

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Pipeline Safety
Rulemaking**

Case No. GS-20-370

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

August 26, 2020

The purpose of this rulemaking is to adopt, by reference in state administrative rule, the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since July 31, 2019, current to August 20, 2020. A summary/explanation of the specific changes to be adopted by reference for pipeline safety is attached.

Regulatory Analysis

N.D.C.C. § 28-32-08 requires an agency to prepare a regulatory analysis if the rule is expected to have an impact on the regulated community in excess of fifty thousand dollars, or if one is requested as provided in the law. The law provides, in part:

2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.

North Dakota system operators subject to Commission jurisdiction who may be affected by the federal regulations proposed to be adopted by reference for the state pipeline safety program include intrastate liquefied natural gas facility operators, intrastate natural gas distribution system operators, natural gas and hazardous liquid transmission pipeline operators, and certain natural gas and hazardous liquid gathering system operators.

The Commission acts as agent for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), in the enforcement of the minimum gas pipeline safety standards on all gas distribution and intrastate transmission facilities and enforcement of safety standards on all liquefied natural gas facilities within the state. This is accomplished by entering into a 601055(a) Title 49 agreement with the United States Department of Transportation that requires North Dakota to adopt all of the federal gas safety standards, along with any future amendments to those standards. This rulemaking is a part of that ongoing agreement.

The intrastate natural gas and hazardous liquid transmission pipeline operators, intrastate natural gas distribution system operators, and liquefied natural gas facility operators must comply with the federal amendments and therefore were impacted financially as a result of PHMSA's adoption of the amendments. Adoption of these amendments for the state pipeline safety program will have no additional impact on the regulated community.

A regulatory analysis has not been requested, and the proposal is not expected to impact the regulated community by an amount in excess of fifty thousand dollars (\$50,000.00). Consequently, no regulatory analysis is required.

Small Entity Regulatory Analysis

N.D.C.C. § 28-32-08.1 requires that before adoption of any proposed rule, the adopting agency prepare a regulatory analysis in which the agency considers options to minimize adverse impact on small entities. The law provides, in part:

2. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:
 - a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;

- d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
- e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.

A small entity regulatory analysis is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Small Entity Economic Impact Analysis

A small entity economic impact statement is not required because the proposed amendments to the existing rule for both the natural gas and hazardous liquids pipeline systems are mandated by federal law.

Takings Assessment

N.D.C.C. § 28-32-09 requires an entity to prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The law provides, in part:

The proposed rules should not limit the use of private property so a takings assessment is not required.

PHMSA latest rulemakings effective date after July 31, 2019
 Summary as of August 20, 2020

Part affected	Amendment No.	Federal Register	Description	Effective date after July 31, 2019
190	No Number	84 FR 37059	Revisions To Civil Penalty Amounts	07/31/19
190	21	84 FR 52015	Enhanced Emergency Order Procedures	12/02/2019
191	26	84 FR 52180	Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments	07/01/2020
191	27	85 FR 8104	Safety of Underground Natural Gas Storage Facilities	03/13/2020
191	28	85 FR 44477	Safety of Underground Natural Gas Storage Facilities; Correction	07/23/2020
192	125	84 FR 52180	Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments	07/01/20
192	126	85 FR 8104	Safety of Underground Natural Gas Storage Facilities	03/13/20
192	127	85 FR 40132	Safety of Gas Transmission Pipelines, MAOP Reconfirmation, Expansion of Assessment Requirements and Other Related Amendments (Response to Petition for Reconsideration)	7/1/20
195	103	85 FR 8104	Safety of Underground Natural Gas Storage Facilities	03/13/20
195	102	84 FR 52260	Safety of Hazardous Liquid Pipelines	07/01/20

Part 190, Amendment #No Number, 84 FR 37059: REVISIONS TO CIVIL PENALTY AMOUNTS

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2019 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

Part 190, Amendment #21, 84 FR 52015: ENHANCED EMERGENCY ORDER PROCEDURES

On October 14, 2016, PHMSA published an interim final rule (IFR) issuing temporary emergency order procedures and requesting public comment. This final rule adopts, with modifications, that IFR implementing the emergency order authority conferred on the Secretary of Transportation (the Secretary) by the "Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016" (PIPES Act). These regulations establish procedures for the issuance of emergency orders to address an unsafe condition or practice, or a combination of unsafe conditions or practices, that constitute or cause an imminent hazard to public health and safety or the environment. The regulations describe the duration and scope of such orders and provide a mechanism by which pipeline owners and operators subject to, and aggrieved by, emergency orders can seek administrative or judicial review.

Part 191, Amendment #26, 84 FR 52180: SAFETY OF GAS TRANSMISSION PIPELINES, MAOP RECONFIRMATION, EXPANSION OF ASSESSMENT REQUIREMENTS AND OTHER RELATED AMENDMENTS

PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas transmission pipelines. This final rule addresses congressional mandates, National Transportation Safety Board recommendations, and responds to public input. The amendments in this final rule address integrity management requirements and other requirements, and they focus on the actions an operator must take to reconfirm the maximum allowable operating pressure of previously untested natural gas transmission pipelines and pipelines lacking certain material or operational records, the periodic assessment of pipelines in populated areas not designated as "high consequence areas," the reporting of exceedances of maximum allowable operating pressure, the consideration of seismicity as a risk factor in integrity management, safety features on in-line inspection launchers and receivers, a 6-month grace period for 7-calendar-year integrity management reassessment intervals, and related recordkeeping provisions.

Part 191, Amendment #27, 85 FR 8104: SAFETY OF UNDERGROUND NATURAL GAS STORAGE FACILITIES

The Pipeline and Hazardous Materials Safety Administration is publishing this final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSTFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, "Design and

Operation of Solution-mined Salt Caverns Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement would apply as a "shall") unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA has determined that the RPs, as originally published, will provide PHMSA with a stronger basis upon which to base enforcement than the IFR. This final rule also addresses recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt caverns.

Part 191, Amendment #28, 85 FR 44477: SAFETY OF UNDERGROUND NATURAL GAS STORAGE FACILITIES; CORRECTION

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule in the Federal Register on February 12, 2020, amending PHMSA's regulations establishing minimum safety standards for underground natural gas storage facilities. That document inadvertently removed certain reporting requirements for natural gas pipeline operators. This document corrects the final regulations.

Part 192, Amendment #125, 84 FR 52180: SAFETY OF GAS TRANSMISSION PIPELINES, MAOP RECONFIRMATION, EXPANSION OF ASSESSMENT REQUIREMENTS AND OTHER RELATED AMENDMENTS

PHMSA is revising the Federal Pipeline Safety Regulations to improve the safety of onshore gas transmission pipelines. This final rule addresses congressional mandates, National Transportation Safety Board recommendations, and responds to public input. The amendments in this final rule address integrity management requirements and other requirements, and they focus on the actions an operator must take to reconfirm the maximum allowable operating pressure of previously untested natural gas transmission pipelines and pipelines lacking certain material or operational records, the periodic assessment of pipelines in populated areas not designated as "high consequence areas," the reporting of exceedances of maximum allowable operating pressure, the consideration of seismicity as a risk factor in integrity management, safety features on in-line inspection launchers and receivers, a 6-month grace period for 7-calendar-year integrity management reassessment intervals, and related recordkeeping provisions.

Part 192, Amendment #126, 85 FR 8104: SAFETY OF UNDERGROUND NATURAL GAS STORAGE FACILITIES

The Pipeline and Hazardous Materials Safety Administration is publishing this final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015 Aliso Canyon incident and the

subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, "Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement would apply as a "shall") unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA has determined that the RPs, as originally published, will provide PHMSA with a stronger basis upon which to base enforcement than the IFR. This final rule also addresses recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt caverns.

Part 192, Amendment #127, 85 FR 40132: SAFETY OF GAS TRANSMISSION PIPELINES, MAOP RECONFIRMATION, EXPANSION OF ASSESSMENT REQUIREMENTS AND OTHER RELATED AMENDMENTS (RESPONSE TO PETITION FOR RECONSIDERATION)

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.

Part 195, Amendment #103, 85 FR 8104: SAFETY OF UNDERGROUND NATURAL GAS STORAGE FACILITIES

The Pipeline and Hazardous Materials Safety Administration is publishing this final rule to amend its minimum safety standards for underground natural gas storage facilities (UNGSFs). On December 19, 2016, PHMSA issued an interim final rule (IFR) establishing regulations in response to the 2015 Aliso Canyon incident and the subsequent mandate in section 12 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016. The IFR incorporated by reference two American Petroleum Institute (API) Recommended Practices (RPs): API RP 1170, "Design and Operation of Solution-mined Salt Caverns Used for Natural Gas Storage" (First Edition, July 2015); and API RP 1171, "Functional Integrity of Natural Gas Storage in Depleted

Hydrocarbon Reservoirs and Aquifer Reservoirs" (First Edition, September 2015). The IFR required each provision in the API RPs to apply as mandatory (i.e., each "should" statement would apply as a "shall") unless an operator provides written justification for not implementing the practice, including an explanation for why it is impracticable and not necessary for safety. Based on the comments received to the IFR and a petition for reconsideration, PHMSA has determined that the RPs, as originally published, will provide PHMSA with a stronger basis upon which to base enforcement than the IFR. This final rule also addresses recommendations from commenters and a petition for reconsideration of the IFR by modifying compliance timelines, revising the definition of a UNGSF, clarifying the states' regulatory role, reducing recordkeeping and reporting requirements, formalizing integrity management practices, and adding risk management requirements for solution-mined salt caverns.

Part 195, Amendment #102, 84 FR 52260: SAFETY OF HAZARDOUS LIQUID PIPELINES

In response to congressional mandates, NTSB and GAO recommendations, lessons learned, and public input, PHMSA is amending the Pipeline Safety Regulations to improve the safety of pipelines transporting hazardous liquids. Specifically, PHMSA is extending reporting requirements to certain hazardous liquid gravity and rural gathering lines; requiring the inspection of pipelines in areas affected by extreme weather and natural disasters; requiring integrity assessments at least once every 10 years of onshore hazardous liquid pipeline segments located outside of high consequence areas and that are "piggable" (i.e., can accommodate in-line inspection devices); extending the required use of leak detection systems beyond high consequence areas to all regulated, non-gathering hazardous liquid pipelines; and requiring that all pipelines in or affecting high consequence areas be capable of accommodating in-line inspection tools within 20 years, unless the basic construction of a pipeline cannot be modified to permit that accommodation. Additionally, PHMSA is clarifying other regulations and is incorporating Sections 14 and 25 of the PIPES Act of 2016 to improve regulatory certainty and compliance.