

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Pipeline Safety
Rulemaking

Case No. GS-23-289

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

October 10, 2023

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 December 1, 2021, current to September 6, 2023. 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 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 proposed rules should not limit the use of private property so a takings assessment is not required.

PHMSA latest rulemakings effective date after December 1, 2021
 Summary as of September 6, 2023

Part affected	Amendment No.	Federal Register	Description	Effective date after December 1, 2021
190	No Number	86 FR 23241	Revisions To Civil Penalty Amounts	05/03/2021
190	No Number	87 FR 15839	Revisions To Civil Penalty Amounts	03/21/2022
190	No Number	87 FR 28779	Criminal Referrals	05/11/2022
190	No Number	88 FR 1114	Revisions To Civil Penalty Amounts	01/06/2023
191	31	87 FR 26296	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	05/16/2022
191	32	87 FR 35675	Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Technical Corrections	06/13/2022
192	130	87 FR 20940	Requirement of Valve Installation and Minimum Rupture Detection Standards	10/05/2022
192	131	87 FR 26296	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	05/16/2022

192	132	87 FR 52224	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	08/24/2022
192	132c	87 FR 64384	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments	05/24/2023
192	133	88 FR 24708	Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments: Technical Corrections; Response to Petitions for Reconsideration	05/24/2023
192	134	88 FR 50056	Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards: Technical Corrections	08/01/2023
195	104	86 FR 73173	Unusually Sensitive Areas For The Great Lakes, Coastal Beaches, And Certain Coastal Waters	02/25/2022
195	105	87 FR 20940	Requirement Of Valve Installation And Minimum Rupture Detection Standards	10/05/2022
195	106	88 FR 50056	Requirement Of Valve Installation And Minimum Rupture Detection Standards: Technical Corrections	08/01/2023

Part 190, Amendment #No Number, 86 FR 23241: REVISIONS TO CIVIL PENALTY AMOUNTS

In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, this final rule provides the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this

rule amends the Federal Aviation Administration regulations to set forth the new civil penalties established in Division V, Title I of the Consolidated Appropriations Act, 2021. The rule also corrects a rounding error in an FAA penalty.

Part 190, Amendment #No Number, 87 FR 15839: REVISIONS TO CIVIL PENALTY AMOUNTS

This final rule provides the statutorily-prescribed 2022 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. In addition, this rule notes new DOT civil penalties authority provided in the Bipartisan Infrastructure Law (BIL, enacted as the Infrastructure Investment and Jobs Act).

Part 190, Amendment #No Number, 87 FR 28779: CRIMINAL REFERRALS

PHMSA is incorporating within its regulations language noting its employees' ability to refer actual or possible criminal activity in connection with PHMSA's jurisdictional statutes directly to the DOT Office of Inspector General (OIG).

Part 190, Amendment #No Number, 88 FR 1114: REVISIONS TO CIVIL PENALTY AMOUNTS

This final rule provides the statutorily-prescribed 2023 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.

Part 191, Amendment #31, 87 FR 26296: 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

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."

Part 191, Amendment #32, 87 FR 35675: SAFETY OF GAS GATHERING PIPELINES: EXTENSION OF REPORTING REQUIREMENTS, REGULATION OF LARGE, HIGH-PRESSURE LINES, AND OTHER RELATED AMENDMENTS: TECHNICAL CORRECTIONS

PHMSA is issuing corrections of certain changes to incident and annual reporting requirements for offshore gathering pipelines in its November 15, 2021, final rule titled "Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments."

Part 192, Amendment #130, 87 FR 20940: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS

PHMSA is revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and hazardous liquid pipelines with diameters of 6 inches or greater. In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote-control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures. This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 9-1-1 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews. Operators must also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications. PHMSA is promulgating these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

Part 192, Amendment #131, 87 FR 26296: 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

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."

Part 192, Amendment #132, 87 FR 52224: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, 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 several lessons learned following the Pacific Gas and Electric Company incident that occurred in San Bruno, CA, on September 9, 2010, and responds to public input received as part of the rulemaking process. The amendments in this final rule clarify certain integrity management provisions, codify a management of change process, update and bolster gas transmission pipeline corrosion control requirements, require operators to inspect pipelines following extreme weather events, strengthen integrity management assessment requirements, adjust the repair criteria for high-consequence areas, create

new repair criteria for non-high consequence areas, and revise or create specific definitions related to the above amendments.

Part 192, Amendment #132c, 87 FR 64384: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, AND OTHER RELATED AMENDMENTS

Correction: In Rule Document 2022-17031, appearing on pages 52224-52279, in the issue of Wednesday, August 24, 2022, a correction is made: On page 52267, in the third column, paragraph "(2)(i)" (of Sec. 192.3 Definitions.) is corrected.

Part 192, Amendment #133, 88 FR 24708: SAFETY OF GAS TRANSMISSION PIPELINES: REPAIR CRITERIA, INTEGRITY MANAGEMENT IMPROVEMENTS, CATHODIC PROTECTION, MANAGEMENT OF CHANGE, AND OTHER RELATED AMENDMENTS: TECHNICAL CORRECTIONS; RESPONSE TO PETITIONS FOR RECONSIDERATION

PHMSA is making necessary technical corrections to ensure consistency within, and the intended effect of, a recently issued final rule titled "Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments." PHMSA also alerts the public to its November 18, 2022, and April 19, 2023, responses to petitions for reconsideration of this final rule.

Part 192, Amendment #134, 88 FR 50056: PIPELINE SAFETY: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS: TECHNICAL CORRECTIONS

PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.

Part 195, Amendment #104, 86 FR 73173: UNUSUALLY SENSITIVE AREAS FOR THE GREAT LAKES, COASTAL BEACHES, AND CERTAIN COASTAL WATERS
PHMSA is amending the pipeline safety regulations to explicitly state that certain coastal waters, the Great Lakes, and coastal beaches are classified as unusually sensitive areas for the purpose of compliance with the hazardous liquid integrity management regulations. This amendment implements mandates contained in the Protecting our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2016, as amended by the PIPES Act of 2020. A hazardous liquid pipeline that could affect these newly designated areas must be included in an operator's integrity management program.

Part 195, Amendment #105, 87 FR 20940: REQUIREMENT OF VALVE INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS

PHMSA is revising the Federal Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore gas transmission, Type A gas gathering, and

hazardous liquid pipelines with diameters of 6 inches or greater. In the revised regulations, PHMSA requires operators of these lines to install rupture-mitigation valves (i.e., remote-control or automatic shut-off valves) or alternative equivalent technologies, and establishes minimum performance standards for those valves' operation to prevent or mitigate the public safety and environmental consequences of pipeline ruptures. This final rule establishes requirements for rupture-mitigation valve spacing, maintenance and inspection, and risk analysis. The final rule also requires operators of gas and hazardous liquid pipelines to contact 9- 1-1 emergency call centers immediately upon notification of a potential rupture and conduct post-rupture investigations and reviews. Operators must also incorporate lessons learned from such investigations and reviews into operators' personnel training and qualifications programs, and in design, construction, testing, maintenance, operations, and emergency procedure manuals and specifications. PHMSA is promulgating these regulations in response to congressional directives following major pipeline incidents where there were significant environmental consequences or losses of human life. The revisions are intended to achieve better rupture identification, response, and mitigation of safety, greenhouse gas, and environmental justice impacts.

**Part 195, Amendment #106, 88 FR 50056: REQUIREMENT OF VALVE
INSTALLATION AND MINIMUM RUPTURE DETECTION STANDARDS: TECHNICAL
CORRECTIONS**

PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled "Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards" for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.