

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Part 192**

[Docket No. PHMSA–2011–0023; Amdt. No. 192–127]

RIN 2137–AE72

Pipeline Safety: Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments: Response to a Joint Petition for Reconsideration**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.**ACTION:** Final rule; petition for reconsideration.

SUMMARY: This document responds to a joint Petition for Reconsideration (Petition) that was submitted on October 31, 2019, by the American Gas Association, the American Petroleum Institute, the American Public Gas Association, and the Interstate Natural Gas Association of America (the Associations). In the Petition, the Associations requested that PHMSA amend the final rule titled “Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of Assessment Requirements, and Other Related Amendments” (Gas Transmission Final Rule) published in the **Federal Register** on October 1, 2019. In response to the Petition, PHMSA is amending the Gas Transmission Final Rule to address the requirements for recordkeeping and the applicability of maximum allowable operating pressure (MAOP) reconfirmation. The amendments are intended to clarify the regulatory requirements identified in the Petition without adversely affecting safety.

DATES: The effective date of this rule is July 1, 2020.**FOR FURTHER INFORMATION CONTACT:** For technical questions, contact Steve Nanney, Project Manager, by telephone at 713–272–2855 or by email at steve.nanney@dot.gov. For general information, contact Robert Jagger, Senior Transportation Specialist, by telephone at 202–366–4361 or by email at robert.jagger@dot.gov.**SUPPLEMENTARY INFORMATION:****I. Background**

On October 1, 2019, (84 FR 52180) PHMSA published a final rule titled, “Safety of Gas Transmission Pipelines: MAOP Reconfirmation, Expansion of

Assessment Requirements, and Other Related Amendments.” (Gas Transmission Final Rule) that amended the Pipeline Safety Regulations (PSR) at 49 CFR part 192 to improve the safety of onshore gas transmission pipelines. The Gas Transmission Final Rule addressed integrity management requirements and other requirements.

The Gas Transmission Final Rule focused on the actions an operator must take to reconfirm the maximum allowable operating pressure (MAOP) of previously untested natural gas transmission pipelines and pipelines lacking certain material or operational records. It also required operators to reconfirm the MAOP of those segments and gather any necessary material property records they might need to do so, where the records needed to substantiate the MAOP are not traceable, verifiable, and complete. Examples of the records necessary to confirm MAOP include pressure test records or material property records (mechanical properties) that verify the MAOP is appropriate for the class location.

On October 31, 2019, the American Public Gas Association, the American Gas Association, the Interstate Natural Gas Association, and the American Petroleum Institute (the Associations) submitted a Petition for Reconsideration of the Gas Transmission Final Rule in accordance with 49 CFR 190.335. In the Petition, the Associations requested that PHMSA (1) clarify that the recordkeeping requirement in § 192.5(d) only applies to transmission pipelines, and (2) limit the applicability of the MAOP reconfirmation requirements in § 192.624(a)(1) to those pipeline segments that do not have a traceable, verifiable, and complete pressure test record under § 192.619(a)(2). PHMSA granted the Petition and responded with a letter dated December 20, 2019, in accordance with 49 CFR 190.337(b).¹ This final rule amends the Gas Transmission Final Rule to implement the changes.

Petition To Clarify the Applicability of the Recordkeeping Requirements of § 192.5(d)

In the Gas Transmission Final Rule published on October 1, 2019, PHMSA added § 192.5(d) to require an operator to have and maintain records that document the current class location of each pipeline segment. In the preamble,

¹ PHMSA has placed a copy of the Associations’ Petition for Reconsideration and PHMSA’s response in the Docket for the Gas Transmission Final Rule, See Docket No. HYPERLINK “<https://www.regulations.gov/docket?D=PHMSA-2011-0023>” PHMSA–2011–0023.

PHMSA stated that this recordkeeping requirement applies to each operator of a gas transmission pipeline; however, PHMSA inadvertently omitted language in the rule’s regulatory text that would have made clear that the recordkeeping requirements of that section applied only to gas transmission pipelines. In their Petition, the Associations requested that PHMSA clarify that the recordkeeping requirements in § 192.5(d) only apply to gas transmission pipelines. This request aligns with the final rule’s original intent.

After reviewing the Petition, the language in the Gas Transmission Final Rule, and the Pipeline Safety Regulations, PHMSA granted the Associations’ request to clarify that the recordkeeping requirements in § 192.5(d) only apply to gas transmission pipelines. The recordkeeping requirements of that section apply to records that document current class location determinations and records that demonstrate how an operator arrived at such a determination for each class location. PHMSA has concluded that the change requested in the Petition is appropriate, is consistent with the original intent of the final rule, and does not compromise safety.

Petition To Limit the Applicability of § 192.624(a)(1)

In the Gas Transmission Final Rule, PHMSA defined a set of pipeline segments for which operators must reconfirm the MAOP. Specifically, § 192.624(a)(1) requires operators of certain gas transmission pipelines to reconfirm MAOP if, among other things, the “records necessary to establish the MAOP in accordance with § 192.619(a) . . . are not traceable, verifiable, and complete” (TVC). In the Petition, the Associations requested that PHMSA revise § 192.624(a)(1) to clarify that it does not apply where an operator already has records necessary to establish MAOP under § 192.619(a)(2) (*i.e.*, pressure test records). The Associations stated that “without the specific reference to § 192.619(a)(2), it is unclear whether an operator must reconfirm MAOP when a pipeline segment already has a TVC pressure test record but is missing other records under § 192.619(a)(1) or (a)(3).” The Associations noted that this revision would align with a corresponding Gas Pipeline Advisory Committee recommendation² and confirm that

² Gas Pipeline Advisory Committee Meeting Final Voting Slides at 1 (Mar. 26–28, 2018). The slide presentation is available in the docket, PHMSA–2011–0023, which can be accessed at www.regulations.gov.

§ 192.624(a)(1) does not require operators to reconfirm the MAOP of pipeline segments if they have TVC pressure test records.

PHMSA granted the Associations' Petition to limit the applicability of the MAOP reconfirmation requirements of § 192.624(a)(1) to those pipeline segments that do not have TVC pressure test records under § 192.619(a)(2).³ PHMSA has determined that the Associations' specific request to limit the applicability of these MAOP reconfirmation requirements in § 192.624(a)(1) will not compromise safety because the availability of TVC pressure test records under § 192.619(a)(2) allows an operator to establish the MAOP for the pipeline segment without the need for reconfirmation. Further, this change is consistent with recommendations from the Gas Pipeline Advisory Committee and the language proposed in the Notice of Proposed Rulemaking (HYPERLINK "<https://www.federalregister.gov/citation/81-FR-20722>" 81 FR 20722; April 8, 2016).

As already specified in the Gas Transmission Rule, if operators are missing any material properties during anomaly evaluations and repairs, operators must confirm those material properties under §§ 192.607 and 192.712(e) through (g).⁴ Any pipeline segment that is missing records necessary to comply with other aspects of the PSR must meet all applicable provisions of part 192 for any future MAOP increases. An increase in MAOP must be based upon the applicable requirements for design; pressure testing; highest actual operating pressure (for any segment not re-pressure tested); and the maximum safe operating pressure based upon the pipeline history as required by § 192.619(a)(1) through (4). In addition, any increase in MAOP must be based upon the class location requirements in §§ 192.5 and 192.611 for MAOP determination.

II. Regulatory Analyses and Notices

Statutory/Legal Authority

These amendments are made pursuant to the Federal Pipeline Safety

³ PHMSA granted the Associations' Petition in a letter dated Dec. 20, 2019. The letters responding to Associations are available in the docket, PHMSA-2011-0023, which can be accessed at www.regulations.gov.

⁴ PHMSA may provide more clarification on these requirements in the upcoming rulemaking, "Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments." RIN 2137-AE72.

Statutes (49 U.S.C. 60101 *et seq.*). Section 60102 authorizes the Secretary of Transportation to issue regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities, as delegated to the PHMSA Administrator under 49 CFR 1.97.

Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures

Executive Order 12866 ("Regulatory Planning and Review"⁵) requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Similarly, DOT regulations require that regulations issued by PHMSA and other DOT Operating Administrations "should be designed to minimize burdens and reduce barriers to market entry whenever possible, consistent with the effective promotion of safety" and should generally "not be issued unless their benefits are expected to exceed their costs." § 5.5(f)-(g). The Gas Transmission Final Rule was considered a significant regulatory action under Executive Order 12866 and Executive Order 13771⁶ ("Reducing Regulation and Controlling Regulatory Costs"). It was also considered significant under the Regulatory Policies and Procedures of the DOT at 49 CFR part 5 because of substantial congressional, State, industry, and public interest in pipeline safety. Therefore, the Office of Management and Budget (OMB) reviewed the Gas Transmission Final Rule in accordance with Executive Order 12866, and determined the rule was consistent with Executive Order 12866 requirements and 49 U.S.C. 60102(b)(5)-(6). PHMSA published a final regulatory impact analysis for the Gas Transmission Final Rule, which is available in the rulemaking docket.

This document amends the Gas Transmission Final Rule and imposes no incremental changes or costs to the regulated industry, except that the amendments may provide relief to the extent the changes reduce confusion by improving the clarity of the regulations. Therefore, this is a non-significant action and was not reviewed by OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of

1996 (5 U.S.C. 601 *et seq.*) requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for any final rule subject to notice-and-comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553), unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. PHMSA prepared a FRFA for the Gas Transmission Final Rule, which is available in the docket for this rulemaking. These amendments to the Gas Transmission Final Rule have no substantial effect on that analysis.

Paperwork Reduction Act

These amendments impose no new requirements for the recordkeeping and reporting contained in the October 1, 2019, Gas Transmission Final Rule.

Unfunded Mandates Reform Act of 1995

These amendments to the Gas Transmission Final Rule do not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*; UMRRA). They do not impose enforceable duties on State, local, or Tribal governments or on the private sector of \$100 million or more, adjusted for inflation, in any one year and therefore do not have implications under Section 202 of the UMRRA of 1995.

PHMSA prepared an analysis of the UMRRA considerations in the final regulatory impact analysis for the Gas Transmission Final Rule, which is available in the docket for the rulemaking. These amendments to the Gas Transmission Final Rule have no substantial effect on that analysis. Therefore, PHMSA determines that these amendments imposes no unfunded mandates.

National Environmental Policy Act

PHMSA had analyzed the Gas Transmission Final Rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and implementing Council on Environmental Quality regulations (40 CFR part 1500) and DOT implementing policies (DOT Order 5610.1C, "Procedures for Considering Environmental Impacts") and determined the final rule would not significantly affect the quality of the human environment. PHMSA prepared an analysis of the NEPA considerations in an Environmental Analysis for Gas Transmission Final Rule, which is available in the docket for the rulemaking. The amendments to the Gas Transmission Final Rule implemented by this document have no substantial effect on the NEPA analysis.

⁵ 58 FR 51735 (Oct. 4, 1993).

⁶ 82 FR 9339 (Feb. 24, 2017).

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Executive Order 13132

PHMSA analyzed these amendments to the Gas Transmission Final Rule in accordance with Executive Order 13132 ("Federalism" 7). The Federal Pipeline Safety Statute, specifically 49 U.S.C. 60104(c), prohibit State safety regulation of interstate pipelines. Under the pipeline safety laws, States have the ability to augment pipeline safety requirements for intrastate pipelines regulated by PHMSA, but may not approve safety requirements less stringent than those required by Federal law. A State may also regulate an intrastate pipeline facility PHMSA does not regulate. It is these statutory provisions, not the rule, that govern preemption of State law.

PHMSA analyzed the Gas Transmission Final Rule and determined that the consultation and funding requirements of Executive Order 13132 do not apply. These amendments to Gas Transmission Final Rule have no substantial effect on that analysis. These amendments to the Gas Transmission Final Rule do 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. These amendments do not impose any substantial direct compliance costs on State and local governments.

Executive Order 13211

PHMSA analyzed the Gas Transmission Final Rule and determined that the requirements of Executive Order 13211 ("Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use") 8 do not apply. These amendments to the Gas Transmission Final Rule are not a "significant energy action" under Executive Order 13211. These amendments are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated these

amendments as a significant energy action.

Executive Order 13175

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments") 9 and DOT Order 5301.1, "Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes." Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing "substantial direct compliance costs" or "substantial direct effects" on such communities or the relationship and distribution of power between the Federal Government and Indian Tribes. The amendments within this document neither impose direct compliance costs on Tribal communities, nor have a substantial direct effect on those communities. Therefore, the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply.

Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 ("Promoting International Regulatory Cooperation" 10), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The amendments in this document do not impact international trade.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each

year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 192

Incorporation by reference, Integrity assessments, Material properties verification, MAOP reconfirmation, Pipeline safety, Predicted failure pressure, Recordkeeping, Risk assessment, Safety devices.

In consideration of the foregoing, PHMSA is amending 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 et seq., and 49 CFR 197.

■ 2. In § 192.5, as amended October 1, 2019, at 84 FR 52243 and effective July 1, 2020, paragraph (d) is revised to read as follows:

§ 192.5 Class locations.

* * * * *

(d) An operator must have records that document the current class location of each gas transmission pipeline segment and that demonstrate how the operator determined each current class location in accordance with this section.

■ 3. In § 192.624, as amended October 1, 2019, at 84 FR 52247 and effective July 1, 2020, paragraph (a)(1) introductory text is revised to read as follows:

§ 192.624 Maximum allowable operating pressure reconfirmation: Onshore steel transmission pipelines.

(a) * * *

(1) Records necessary to establish the MAOP in accordance with § 192.619(a)(2), including records required by § 192.517(a), are not traceable, verifiable, and complete and the pipeline is located in one of the following locations:

* * * * *

Issued in Washington, DC, on June 29, 2020, under authority delegated in 49 CFR part 1.97.

Howard R. Elliott, Administrator.

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7 64 FR 43255 (Aug. 10, 1999).

8 66 FR 28355 (May 22, 2001).

9 65 FR 67249 (Nov. 9, 2000).

10 77 FR 26413 (Nov. 9, 2000).