



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA-2010-0026; Amdt. Nos. 191-23; 192-120; 195-100]

RIN 2137-AE59

Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations: Response to Petitions for Reconsideration

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On March 11, 2015, PHMSA published a final rule amending the pipeline safety regulations to make miscellaneous changes that updated and clarified certain regulatory requirements. These amendments addressed several subject matter areas, including the performance of post-construction inspections, Type B onshore gas gathering line leak surveys, qualifying plastic pipe joiners, ethanol regulation, pipe transportation, offshore pipeline condition report filing, pressure reduction calculations for hazardous liquid pipeline anomalies, and components fabricated by welding. This final rule responds to petitions for reconsideration of the final rule.

DATES: The effective date of the amendment to 49 CFR 192.305, published at 80 FR 12779, March 11, 2015, is delayed indefinitely. PHMSA will publish a document in the **Federal Register** announcing a new effective date.

FOR FURTHER INFORMATION CONTACT: Kay McIver, Transportation Specialist, by telephone at 202-366-0113, or by electronic mail at kay.mciver@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2015, PHMSA published a final rule amending the pipeline safety regulations to make miscellaneous changes that update and clarify certain regulatory requirements (80 FR 12762). These amendments address several subject matter areas, including the performance of post-construction inspections, Type B onshore gas gathering line leak surveys, qualifying plastic pipe joiners, ethanol regulation, pipe transportation, offshore pipeline condition report filing, pressure reduction calculations for hazardous liquid pipeline anomalies, and components fabricated by welding.

II. Petitions for Reconsideration

Collectively, PHMSA received four petitions for reconsideration of the final rule from the American Public Gas Association (APGA), the American Gas Association (AGA), the Interstate Natural Gas Association (INGAA), and the National Association of Pipeline Safety Representatives (NAPSR). The APGA, the AGA, and NAPSR expressed concerns about the provisions of the final rule applicable to construction inspection in § 192.305. INGAA and the

AGA expressed concerns applicable to provisions in the final rule applicable to components fabricated by welding.

Components Fabricated by Welding; 49 CFR 192.153 and 192.165(b)(3)

In the final rule published on March 11, 2015, PHMSA added paragraph (e) to § 192.153 requiring that “a component having a design pressure established under paragraph (a) or paragraph (b) of this section and subject to the strength testing requirements of § 192.505(b) must be tested to at least 1.5 times the MAOP.” PHMSA also modified § 192.165(b)(3) to cross-reference this new subsection. In the preamble to the final rule, PHMSA noted “this proposal is not a change to the current pressure testing requirements found in Part 192, but [is] simply a clarification to ensure a clearer understanding of PHMSA’s pressure testing requirements for certain ASME BPVC vessels located in compressor stations, meter stations and other Class 3 or Class 4 locations” (80 FR 12772, March 11, 2015).

On April 10, 2015, INGAA and AGA filed separate petitions for reconsideration with PHMSA regarding this change (Docket No. PHMSA-2010-0026). INGAA stated that PHMSA’s modifications to these code sections were not merely a clarification, but a departure from industry and agency understanding and practice, and require additional review. Specifically, INGAA claimed that PHMSA changed the acceptable test factor for a pressure vessel built under the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPVC) from the ASME requirements of 1.3 times the Maximum Allowable Working Pressure (MAWP) to 1.5 times the Maximum Allowable Operating Pressure (MAOP).

INGAA and AGA requested that PHMSA reconsider this change due to a lack of technical justification and regulatory support, asking PHMSA to, at a minimum, conduct a study to validate the future use of 1.5 times MAOP for ASME pressure vessels and create an exception

for ASME pressure vessels that were put into operation between July 14, 2004 (when the 1.3 factor was adopted by ASME) and October 1, 2015 (the final rule's effective date).

After reviewing INGAA's and AGA's petitions for reconsideration, the language in the final rule, and the Pipeline Safety Regulations (PSR), PHMSA disagrees with the petitioners' claim that the change, as written, was a departure from industry and agency understanding. The pressure testing requirements in the PSR for pipelines in Class 3 and 4 areas, as well as facilities located in Class 1 and 2 areas, are subject to the requirements of § 192.505(b) and require a pressure test equal to a minimum of 1.5 times the MAOP. The testing requirements of § 192.505(b), which were not revised in the final rule, state that in a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station must be tested to at least Class 3 location test requirements. PHMSA believes the amendment to § 192.153 and the corresponding cross-reference with § 192.165(b)(3) simply clarify the regulations, is consistent with existing agency understanding and practice, and ensures regulated parties do not incorrectly use the newer ASME BPVC design factor of 1.3 for pressure testing in instances where pipelines must be tested at 1.5 times MAOP.

Regarding INGAA's request to create an exception for ASME pressure vessels put into operation between July 14, 2004, and October 1, 2015, from the requirements found at § 192.153(e), PHMSA is considering INGAA's request and will be evaluating the potential costs and environmental implications to operators to retest the non-compliant pressure vessels.

Responsibility to Conduct Construction Inspections; 49 CFR 192.305

Prior to the issuance of the final rule on March 11, 2015, § 192.305 stated that "each transmission pipeline or main must be inspected to ensure that it is constructed in accordance

with this part,” and § 195.204 stated “inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this subpart.” In the final rule issued on March 11, 2015, PHMSA amended § 192.305 to specify that a pipeline operator must not use operator personnel to perform a required inspection if the operator personnel also performed the construction task that required inspection. This amendment was based, in part, on a petition (Docket No. PHMSA-2010-0026) from the National Association of Pipeline Safety Representatives (NAPSR),¹ which suggested that contractors who install transmission lines or mains should be prohibited from inspecting their own work for compliance purposes. On Wednesday, July 11, 2012, the Gas Pipeline Advisory Committee recommended that PHMSA adopt the amendment.

On April 10, 2015, the APGA petitioned for a clarification, or in the alternative, a reconsideration of the final rule. The APGA stated that the amendment to § 192.305 has the potential to impose significant costs on publicly-owned gas distribution systems with little, if any, corresponding safety benefit. The APGA stated that if a utility has only one qualified crew that works together to construct distribution mains, there would not be anyone working for the utility available and qualified to perform the inspection. According to the APGA, 585 municipal gas utilities have 5 or fewer employees. The APGA went on to say that prohibiting small utilities from having their own employees inspect pipeline construction work performed by employees of the municipal utility would significantly increase the costs for those utilities by requiring small utilities to contract with third parties for such inspections. The APGA stated that

¹ NAPSR is a non-profit organization of state pipeline safety personnel who serve to promote pipeline safety in the United States and its territories. Its membership includes the staff manager responsible for regulating pipeline safety from each state that is certified to do so or conducts inspections under an agreement with DOT in lieu of certification.

its concerns would be alleviated by a clarification stating a two-man utility crew may inspect each other's work and comply with the amendment to § 192.305.

On April 10, 2015, the AGA petitioned PHMSA to extend the compliance date for the amendments in § 192.305 and § 195.204 from October 1, 2015, to January 1, 2016. The AGA asked for this additional time to allow pipeline operators to modify their construction inspection procedures, align associated documentation, and ensure proper training is in place for both company employees and contractors.

On July 28, 2015, NAPSRS petitioned PHMSA to reconsider the revision of § 192.305, as it undermines the 2002 NAPSRS CR-1-02 resolution. NAPSRS asked for a delay in the effective date of the final rule relative to § 192.305 until PHMSA has reviewed the rule and worked with NAPSRS to address its concerns. According to NAPSRS, allowing contractor personnel to inspect the work performed by their own company does not remove the inherent conflict of interest that is present and defeats the safety benefits that NAPSRS intended. NAPSRS stated that its original resolution would have prohibited contractors from self-inspecting their own work. NAPSRS noted that, unfortunately, the final rule's amendment specifically allows contract personnel to inspect the work of their own crews so long as the inspector did not directly perform the task being inspected. Additionally, the amendment appears to apply to operator construction personnel as well, which was not NAPSRS's original intent since, in its experience, operator personnel have less of an incentive to accept poor-quality work. Further, the final rule mistakenly decreases the scope of the inspection by changing the inspection requirements to only those found in Subpart G for the construction of mains and transmission lines,, rather than in all of Part 192 as it was prior to the amendment.

As stated in the final rule, PHMSA believes that these construction inspections are important safety requirements because transmission pipelines and distribution mains are usually buried after construction, and subsequent examinations of these pipelines often involve a difficult excavation process. Upon further examination of the impacts of this amendment, in particular the issues raised by the petitioners, PHMSA believes that further examination and analysis of this safety issue is warranted prior to this change going into effect. Therefore, PHMSA is delaying the effective date of the amendment to 49 CFR 192.305 indefinitely. During this delay, PHMSA will be evaluating the ways operators are currently complying with § 192.305, developing guidance (based on input from industry and other regulatory bodies) and hosting a series of workshops on the guidance. Upon completion of this evaluation, PHMSA will determine the efficacy of the amendment and decide if any additional amendments to the current regulations are warranted and to propose any necessary amendments to § 192.305. Please note, the effective date for all the other amendments contained in the final rule remains October 1, 2015.

III. Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and therefore was not reviewed by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

This final rule will not impose increased compliance costs on the regulated industry. The amendments to the March 11, 2015 final rule provide regulatory relief to pipeline operators involved in construction inspection and do not alter the cost benefit analysis and conclusions.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This final rule will not impose increased compliance costs on the regulated industry. The delay in the effective date to § 192.305 does not alter our original certification that the March 11, 2015 final rule does not have a significant impact on a substantial number of small entities. Therefore, I certify under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule imposes no new requirements for recordkeeping and reporting.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of \$100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321 – 4375) requires that Federal agencies analyze final actions to determine whether those actions will have a significant impact on the human environment. The Council on Environmental Quality regulations requires Federal agencies to conduct an environmental review considering (1) the need for the final action, (2) alternatives to the final action, (3) probable environmental impacts of the final action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

The amendment adopted in this final rule will not impose increased compliance costs on the regulated industry or have any measureable effect on our original assessment. The amendments to the March 11, 2015, final rule provide regulatory relief to pipeline operators involved in construction inspection. Overall, this final rule will reduce the compliance burden without compromising pipeline safety. Therefore, PHMSA has determined that this final rule will not have a significant impact on the human environment.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement published in the Federal Register on April 11, 2000 (70 FR 19477).

Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132 (“Federalism”). This final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and

responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule does not preempt State law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This final rule is not a "significant energy action" under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

The effective date for the amendment revising 49 CFR 192.305, published March 11, 2015, at 80 FR 12779, is delayed indefinitely.

Issued in Washington, DC on September 25, 2015, under authority delegated in 49 CFR Part 1.97.

Stacy Cummings,
Interim Executive Director.

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