploration and production fluid.

(b)(1) No person shall operate an exploration and production fluid transportation system without an exploration and production fluid transportation system permit.

(2) Application for which shall be made on forms prescribed by the Director of Production and Conservation.

(3) The application shall be executed under penalties of perjury and accompanied by an exploration and production fluid transportation system permit fee in the amount specified below.

(c)(1) If the application does not contain all of the required information or documents, the director or his or her designee shall notify the applicant in writing.

(2) The notification shall specify the additional information or documents necessary to process the application, and shall advise the applicant that the application will be deemed denied unless the additional information or documents are submitted within thirty (30) days following the date of notification.

(d) The application shall, at a minimum, include:

- (1) A permit fee of one hundred dollars (\$100) per transportation tank;
- (2) The name, address, and business and emergency telephone numbers of the proposed exploration and production fluid transporter, including Arkansas contact information if the transporter is located outside of the State of Arkansas;
- (3) A brief description of the number and type of transportation tanks to be used in the system, specifying whether transportation tanks will be owned, leased, or

otherwise arranged for, and including tank capacity and a manufacturer's serial number or other identifying number for each transportation tank; and

(4) An entity organizational report on a form prescribed by the director.

(e)(1) If the applicant satisfies all requirements of this section, the director shall issue an exploration and production fluid transportation system permit and permit sticker for each transportation tank.

(2) The exploration and production fluid transportation system permit shall be kept in the Arkansas office of the exploration and production fluid transportation system permit holder.

(3) The permit sticker shall be affixed to the back of the transportation tank and shall be kept visible and readable at all times.

(f) Exploration and production fluid transportation system permits are not transferable.

(g)(1) Exploration and production fluid transportation system permits shall be renewed annually on July 1 of each year, commencing on July 1, 2010.

(2) Amended applications, including any additional permit fees, are required to be submitted within thirty (30) days of the addition of any transportation tanks to the exploration and production fluid transportation system.

(h) Exploration and production fluid transportation system recordkeeping requirements:

(1) Each exploration and production fluid transportation system permit holder shall maintain a record of all exploration and production fluids received, transported, delivered or disposed of, which shall include the:

- (A) Well lease or unit name;
- (B) Well or facility operator (fluid generator);
- (C) Date received;
- (D) Amount per pick up;
- (E) Type of fluid; and
- (F) Name and location of the permitted off-site:
 - (i) Temporary storage facility;

- (ii) Permitted surface disposal facility; or
- (iii) Permitted injection well disposal facility; and

(2) Records shall be:

(A) Maintained a minimum of three (3) years at the Arkansas office of the exploration and production fluid transportation system permit holder; and

(B) Made available to Oil and Gas Commission staff for inspection during normal business hours.

(i) Exploration and production fluid transportation system operating requirements:

(1) All transportation tanks and associated piping and valves must be kept in leak-free condition;

(2)(A) Exploration and production fluid transporters shall only transport exploration and production fluid to a permitted:

- (i) Well for reuse in the well drilling or well completion process;
- (ii) Off-site temporary storage facility;
- (iii) Surface disposal facility; or
- (iv) Injection well disposal facility.

(B) Exploration and production fluid shall not be released or discharged onto the ground surface or into waters of the state unless otherwise authorized by the Division of Environmental Quality;

(3) All exploration and production fluids stored at a permitted temporary storage facility shall be contained in tanks or permitted temporary storage pits;

(4) Exploration and production fluid shall not be commingled or blended with nonexempt waste (such as used motor or compressor oil) under Subtitle C of the Federal Resource Conservation and Recovery Act of 1976; and

(5) All transportation tanks shall contain the name and phone number of the exploration and production fluid transporters in a legible manner.

(j) No person shall engage, employ, or contract with any other person except a permitted exploration and production fluid transporter to transport exploration and production fluids.

(k) Failure to comply with provisions of this section may result in revocation of the exploration and production fluid transportation system permit and/or the assessment of civil penalties in accordance with 15 CAR § 275-104.

15 CAR § 275-504. Gathering and transportation of hazardous liquids by pipeline—permitting and operational requirements.

(a) **Definitions.** As used in this section:

(1) “Jurisdictional pipeline” means any onshore hazardous liquid pipeline regulated under Federal Regulation 49 C.F.R. pt. 195, as amended, which is within the jurisdiction of the Oil and Gas Commission (“Commission”) in accordance with Arkansas Code § 15-71-110, as amended.

(2) “Nonjurisdictional pipeline” means any onshore hazardous liquid pipeline, including but not limited to flowlines, or gathering lines, not under jurisdiction of Federal Regulation 49 C.F.R. pt. 195, as amended, which is within the jurisdiction of the Oil and Gas Commission in accordance with Arkansas Code § 15-71-110, as amended.

(3) “Perennial stream” means:

(A) A stream that has flowing water year-round during a typical year;

(B) The water table is located above the stream bed for most of the year;

(C) Groundwater is the primary source of water for stream flow; and

(D) Runoff from rainfall is a supplemental source of water for stream flow.

(4) “PHMSA” means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation

(5) “Pipeline operator” means any person who owns or operates and is responsible for the construction, operation and maintenance of a hazardous liquid pipeline which transports hazardous liquid from a point of beginning to severance the well within the jurisdiction of the Oil and Gas Commission in accordance with Arkansas Code § 15-71-110, as amended.

(6) "Unusually Sensitive Area" (USA) means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under 49 C.F.R. § 195.6.

b) Applicability.

(1) For purposes of this rule, the jurisdiction of the Oil and Gas Commission, as specified in Arkansas Code § 15-71-110, as amended, extends to and includes:

(A) The gathering, storage and transportation of crude oil, refined products, and CO2: and

(B) Any other product in liquid form during transportation by pipeline subject to 49 U.S.C. 60101, as defined in Arkansas Code § 15-71-110, as amended.

(2) Every pipeline operator transporting hazardous liquids by pipeline is subject to the applicable provisions of this rule except for crude oil pipelines from a permitted oil well, to a lease stock tank located on the well pad, lease or production unit which are exempt from the provisions of this rule.

(c) General Requirements for all Jurisdictional and Nonjurisdictional Pipelines.

(1)(A) Each pipeline operator shall apply, on a form prescribed by the Director of Production and Conservation, for an initial statewide permit to construct, maintain and operate a hazardous liquid pipeline system.

(B) The initial permit application shall contain at a minimum the following:

(i) Name, address, and contact information for the pipeline operator;

(ii) Map, in electronic form or other media acceptable to the director, showing the location of all hazardous liquid pipelines from the point of initial jurisdiction through any gathering or processing equipment or treating facility, pumping station, storage tank(s), and to the termination point of the jurisdiction of the Oil and Gas Commission, including all public road, railroads, and perennial stream and river crossings;

(iii) A determination as to what pipelines are jurisdictional;

(2) Each pipeline operator shall be required to submit an annual permit renewal by January 31 of each year.

(3)(A) The renewal permit shall include a revised pipeline map, if applicable, showing any new pipeline additions constructed or pipelines properly abandoned during the previous year, an annual report on a form prescribed by the director, and a permit renewal fee in accordance with paragraph (c)(1)(B)(iv) above.

(B) The renewal permit shall also contain the pipeline operator's determination as to which pipelines are jurisdictional.

(4)(A) Each pipeline operator shall submit a Notice of Construction or Repair, on a form prescribed by the director, prior to commencing construction of a new pipeline or pipeline segment or within 48 hours after completing repair to an existing pipeline, for each segment or project length of pipeline constructed during the year.

(B) The notice shall indicate the location and extent of the hazardous liquid pipelines to be constructed or repaired.

(5)(A) Each pipeline operator shall notify the director, or his or her designee, within five (5) calendar days of exceeding any hazardous liquid pipeline's established maximum allowable operating pressure.

(B) This shall be submitted on a form prescribed by the director.

(6)(A) Each pipeline operator shall, at the earliest practicable moment, give notice to OGC of a release of any hazardous liquid, anhydrous ammonia, or carbon dioxide from any pipeline and submit a Notice of Incident, on a form prescribed by the director, for each incident of release due to pipeline failure which results in:

(i) A death or personal injury requiring in-patient hospitalization;

(ii) Either a fire or explosion not intentionally set by the operator;

(iii) Estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$25,000;

(iv) Pollution of any stream, river, lake, reservoir, or other similar body of water that violated applicable water quality standards, caused a discoloration of the surface of the water or adjoining shoreline, or deposited a sludge or emulsion beneath the surface of the water or upon adjoining shorelines;

(v) A release of five (5) or more barrels of crude oil or product from a pipeline; or

(vi) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subparagraphs (i), or (ii), (iii), (iv) or (v) above.

(B) The notice required in (c)(6)(A) above shall be sent via phone or e-mail to the Commission Regional Office for the county where the event occurred, no later than 2 hours after discovery and include the following information:

(i) Company/operator name;

(ii) Location of accident;

(iii) Time and date of accident;

(iv) Fatalities or personal injuries;

(v) Phone number of operator;

(vi) Telephone number of the operator's on-site person;

(vii) Other significant facts relevant to the accident, such as ignition, explosion, rerouting of traffic, evacuation of any building, and media interest

(C) Following an incident reported as required by this section, the operator of the pipeline shall submit a Notice of Incident, on a form prescribed by the director for the incident due to hazardous liquid pipeline failure within ten (10) business days.

(D)(i) Line markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

(ii) The marker must state at least the following on a background of sharply contrasting color:

(a) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline", "Anhydrous Ammonia" or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of 1 /4 inch (6.4 millimeters).

(b) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

(7) Every pipeline operator shall be a member of a qualified One Call Center system.

(d) Requirements for all Nonjurisdictional Pipelines

(1)(A) All pipelines crossing any stream or stream bed shall comply with applicable state rules and federal regulations.

(B) Additionally, any stream crossing of perennial streams, constructed on or after December 16, 2007, shall maintain a minimum of fifty (50) feet of undisturbed stream bank for the protection of the stream.

(C) However, the fifty (50) feet of undisturbed stream bank requirement may be modified by the director provided that the pipeline operator provides proof that the pipeline operator has received approval for the crossing from a state or federal agency.

(2)(A) Each pipeline operator shall place and maintain appropriate pipeline signage.

(B) Pipeline markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

(C) The marker must state at least the following on a background of sharply contrasting color:

(i) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline," "Anhydrous Ammonia" or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of 1 /4 inch (6.4 millimeters);

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

(3) All pipelines, constructed after the effective date of this rule shall be buried at least twenty-four (24) inches below ground surface, or in accordance with other applicable state or federal laws.

(e) Requirements for Jurisdictional Pipelines

(1) All jurisdictional pipelines shall be in compliance with construction, operation, and maintenance and reporting requirements contained in Federal Regulations 49 C.F.R. pt. 195, as amended, which are herein incorporated by reference.

(2) All reports submitted to the Department of Transportation from jurisdictional pipeline operators shall be concurrently submitted to the OGC.

(3) All pipeline operators of jurisdictional pipelines shall be subject to the applicable drug and alcohol testing requirements contained in Federal Regulation 49 C.F.R. pt. 199, as amended.

(4) Any pipeline operator determined to be in violation of 49 C.F.R. pt. 195 may be subject to civil penalties up to the amount set forth in 49 C.F.R. pt. 190 pursuant to the procedures set forth in 49 C.F.R. pt. 190 and 15 CAR § 275-104 as applicable

(f) Additional Requirements

(1)(A) Additional Requirements for pipeline operators of intrastate hazardous liquids pipelines, a hazardous liquids pipeline facility, an intrastate carbon dioxide pipeline, an anhydrous ammonia pipeline or anhydrous ammonia pipeline facility

shall be included when any part of the pipelines or facilities are located within 1,000 feet of a public school building containing classrooms, or

(B) Within 1,000 feet of any other public school facility where students congregate or within 1,000 feet of any hospital, long-term care facility, public park, event center or stadium, any pipeline or facility referenced in Section (f)(1)(A) above shall comply with the following:

(i) File with the Commission in the initial pipeline permit application the following information;

(a) The name of the school; public school facility, hospital, long-term care facility, public park, event center or stadium;

(b) The street address of the public school building, public school facility, hospital, long-term care facility, public park, event center or stadium; and

(c) The identification (system name) of the pipeline;

(ii) File with the Commission on an annual basis, any updates to the above information on an ongoing basis for the duration of the pipeline or facility operation.

(2) Any pipeline or facility referenced in Section (f)(1)(A) and (f)(1)(B) above shall have a written pipeline emergency response plan pertinent to the relevant school, school facility, hospital, long-term care facility, public park, event center, or stadium. The plan shall contain the following:

(A) A description and map of the pipeline facilities that are within 1,000 feet of the school building, school facility, hospital, long-term care facility, public park, event center, or stadium or facility;

(B) A list of any product(s) transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) The designated emergency number for the pipeline facility operator;

(D) Information on the State's excavation one-call system;

(E) Information on how to recognize, report, and respond to a product release;

(3) The pipeline operator shall provide a copy of the pipeline emergency response plan to the Commission and mail by certified mail, return receipt requested, to the superintendent of the school district, mayor's office, event center, and stadium manager where the school, school facility, hospital, long-term care facility, public park, event center, or stadium is located.

(4)(A) The pipeline operator shall make every effort to meet with the appropriate official to explain the pipeline emergency response plan.

(B) All records documenting compliance with the requirements of this section, including documentation of any meetings or acknowledgment of receipt by the school district superintendent, or both, shall be retained for five years from the date of the event that is commemorated by the record.

(C) Records of certified mail transmissions undertaken in compliance with this section satisfy the record-keeping requirements of this subsection.

(g) **Enforcement**

(1) Any regulated entity engaged in the operation of hazardous liquid pipelines are subject to the issuance of a notice of violation of any statutes or any rule or permit condition of the Commission with respect to the hazardous liquid pipelines covered by this rule.

(2) In accordance with Arkansas Code § 15-72-103(c), any person knowingly and willfully aiding or abetting any other person in the violation of any statute relating to the violation of any provision of the state statutes, or any rule, order, or permit condition dealing with hazardous liquid pipelines covered by this rule, shall be subject to the same penalties as are prescribed herein for the regulated entity.

(3) All violations of this rule shall be issued in accordance with 15 CAR § 275-104(a) through (f).

(4) Civil Penalties

(A) The director shall determine whether to request the assessment of civil penalties issued under this rule with consideration given for compliance with applicable abatement requirements.

(B) If a civil penalty is requested by the director, the regulated entity may voluntarily agree to the assessment and pay the civil penalty as requested or modified by the director, or the Director may file an application, in accordance with 15 CAR § 275-101 and 15 CAR § 275-102, and other applicable hearing procedures, to request the issuance of the requested civil penalty by the Commission.

(C)(i) The amount of the director's requested civil penalty shall be based on the civil penalty amounts authorized by applicable federal law for violations of the United States Department of Transportation, Office of Pipeline Safety jurisdictional hazard liquid pipeline requirements.

(ii) However, the Commission is not bound by the director's request and may impose civil penalties of up to the maximum amounts permitted by law.

Proposed Rulemaking

Title

Promulgated by:
Oil and Gas Commission

Title 15. Natural Resources and Economic Development

Chapter XV. Oil and Gas Commission, Department of Energy and Environment

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(b)(1) No pipeline company shall transport oil from any gathering system which the said pipeline company has reason to believe has violated any rule or order of the commission or any conservation law of this state with reference to oil and gas.

(2) It shall be the duty of the pipeline company to suspend transportation of any oil from said gathering system until such time as such pipeline company is notified in writing by the agent of the commission that the violation on the part of the gathering system has been discontinued and that the gathering system is complying with the rules and orders of the commission and the conservation laws of the State of Arkansas.

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(1) By watercraft, or by trucks or other conveyances except railroads, from leases to storers or refiners;

(2) Between transporters within the state;

(3) Between storers within the state;

(4) Between refiners within the state; and

(5) Between storers and refiners within the state.

(b) Each storer of oil within the State of Arkansas shall furnish for each calendar month a Transporter's and Storer's Monthly Report, containing complete information and data indicated by such form respecting the storage of oil within the State of Arkansas.

(c) The Transporter's and Storer's Monthly Report for each month shall be prepared and filed according to instructions on the form, on or before the fifteenth day of the next succeeding month.

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(1) "Class II fluids" means:

(A) Produced water and/or other fluids brought to the surface in connection with drilling, completion, or fracture treatments, workover or recompletion and plugging of oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, or natural gas storage operations; or

(B) Produced water and/or other fluids from subdivision (a)(1)(A) of this section, which prior to reinjection have been used on site for purposes integrally associated with well drilling, completion or fracture treatments, workover or recompletions or plugging oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, natural gas storage operations, or chemically treated or altered to the extent necessary to make them usable for purposes integrally related to well drilling, completion, workover or recompletions or plugging oil, natural gas, Class II or wells that are required to be permitted as water supply wells by the Oil and Gas Commission, enhanced recovery operations, natural gas storage operations, or commingled with fluid wastes resulting from fluid treatments outlined above, provided the commingled fluid wastes do not constitute a hazardous waste under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.;

(2) "Exploration and production fluid" means crude oil bottom sediments and all Class II fluids, to the extent those fluids are now or hereafter exempt from the provisions of Subtitle C of the Federal Resource Conservation Recovery Act of 1976, Pub. L. No. 94-580;

(3) "Exploration and production fluid transportation system" means any motor vehicle licensed for highway use on a public highway or used on a public highway, that is equipped for either carrying or pulling a transportation tank containing exploration

and production fluids, from the point of any fluid generation or collection site to any subsequent off-site:

- (A) Storage facility;
- (B) Surface disposal facility; or
- (C) Injection well disposal facility;

(4) "Exploration and production fluid transporter" means an operator of an exploration and production fluid transportation system; and

(5) "Transportation tank" means an assembly, compartment, tank, or other container that is used for transporting or delivering exploration and production fluid.

(b)(1) No person shall operate an exploration and production fluid transportation system without an exploration and production fluid transportation system permit.

(2) Application for which shall be made on forms prescribed by the Director of Production and Conservation.

(3) The application shall be executed under penalties of perjury and accompanied by an exploration and production fluid transportation system permit fee in the amount specified below.

(c)(1) If the application does not contain all of the required information or documents, the director or his or her designee shall notify the applicant in writing.

(2) The notification shall specify the additional information or documents necessary to process the application, and shall advise the applicant that the application will be deemed denied unless the additional information or documents are submitted within thirty (30) days following the date of notification.

(d) The application shall, at a minimum, include:

- (1) A permit fee of one hundred dollars (\$100) per transportation tank;
- (2) The name, address, and business and emergency telephone numbers of the proposed exploration and production fluid transporter, including Arkansas contact information if the transporter is located outside of the State of Arkansas;
- (3) A brief description of the number and type of transportation tanks to be used in the system, specifying whether transportation tanks will be owned, leased, or

otherwise arranged for, and including tank capacity and a manufacturer's serial number or other identifying number for each transportation tank; and

(4) An entity organizational report on a form prescribed by the director.

(e)(1) If the applicant satisfies all requirements of this section, the director shall issue an exploration and production fluid transportation system permit and permit sticker for each transportation tank.

(2) The exploration and production fluid transportation system permit shall be kept in the Arkansas office of the exploration and production fluid transportation system permit holder.

(3) The permit sticker shall be affixed to the back of the transportation tank and shall be kept visible and readable at all times.

(f) Exploration and production fluid transportation system permits are not transferable.

(g)(1) Exploration and production fluid transportation system permits shall be renewed annually on July 1 of each year, commencing on July 1, 2010.

(2) Amended applications, including any additional permit fees, are required to be submitted within thirty (30) days of the addition of any transportation tanks to the exploration and production fluid transportation system.

(h) Exploration and production fluid transportation system recordkeeping requirements:

(1) Each exploration and production fluid transportation system permit holder shall maintain a record of all exploration and production fluids received, transported, delivered or disposed of, which shall include the:

- (A) Well lease or unit name;
- (B) Well or facility operator (fluid generator);
- (C) Date received;
- (D) Amount per pick up;
- (E) Type of fluid; and
- (F) Name and location of the permitted off-site:
 - (i) Temporary storage facility;

- (ii) Permitted surface disposal facility; or
- (iii) Permitted injection well disposal facility; and

(2) Records shall be:

(A) Maintained a minimum of three (3) years at the Arkansas office of the exploration and production fluid transportation system permit holder; and

(B) Made available to Oil and Gas Commission staff for inspection during normal business hours.

(i) Exploration and production fluid transportation system operating requirements:

(1) All transportation tanks and associated piping and valves must be kept in leak-free condition;

(2)(A) Exploration and production fluid transporters shall only transport exploration and production fluid to a permitted:

- (i) Well for reuse in the well drilling or well completion process;
- (ii) Off-site temporary storage facility;
- (iii) Surface disposal facility; or
- (iv) Injection well disposal facility.

(B) Exploration and production fluid shall not be released or discharged onto the ground surface or into waters of the state unless otherwise authorized by the Division of Environmental Quality;

(3) All exploration and production fluids stored at a permitted temporary storage facility shall be contained in tanks or permitted temporary storage pits;

(4) Exploration and production fluid shall not be commingled or blended with nonexempt waste (such as used motor or compressor oil) under Subtitle C of the Federal Resource Conservation and Recovery Act of 1976; and

(5) All transportation tanks shall contain the name and phone number of the exploration and production fluid transporters in a legible manner.

(j) No person shall engage, employ, or contract with any other person except a permitted exploration and production fluid transporter to transport exploration and production fluids.

(k) Failure to comply with provisions of this section may result in revocation of the exploration and production fluid transportation system permit and/or the assessment of civil penalties in accordance with 15 CAR § 275-104.

15 CAR § 275-504. Gathering and transportation of hazardous liquids by pipeline—permitting and operational requirements.

(a) **Definitions.** As used in this section:

(1) “Jurisdictional pipeline” means any onshore hazardous liquid pipeline regulated under Federal Regulation 49 C.F.R. pt. 195, as amended, which is within the jurisdiction of the Oil and Gas Commission (“Commission”) in accordance with Arkansas Code § 15-71-110, as amended.

(2) “Nonjurisdictional pipeline” means any onshore hazardous liquid pipeline, including but not limited to flowlines, or gathering lines, not under jurisdiction of Federal Regulation 49 C.F.R. pt. 195, as amended, which is within the jurisdiction of the Oil and Gas Commission in accordance with Arkansas Code § 15-71-110, as amended.

(3) “Perennial stream” means:

- (A) A stream that has flowing water year-round during a typical year;
- (B) The water table is located above the stream bed for most of the year;
- (C) Groundwater is the primary source of water for stream flow; and
- (D) Runoff from rainfall is a supplemental source of water for stream flow.

(4) “PHMSA” means the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation

(5) “Pipeline operator” means any person who owns or operates and is responsible for the construction, operation and maintenance of a hazardous liquid pipeline which transports hazardous liquid from a point of beginning to severance the well within the jurisdiction of the Oil and Gas Commission in accordance with Arkansas Code § 15-71-110, as amended.

(6) "Unusually Sensitive Area" (USA) means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under 49 C.F.R. § 195.6.

b) Applicability.

(1) For purposes of this rule, the jurisdiction of the Oil and Gas Commission, as specified in Arkansas Code § 15-71-110, as amended, extends to and includes:

(A) The gathering, storage and transportation of crude oil, refined products, and CO₂: and

(B) Any other product in liquid form during transportation by pipeline subject to 49 U.S.C. 60101, as defined in Arkansas Code § 15-71-110, as amended.

(2) Every pipeline operator transporting hazardous liquids by pipeline is subject to the applicable provisions of this rule except for crude oil pipelines from a permitted oil well, to a lease stock tank located on the well pad, lease or production unit which are exempt from the provisions of this rule.

(c) General Requirements for all Jurisdictional and Nonjurisdictional Pipelines.

(1)(A) Each pipeline operator shall apply, on a form prescribed by the Director of Production and Conservation, for an initial statewide permit to construct, maintain and operate a hazardous liquid pipeline system.

(B) The initial permit application shall contain at a minimum the following:

(i) Name, address, and contact information for the pipeline operator;

(ii) Map, in electronic form or other media acceptable to the director, showing the location of all hazardous liquid pipelines from the point of initial jurisdiction through any gathering or processing equipment or treating facility, pumping station, storage tank(s), and to the termination point of the jurisdiction of the Oil and Gas Commission, including all public road, railroads, and perennial stream and river crossings;

(iii) A determination as to what pipelines are jurisdictional;

(2) Each pipeline operator shall be required to submit an annual permit renewal by January 31 of each year.

(3)(A) The renewal permit shall include a revised pipeline map, if applicable, showing any new pipeline additions constructed or pipelines properly abandoned during the previous year, an annual report on a form prescribed by the director, and a permit renewal fee in accordance with paragraph (c)(1)(B)(iv) above.

(B) The renewal permit shall also contain the pipeline operator's determination as to which pipelines are jurisdictional.

(4)(A) Each pipeline operator shall submit a Notice of Construction or Repair, on a form prescribed by the director, prior to commencing construction of a new pipeline or pipeline segment or within 48 hours after completing repair to an existing pipeline, for each segment or project length of pipeline constructed during the year.

(B) The notice shall indicate the location and extent of the hazardous liquid pipelines to be constructed or repaired.

(5)(A) Each pipeline operator shall notify the director, or his or her designee, within five (5) calendar days of exceeding any hazardous liquid pipeline's established maximum allowable operating pressure.

(B) This shall be submitted on a form prescribed by the director.

(6)(A) Each pipeline operator shall, at the earliest practicable moment, give notice to OGC of a release of any hazardous liquid, anhydrous ammonia, or carbon dioxide from any pipeline and submit a Notice of Incident, on a form prescribed by the director, for each incident of release due to pipeline failure which results in:

- (i) A death or personal injury requiring in-patient hospitalization;
- (ii) Either a fire or explosion not intentionally set by the operator;
- (iii) Estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$25,000;

(iv) Pollution of any stream, river, lake, reservoir, or other similar body of water that violated applicable water quality standards, caused a discoloration of the surface of the water or adjoining shoreline, or deposited a sludge or emulsion beneath the surface of the water or upon adjoining shorelines;

(v) A release of five (5) or more barrels of crude oil or product from a pipeline; or

(vi) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of subparagraphs (i), or (ii), (iii), (iv) or (v) above.

(B) The notice required in (c)(6)(A) above shall be sent via phone or e-mail to the Commission Regional Office for the county where the event occurred, no later than 2 hours after discovery and include the following information:

(i) Company/operator name;

(ii) Location of accident;

(iii) Time and date of accident;

(iv) Fatalities or personal injuries;

(v) Phone number of operator;

(vi) Telephone number of the operator's on-site person;

(vii) Other significant facts relevant to the accident, such as ignition, explosion, rerouting of traffic, evacuation of any building, and media interest

(C) Following an incident reported as required by this section, the operator of the pipeline shall submit a Notice of Incident, on a form prescribed by the director for the incident due to hazardous liquid pipeline failure within ten (10) business days.

(D)(i) Line markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

(ii) The marker must state at least the following on a background of sharply contrasting color:

(a) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline", "Anhydrous Ammonia" or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of 1 /4 inch (6.4 millimeters).

(b) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

(7) Every pipeline operator shall be a member of a qualified One Call Center system.

(d) Requirements for all Nonjurisdictional Pipelines

(1)(A) All pipelines crossing any stream or stream bed shall comply with applicable state rules and federal regulations.

(B) Additionally, any stream crossing of perennial streams, constructed on or after December 16, 2007, shall maintain a minimum of fifty (50) feet of undisturbed stream bank for the protection of the stream.

(C) However, the fifty (50) feet of undisturbed stream bank requirement may be modified by the director provided that the pipeline operator provides proof that the pipeline operator has received approval for the crossing from a state or federal agency.

(2)(A) Each pipeline operator shall place and maintain appropriate pipeline signage.

(B) Pipeline markers must be located at each public road crossing, at each railroad crossing, and in sufficient number along the remainder of each buried line so that its location is accurately known.

(C) The marker must state at least the following on a background of sharply contrasting color:

(i) The word "Warning," "Caution," or "Danger" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline," "Anhydrous Ammonia" or "Carbon Dioxide Pipeline," all of which, except for markers in heavily developed urban areas, must be in letters at least 1 inch (25 millimeters) high with an approximate stroke of 1 /4 inch (6.4 millimeters);

(ii) The name of the operator and a telephone number (including area code) where the operator can be reached at all times.

(3) All pipelines, constructed after the effective date of this rule shall be buried at least twenty-four (24) inches below ground surface, or in accordance with other applicable state or federal laws.

(e) Requirements for Jurisdictional Pipelines

(1) All jurisdictional pipelines shall be in compliance with construction, operation, and maintenance and reporting requirements contained in Federal Regulations 49 C.F.R. pt. 195, as amended, which are herein incorporated by reference.

(2) All reports submitted to the Department of Transportation from jurisdictional pipeline operators shall be concurrently submitted to the OGC.

(3) All pipeline operators of jurisdictional pipelines shall be subject to the applicable drug and alcohol testing requirements contained in Federal Regulation 49 C.F.R. pt. 199, as amended.

(4) Any pipeline operator determined to be in violation of 49 C.F.R. pt. 195 may be subject to civil penalties up to the amount set forth in 49 C.F.R. pt. 190 pursuant to the procedures set forth in 49 C.F.R. pt. 190 and 15 CAR § 275-104 as applicable

(f) Additional Requirements

(1)(A) Additional Requirements for pipeline operators of intrastate hazardous liquids pipelines, a hazardous liquids pipeline facility, an intrastate carbon dioxide pipeline, an anhydrous ammonia pipeline or anhydrous ammonia pipeline facility

shall be included when any part of the pipelines or facilities are located within 1,000 feet of a public school building containing classrooms, or

(B) Within 1,000 feet of any other public school facility where students congregate or within 1,000 feet of any hospital, long-term care facility, public park, event center or stadium, any pipeline or facility referenced in Section (f)(1)(A) above shall comply with the following:

(i) File with the Commission in the initial pipeline permit application the following information;

(a) The name of the school; public school facility, hospital, long-term care facility, public park, event center or stadium;

(b) The street address of the public school building, public school facility, hospital, long-term care facility, public park, event center or stadium; and

(c) The identification (system name) of the pipeline;

(ii) File with the Commission on an annual basis, any updates to the above information on an ongoing basis for the duration of the pipeline or facility operation.

(2) Any pipeline or facility referenced in Section (f)(1)(A) and (f)(1)(B) above shall have a written pipeline emergency response plan pertinent to the relevant school, school facility, hospital, long-term care facility, public park, event center, or stadium. The plan shall contain the following:

(A) A description and map of the pipeline facilities that are within 1,000 feet of the school building, school facility, hospital, long-term care facility, public park, event center, or stadium or facility;

(B) A list of any product(s) transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) The designated emergency number for the pipeline facility operator;

(D) Information on the State's excavation one-call system;

(E) Information on how to recognize, report, and respond to a product release;

(3) The pipeline operator shall provide a copy of the pipeline emergency response plan to the Commission and mail by certified mail, return receipt requested, to the superintendent of the school district, mayor's office, event center, and stadium manager where the school, school facility, hospital, long-term care facility, public park, event center, or stadium is located.

(4)(A) The pipeline operator shall make every effort to meet with the appropriate official to explain the pipeline emergency response plan.

(B) All records documenting compliance with the requirements of this section, including documentation of any meetings or acknowledgment of receipt by the school district superintendent, or both, shall be retained for five years from the date of the event that is commemorated by the record.

(C) Records of certified mail transmissions undertaken in compliance with this section satisfy the record-keeping requirements of this subsection.

(g) **Enforcement**

(1) Any regulated entity engaged in the operation of hazardous liquid pipelines are subject to the issuance of a notice of violation of any statutes or any rule or permit condition of the Commission with respect to the hazardous liquid pipelines covered by this rule.

(2) In accordance with Arkansas Code § 15-72-103(c), any person knowingly and willfully aiding or abetting any other person in the violation of any statute relating to the violation of any provision of the state statutes, or any rule, order, or permit condition dealing with hazardous liquid pipelines covered by this rule, shall be subject to the same penalties as are prescribed herein for the regulated entity.

(3) All violations of this rule shall be issued in accordance with 15 CAR § 275-104(a) through (f).

(4) Civil Penalties

(A) The director shall determine whether to request the assessment of civil penalties issued under this rule with consideration given for compliance with applicable abatement requirements.

(B) If a civil penalty is requested by the director, the regulated entity may voluntarily agree to the assessment and pay the civil penalty as requested or modified by the director, or the Director may file an application, in accordance with 15 CAR § 275-101 and 15 CAR § 275-102, and other applicable hearing procedures, to request the issuance of the requested civil penalty by the Commission.

(C)(i) The amount of the director's requested civil penalty shall be based on the civil penalty amounts authorized by applicable federal law for violations of the United States Department of Transportation, Office of Pipeline Safety jurisdictional hazard liquid pipeline requirements.

(ii) However, the Commission is not bound by the director's request and may impose civil penalties of up to the maximum amounts permitted by law.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.