

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 191 and 192**

[Docket No. PHMSA–2011–0023; Amdt. Nos. 191–31; 192–131]

RIN 2137–AF38

Pipeline Safety: Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Response to a Petition for Reconsideration; Technical Corrections; Issuance of Limited Enforcement Discretion

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

ACTION: Final rule; response to petition for reconsideration; enforcement discretion; technical corrections.

SUMMARY: PHMSA is alerting the public to its April 1, 2022, response denying a petition for reconsideration of the final rule titled “Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments.” This final rule also makes clarifications and two technical corrections to that rulemaking. Lastly, this final rule memorializes a limited enforcement discretion in connection with that rulemaking’s amendment of the regulatory definition of “incidental gathering.”

DATES: This final rule is effective May 16, 2022. The limited enforcement discretion is effective May 16, 2022.

FOR FURTHER INFORMATION CONTACT: Technical questions: Steve Nanney, Senior Technical Advisor, by telephone at 713–272–2855.

General information: Sayler Palabrica, Transportation Specialist, by telephone at 202–366–0559.

SUPPLEMENTARY INFORMATION:**I. Response to Petition for Reconsideration**

On November 15, 2021, PHMSA published a final rule titled “Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments”¹ amending the Pipeline Safety Regulations at 49 CFR parts 191 and 192 to introduce reporting

requirements for previously unregulated Types C and R gas gathering pipelines along with safety standards for Type C gas gathering pipelines.

On December 15, 2021, the American Petroleum Institute and the GPA Midstream Association (collectively, “Petitioners”) submitted a Petition for Reconsideration of the final rule.² On April 1, 2022, PHMSA issued a letter to the Petitioners with an accompanying Appendix (“Response Letter”) responding to the arguments made in the Petition and denying the Petition and the Motion to Stay. The Response Letter is available in the docket for this rulemaking at Doc. No. PHMSA–2011–0023–0504.

II. Clarifications and Technical Corrections

Although PHMSA denied the Petition for reasons articulated in the Response Letter, Petitioners raised certain elements of the final rule that could benefit from clarification or technical correction to facilitate operator compliance efforts. Specifically, PHMSA is (1) issuing a technical correction amending the safety-related condition report requirements in § 191.23 consistent with statements in the preamble to the final rule, and (2) clarifying that operators may, when identifying Type C gas gathering lines pursuant to § 192.8, use the default specified minimum yield strength (“SMYS”) at § 192.107(b)(2) when the yield strength is not known. PHMSA is also issuing a technical correction amending § 192.8 to align the regulatory text with statements in the final rule facilitating operators’ consideration of maximum allowable operating pressure (“MAOP”) in making threshold determinations that gas gathering facilities qualify as Type C lines.

A. Technical Correction To Clarify That Certain Type C Gathering Lines Do Not Need To Report MAOP Exceedances

The final rule exempts all Type R gathering lines from part 191 requirements to report certain safety-related conditions, including when the pressure on a pipeline exceeds its MAOP. 86 FR at 63295 (revising § 191.23(b)(1)). However, the preamble to the final rule explained that exception was not meant to be limited to Type R gathering lines: Type C gathering lines with an outside diameter of less than 12.75 inches, which are not required by § 192.9(e)–(f) to establish

MAOP pursuant to § 192.619, were to be excepted from the safety-related condition reporting requirement. 86 FR at 63275. As the Petition pointed out, PHMSA inadvertently omitted regulatory language codifying that exception. PHMSA is therefore issuing a technical correction revising § 191.23(b)(1) to clarify that safety-related condition reporting of MAOP exceedances is not required for operators of gathering lines not required to establish an MAOP pursuant to §§ 192.9(e) and (f) and 192.619.

B. Clarification That Operators May Use a Default SMYS for Identifying Type C Gathering Lines

The final rule sets out in the Table 1 to § 192.8(c)(2) the criteria for an operator to use in making the threshold determination that its pipelines are Type C. 86 FR at 63296. Among those criteria is a comparison of hoop stress to SMYS. The Petition requested that PHMSA revise regulatory text to provide that operators may use the default yield strength specified at § 192.107(b)(2) for the SMYS input for determining whether a steel gas gathering line is a Type C gathering line.

As noted in the Response Letter, PHMSA declines to revise pertinent regulatory text as requested by the Petitioners. However, PHMSA agrees that there is value in clarifying that, in making the determination whether a gathering line is a Type C line pursuant to § 192.8(c), operators that do not know the yield strength of a steel gathering line may use the 24,000 pounds-per-square-inch default yield strength specified at § 192.107(b)(2) as a proxy for pipe SMYS used along with the pipeline operating hoop stress to determine the operating hoop stress percentage of pipe SMYS.

C. Technical Correction for Determining Pressure in Identifying Type C Gathering Lines

PHMSA also understands there is value in clarifying regulatory text pertaining to the operating pressure input in making the threshold determination of whether a gathering line is Type C pursuant to § 192.8(c). The final rule identifies operating pressure as an input to the threshold determination whether a pipeline facility is a Type C gathering line. 86 FR 63291 (“The Type C determination in § 192.8(c)(2) requires, at a minimum, knowledge only of . . . pressure of the pipeline.”), and 86 FR 63296 (codifying Table 1 to § 192.8(c)). However, PHMSA

² Doc. No. PHMSA–2011–0023–0493 (Dec. 20, 2021) (“Petition”). The Petition was accompanied by a Motion to Stay the rule (Doc. No. PHMSA–2011–0023–0492 (Dec. 20, 2021)).

¹ 86 FR 63266 (“Final Rule”).

inadvertently omitted from the final rule's regulatory text language codifying that operators would be able to reference historical operating pressure as an input to that threshold determination.

PHMSA therefore is issuing a technical correction to remedy this omission. Specifically, PHMSA is introducing § 192.8(c)(4), which provides that gas gathering line operators may, in connection with the threshold determination that a facility is a Type C gathering line when no MAOP has been calculated consistent with § 192.619(a) or (c)(1), use either (i) an MAOP calculated consistent with the methods at § 192.619(a) or (c)(1), or (ii) as a substitute for MAOP, the highest operating pressure to which the segment was subjected during the preceding five years.

III. Limited Enforcement Discretion for Existing Incidental Gathering Lines

PHMSA is also issuing a limited enforcement discretion addressing concerns raised in the Petition regarding the scope of the final rule's amendment of § 192.8 limiting the use of the "incidental gathering" designation. The final rule permitted continued use of an "incidental gathering" designation, which allows operators to designate lines downstream from the termination of any gathering function as a gathering line rather than as a transmission line. For pipelines that are new, replaced, relocated, or otherwise changed after May 16, 2022, however, the final rule limited incidental gathering to no more than 10 miles from the furthestmost downstream endpoint of gathering. (86 FR 63295 (codifying § 192.8(a)(5)).

Petitioners asked PHMSA to restrict the scope of this limitation to newly-constructed lines, as they note that its application to projects involving the replacement, relocation, or change of gas gathering lines currently considered "incidental gathering" would cause economic hardship on lines that would have to come into prompt compliance with the suite of part 192 requirements governing transmission lines.

As stated in the Response Letter, PHMSA declines at this time to amend the final rule to limit the scope of the incidental gathering distance limitation as requested by Petitioners. However, PHMSA understands that the broad scope of the final rule distance limitation may discourage operators of existing incidental gathering lines from undertaking much needed safety-improving repairs and replacement projects, which would subject those gathering lines to the more rigorous part 192 requirements for transmission lines.

Therefore, PHMSA will exercise its discretion, during the pendency of its consideration of amendments to § 192.8(a)(5) to be announced in a forthcoming supplemental notice of proposed rulemaking ("SNPRM") under RIN 2137-AF37,³ to enforce the final rule's ten-mile limitation on "incidental gathering" only in connection with gas gathering lines that are newly construction after May 16, 2022. PHMSA will not, during the pendency of that rulemaking, enforce the final rule's 10-mile limitation in connection with repair, replacement, or change of gathering lines existing on or before May 16, 2022 that are currently considered "incidental gathering" lines. PHMSA expects this limited enforcement discretion will remove any disincentive created by the final rule for operators of those legacy "incidental gathering" pipelines to undertake safety-enhancing replacement, relocation, or other projects on those lines while PHMSA considers within a rulemaking whether modification of § 192.8(a)(5) is warranted. PHMSA will memorialize this enforcement discretion within implementation material for PHMSA inspectors and recommend that its state partners do the same.

This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a temporary safeguard from Departmental enforcement as described herein. To the extent this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way. This enforcement discretion will remain in effect until further notice, aligned with the forthcoming SNPRM under RIN 2137-AF37. Nothing herein prohibits the PHMSA Office of Pipeline Safety from rescinding this limited exercise of its enforcement discretion and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Furthermore, nothing herein relieves operators from compliance with any other applicable provisions of PHMSA regulations or other law, and PHMSA reserves the right to exercise all of its other authorities.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority

Statutory authority for this document's clarification and technical corrections to the final rule, as with the final rule itself (whose discussion of

statutory authority at section IV.A., 86 FR 63290, is incorporated herein by reference), is provided by the Federal Pipeline Safety Act (49 U.S.C. 60101 *et seq.*). The Secretary delegated his authority under the Federal Pipeline Safety Act to the PHMSA Administrator under 49 CFR 1.97.

PHMSA finds it has good cause to make those clarification and technical corrections without notice and comment pursuant to section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the textual alterations herein consist of a pair of technical corrections codifying statements in the final rule preamble that were inadvertently omitted from its amendatory text; they make no substantive changes to the final rule but merely facilitate its implementation by aligning the regulatory text and explanatory material in the final rule's preamble. Because the final rule is the product of an extensive administrative record with numerous opportunities (including through written comments and the advisory committee) for public comment, PHMSA finds that additional comment on the technical corrections herein is unnecessary.

The May 16, 2022 effective date of the revisions contained in this notice is authorized under both section 553(d)(1) and (3) of the APA. Section 553(d)(1) provides that a rule should take effect "not less than 30 days" after publication in the **Federal Register** except for "a substantive rule which grants or recognizes an exemption or relieves a restriction," while section 553(d)(3) allows for earlier effectiveness for good cause found by the agency and published within the rule. 5 U.S.C. 553(d)(1), (3). "[T]he purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. F.C.C.*, 78 F.3d 620, 630 (D.C. Cir. 1996). The technical correction at § 191.23(b)(1) relieves reporting requirements, the technical correction at § 192.8(c)(4) eases the threshold Type C determination by codifying an alternative method for calculating an operating pressure input, while the enforcement discretion expresses PHMSA's intent to limit enforcement of § 192.8(a)(5) to only certain categories (newly built incidental gathering lines)

³ Additional detail regarding the contents of that Supplemental Notice of Proposed Rulemaking will be announced in the Spring 2022 Unified Agenda.

provided for in that provision. Each relieves regulatory requirements of the final rule and, in accordance with 5 U.S.C. 553(d)(1), are effective May 16, 2022. Moreover, PHMSA finds that good cause under Section 553(d)(3) supports making the revisions effective May 16, 2022 because the technical corrections contained in this notice are entirely consistent with the final rule (which itself was published in November 2021) and in fact help promote timely compliance with the final rule's requirements before its May 16, 2022, effective date.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 ("Regulatory Planning and Review") and DOT Order 2100.6A ("Rulemaking and Guidance Procedures"); therefore, this notice has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. PHMSA finds that neither the clarifications nor the technical corrections herein (in all respects consistent with the final rule) neither impose incremental compliance costs nor adversely affect safety. Additionally, PHMSA found in the Regulatory Impact Analysis that the incidental gathering provision of the final rule would have a minor cost. To the extent the enforcement discretion statement contained in this notice results in fewer safety requirements applied to existing incidental gathering lines greater than 10 miles that are modified or replaced, the notice may lead to reduced costs of compliance and reduced safety and environmental benefits. However, the amount of existing incidental gathering lines 10 or more miles long is believed to be low and the portion of those lines that will be modified or replaced while the enforcement discretion is in effect is also likely to be low. Overall, PHMSA expects any impacts on the expected costs and benefits of the final rule will be negligible.

C. 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.*), generally requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule subject to notice-and-comment rulemaking under the APA. 5 U.S.C. 604(a).⁴ The

Small Business Administration's implementing guidance explains that "[i]f an NPRM is not required, the RFA does not apply."⁵ Because PHMSA has "good cause" under the APA to forego comment on the technical corrections herein, no FRFA is required. Moreover, PHMSA prepared a FRFA for the final rule, which is available in the docket for this rulemaking;⁶ because the technical corrections herein will impose no new incremental compliance costs, PHMSA understands the analysis in that FRFA remains unchanged.

D. Paperwork Reduction Act

The clarifications and technical corrections in this notice impose no new or revised information collection requirements beyond those discussed in the final rule.

E. Unfunded Mandates Reform Act of 1995

PHMSA analyzed the clarifications and technical corrections in this notice under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 *et seq.*) and determined that the technical corrections to the final rule herein 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. PHMSA prepared an analysis of the UMRA considerations in the final RIA for the final rule, which is available in the docket for the rulemaking.⁷ Because the clarifications and technical corrections herein will impose no new incremental compliance costs, PHMSA understands the analysis in that UMRA discussion for the final rule remains unchanged.

F. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. PHMSA analyzed the final rule in accordance with NEPA, implementing Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT implementing policies (DOT Order 610.1C, "Procedures for Considering Environmental Impacts") and determined the final rule would not

PHMSA has good cause to forego comment in adopting the technical correction herein.

⁴ Small Business Administration, "A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act" 55 (2017).

⁵ Doc. No. PHMSA–2011–0023–0488, at 34–35 (Nov. 14, 2021).

⁶ Doc. No. PHMSA–2011–0023–0488, at 35 (Nov. 14, 2021).

significantly affect the quality of the human environment.⁸ The clarifications and technical corrections to the final rule in this notice have no effect on PHMSA's earlier NEPA analysis as they are consistent, and merely facilitate compliance with, the final rule. PHMSA acknowledges that the limited enforcement discretion in Section III above could result in some existing "incidental" gas gathering lines that are replaced, relocated, or changed remaining subject to less rigorous part 192 safety requirements than if those lines were to be regulated as transmission lines consistent with the final rule's revisions to § 192.8. However, PHMSA expects that the enforcement discretion could improve public safety and environmental protection in some cases, as it removes potential inhibitions for some of those operators undertaking safety-enhancing repair, replacement, or change projects on their facilities. With these offsetting considerations in mind, PHMSA finds that the limited enforcement discretion herein would result in no significant impact on the human environment.

G. 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.

H. Executive Order 13132 (Federalism)

PHMSA has analyzed this notice in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism").⁹ The clarifications and technical corrections herein are consistent, and merely facilitate compliance with, the final rule, and do not have any 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 beyond what was accounted for in the final rule. It does not contain any provision that imposes any substantial direct compliance costs on State and local governments, nor any new provision that preempts State law. Therefore, the consultation and funding

⁸ Final Environmental Assessment, Doc. No. PHMSA–2011–0023 (Nov. 2021).

⁹ 64 FR 43255 (Aug. 10, 1999).

⁴ This requirement is subject to exceptions—which are not in any event applicable here because

requirements of Executive Order 13132 do not apply.¹⁰

I. Executive Order 13211

PHMSA analyzed the final rule and determined that the requirements of Executive Order 13211 (“Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use”)¹¹ did not apply. The clarifications and technical corrections to the final rule herein are not a “significant energy action” under Executive Order 13211 either as they are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated these clarifications and revisions as a significant energy action.

J. 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”)¹² and DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of the clarifications and technical revisions have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”),¹³ 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 clarifications and technical corrections to the final rule in this notice do not impact international trade.

¹⁰ Moreover, PHMSA determined that the Final Rule did not impose substantial direct compliance costs on State and local governments.

¹¹ 66 FR 28355 (May 22, 2001).

¹² 65 FR 67249 (Nov. 6, 2000).

¹³ 77 FR 26413 (May 4, 2012).

L. 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

49 CFR Part 191

MAOP exceedance, Pipeline reporting requirements.

49 CFR Part 192

Integrity assessments, MAOP reconfirmation, Material verification, Pipeline safety, Predicted failure pressure, Reporting and record-keeping requirements, Risk assessment, Safety devices.

In consideration of the foregoing, PHMSA amends 49 CFR parts 191 and 192 as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL, INCIDENT, AND OTHER REPORTING

■ 1. The authority citation for part 191 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 *et seq.*, and 49 CFR 1.97.

■ 2. Section 191.23, as amended November 15, 2021, at 86 FR 63295, and effective May 16, 2022, is further amended by revising paragraph (b)(1) to read as follows:

§ 191.23 Reporting safety-related conditions.

* * * * *

(b) * * *

(1) Exists on a master meter system, a reporting-regulated gathering pipeline, a Type C gas gathering pipeline with an outside diameter of 12.75 inches or less, a Type C gas gathering pipeline covered by the exception in § 192.9(f)(1) of this subchapter and therefore not required to comply with § 192.9(e)(2)(ii), or a customer-owned service line;

* * * * *

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

■ 3. 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 1.97.

■ 4. Section 192.8, as amended November 15, 2021, at 86 FR 63295, and effective May 16, 2022, is further amended by adding paragraph (c)(4) to read as follows:

§ 192.8 How are onshore gathering pipelines and regulated onshore gathering pipelines determined?

* * * * *

(c) * * *

(4) For the purpose of identifying Type C lines in table 1 to paragraph (c)(2) of this section, if an operator has not calculated MAOP consistent with the methods at § 192.619(a) or (c)(1), the operator must either:

(i) Calculate MAOP consistent with the methods at § 192.619(a) or (c)(1); or

(ii) Use as a substitute for MAOP the highest operating pressure to which the segment was subjected during the preceding 5 operating years.

Issued in Washington, DC, on April 28, 2022, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

[FR Doc. 2022–09474 Filed 5–3–22; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02]

RIN 0648–XB936

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined, based on consideration of the regulatory determination criteria regarding inseason adjustments, that the Atlantic bluefin tuna (BFT) daily retention limit that applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally for BFT) should be adjusted for the remainder of 2022. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to: Two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling permits;