

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2023-94 Rule Number En 1400

<p>1. Agency Name & Address:</p> <p>Department of Energy 21 South Fruit Street, Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: RSA 12-P:5, V; RSA 374:13; RSA 374:15</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p><input checked="" type="checkbox"/> Adopt</p> <p><input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.)</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **En 1400 Rules for Pipeline Utilities**

6. Contact person for copies and questions:

Name:	Andrew J. Harmon, Esq.	Title:	Hearing Examiner
Address:	Department of Energy 21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-2443

7. The rulemaking notice appeared in the Rulemaking Register on **April 13, 2023**.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes ☒ N/A ☐ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.
10. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).
11. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

In Item 7 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

Items 8 through 11 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 8 is required in every filing, and therefore is listed without a check-box. Items 9 through 11 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 8. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 9. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 10. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 11. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

Notice Number 2023-94Rule Number En 1400

1. Agency Name & Address:

**Department of Energy
21 S. Fruit St., Ste. 10
Concord, NH 03301**

2. RSA Authority: **RSA 12-P:5, V;
RSA 374:15**

3. Federal Authority: _____

4. Type of Action:

Adoption **X**

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Rules for Pipeline Public Utilities**

6. (a) Summary of what the rule says and of any proposed amendments:

The new Chapter En 1400 rules regarding pipeline public utilities reports, which are proposed by the Department of Energy (Department), modify the existing Puc 1400 rules, such as by replacing the term “Commission” with the term “Department,” in order to effectuate the transfer of the entirety of these regulatory responsibilities regarding certain reporting from the Public Utilities Commission (PUC) to the Department. The En 1400 rules also simplify the definitions of utilities by retaining the reference to RSA 362:2, but omitting any paraphrasing of the statute.

The new En 1400 rules otherwise retain the provisions in the existing Puc 1400 rules and apply to reporting by pipeline utilities regarding gas, crude petroleum, refined petroleum products, or combinations of petroleum products in the State.

6. (b) Brief description of the groups affected:

The En 1400 rules generally apply to any public utility that owns or operates any gas pipeline, including pumping stations, storage depots, and other facilities, for the transportation, distribution, or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

RULE	STATUTE(S) IMPLEMENTED
En 1401	RSA 12-P:5, IV
En 1402	RSA 12-P:5, IV; 374:15
En 1403.01	RSA 12-P:5, IV; 374:15
En 1403.02	RSA 12-P:5, IV; 374:15

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Andrew J. Harmon, Esq.** Title: **Hearings Examiner**
Address: **21 S. Fruit St., Ste. 10** Phone #: **603-271-2443**
Concord, NH 03301 Fax#:
E-mail: **andrew.j.harmon@energy.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964 or
dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **June 16, 2023**

☐ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, June 2, 2023 at 9:00 a.m.**

Place: **New Hampshire Public Utilities Commission
Hearing Room B
21 South Street
Concord, NH 03301**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 23:086, dated March 24, 2023

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed En 1400 rules to the existing Puc 1400 rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed En 1400 rules will replace the existing Puc 1400 without change as these responsibilities are transferring from the Public Utilities Commission to the Department of Energy.

A. To State general or State special funds:

None

B. To State citizens and political subdivisions:

None

C. To independently owned businesses:

None

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision of the State of New Hampshire, and therefore do not violate Part I, Article 28-a of the N.H. Constitution by necessitating additional local expenditures by a political subdivision.

COMMISSIONER
Jared S. Chicoline

DEPUTY COMMISSIONER
Christopher J. Ellms, Jr.

STATE OF NEW HAMPSHIRE



DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

Tel. (603) 271-3670

FAX No. 271-1526

TDD Access: Relay NH
1-800-735-2964

Website:
www.energy.nh.gov

June 21, 2023

Michael Morrell, Acting Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301-6312

**Re: En 1400 – Rules for Pipeline Utilities
Department of Energy Final Proposal
Rulemaking Notice No. 2023-94**

Dear Mr. Morrell:

On April 13, 2023, the Department of Energy filed a rulemaking notice with respect to the adoption of En 1400 rules regarding pipeline utilities. The rulemaking notice was published in the Rulemaking Register on April 13, 2023. A public hearing on the Initial Proposal was held on June 2, 2023, pursuant to RSA 541-A:11, and notice was given that written comments should be submitted by June 16, 2023. On June 21, 2023, the Commissioner of the Department established the Final Proposal for adoption of En 1400.

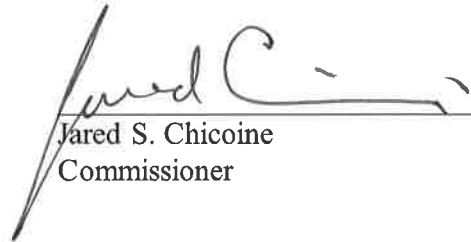
As required by the Rulemaking Manual, enclosed please find one copy of each of the following:

- A completed Appendix II-G Cover Sheet for Final Proposal;
- The established text of the Final Proposed rule as the "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as Appendix A and the incorporation by reference information table as Appendix B;
- The established text of the Final Proposed rule as the "Final Proposal-Annotated Text;"; and
- Completed Appendix II-H Incorporation by Reference Statements.

FP 2023-94
En 1400
Final Proposal

Thank you in advance for your assistance with this matter.

Sincerely,



Jared S. Chicoine
Commissioner

Enclosures

Informational Note and Unclear. The Budget bill, HB 2, (2021, 91), established the Dept. of Energy and transferred all those functions, powers, and duties of the PUC to the Dept where the legislation replaced the authority of the PUC with the authority of the Dept. **Unclear:** The Notice says that these new rules are the existing Puc 1400 rules. It is unclear whether the existing Puc rules will be repealed.

ext 6-20-23 1

Adopt En 1400 to read as follows:

CHAPTER En 1400 RULES FOR PIPELINE PUBLIC UTILITIES

PART En 1401 DEFINITIONS

En 1401.01 "Pipeline public utility," "pipeline utility" or "utility" means any "public utility" as defined in RSA 362:2.

En 1401.02 "Department" shall mean the New Hampshire department of energy.

PART En 1402 REPORTING REQUIREMENTS

En 1402.01 Reports to Department.

(a) If deemed necessary by the department to evaluate the safe operation of gas pipelines and to fulfill its authority under RSA 374:3, each utility and any owner or operator of a pipeline facility regulated by the Federal Energy Regulatory Commission shall provide the department, upon its request, the results of any tests and summaries of any records required under state or federal law. Such tests and summaries may include but not be limited to operating pressures, welding procedures, construction procedures, incident reporting, and accident reporting, and other practices that relate to the safe operation of pipelines.

(b) Each utility and any owner or operator of a pipeline facility regulated by the Federal Energy Regulatory Commission shall file reports with the department on such forms as the department shall specify as provided in En 1403.

(c) Copies of forms shall be furnished by the department upon request.

PART 1403 FORMS TO BE FILED

En 1403.01 F-22 Information Sheet.

(a) Each utility shall file **En Form F-22**:

(1) ~~Annually~~; and

(2) Whenever any changes occur to the information included in a utility's current En Form F-22 filing.

(b) Each utility shall include on En Form F-22 the following:

(1) Name of utility;

(2) Officer's or individual's name, **address** and e-mail address to receive annual report form (**En Form F-16**);

(3) Officer's or individual's name, **address** and e-mail address to receive the utility assessment invoice;

(4) The names and titles of the principal officers of the company; and

(5) The name, **title** and signature of the individual who supervised the completion of the form, with date of signature.

Edit. Insert a comma.

Edit/Unclear. It is unclear whether this is the form's title. Put the form's title in quotation marks and remove the parenthesis.

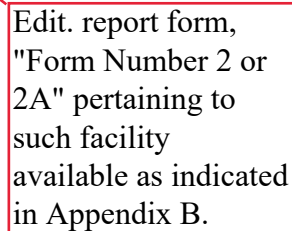
Unclear. No agency forms were filed with the final proposal. It is unclear whether these are federal forms and the incorporated documents in Appendix B do not contain these forms. Since no agency forms were filed with the FP, the Committee is being asked to approve forms it has not seen.

En 1403.02 Annual Reporting.

(a) Any owner or operator of a pipeline facility regulated by the Federal Energy Regulatory Commission shall, with respect to any such pipeline facility located or to be located in New Hampshire, file with the department:

(1) Concurrently upon its filing annually, on or before April 30 of each year, a copy of the signed original of the applicable Federal Energy Regulatory Commission annual report form (Form Number 2 or 2A) pertaining to such facility; and

(2) Concurrently upon its filing with the Federal Energy Regulatory Commission, a copy of any application for a certification of public convenience and necessity under the Natural Gas Act, 15 U.S.C. § 717f(c), with respect to any pipeline facility proposed to be located in New Hampshire.



Edit. report form,
"Form Number 2 or
2A" pertaining to
such facility
available as indicated
in Appendix B.

Appendix A

En 1401	RSA 12-P:5, IV
En 1402	RSA 12-P:5, IV; 374:15
En 1403.01	RSA 12-P:5, IV; 374:15
En 1403.02	RSA 12-P:5, IV; 374:15

Appendix B

DOCUMENTS INCORPORATED BY REFERENCE

FEDERAL STANDARDS AND FORMS

Rule	Title	Publisher; How to Obtain; and Cost
En 1403.02(a)(1)	Form Number 2 – Major Natural Gas Pipeline Annual Report	Available from the publisher, Federal Energy Regulatory Commission (FERC) at no cost at http://www.ferc.gov/docs-filing/forms.asp
En 1403.02(a)(1)	Form Number 2A – Non-Major Natural Gas Pipeline Annual Report	Available from the publisher, Federal Energy Regulatory Commission (FERC) at no cost at http://www.ferc.gov/docs-filing/forms.asp

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **Department of Energy**

2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Paul Kasper	Title:	Director, Enforcement Division
Address:	NHDOE, 21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-3670

3. Specific rule number where the material is incorporated: **En 1403.02(a)(1)**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) or, if the material is undated Internet content, the date the material was accessed and printed, and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text. **N/A**

6. How the material incorporated can be obtained by the public (include cost and the address of the party which published the material, and the Internet source URL if it appears in the rule, for example if the material is Internet content only available online).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference. **The length and page dimensions of the documents are readily amenable only to digital format.**

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: **June 20, 2023**

Signature: _____

Name: **Jared S. Chicoine**

Title: **Commissioner**

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

ATTACHMENT TO APPENDIX II-H
INCORPORATION BY REFERENCE STATEMENT

Rulemaking Notice No. 2023-94
En 1400, Rules for Pipeline Public Utilities
Rules of the Department of Energy
Final Proposal

- (1) En 1403.02(a)(1): Form Number 2 – Major Natural Gas Pipeline Annual Report.
- (2) En 1403.02(a)(1): Form Number 2A – Non-Major Natural Gas Pipeline Annual Report.
- (3) The Department did not modify the text of any materials incorporated by reference.
- (4) Copies of Form Number 2 – Major Natural Gas Pipeline Annual Report and Form Number 2A – Non-Major Natural Gas Pipeline Annual Report, are both available from the publisher, Federal Energy Regulatory Commission (FERC) at no cost at <http://www.ferc.gov/docs-filing/forms.asp>.
- (5) The Department did not reproduce the incorporated materials in full in the rules because the incorporated materials are not only lengthy, but the page dimensions are extensive and voluminous. All incorporated materials are available for purchase from the publisher or other sources or are available for review at the Department of Energy at no cost.