



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA-2011-0023; Amdt. No. 192-138]

RIN 2137-AF39

Pipeline Safety: Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments: Corrections to Conform to Judicial Review

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

ACTION: Correcting amendments.

SUMMARY: These amendments conform part 192 of the Code of Federal Regulations (CFR) to the August 2024 order of the United States Court of Appeals for the District of Columbia Circuit by removing several vacated provisions.

DATES: Effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION: On August 24, 2022, PHMSA published a final rule titled “Safety of Gas Transmission Pipelines: Repair Criteria, Integrity Management Improvements, Cathodic Protection, Management of Change, and Other Related Amendments” (2022 Gas Transmission Final Rule)¹ amending the federal pipeline safety regulations at 49 CFR part 192 to improve the safety of onshore gas transmission pipelines. The 2022 Gas Transmission Final Rule updated and expanded requirements pertaining to corrosion control,

¹ 87 FR 52224 (Aug. 24, 2022).

repair criteria and timelines for various pipeline integrity anomalies (including various manifestations of metal loss, cracking, and denting), and other integrity management improvements.

The Interstate Natural Gas Association of America (INGAA) filed a petition for judicial review challenging several provisions of the 2022 Gas Transmission Final Rule. On August 16, 2024, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) ordered the following provisions vacated:²

- 1) Monitoring and mitigation of internal corrosive constituents at § 192.478;
- 2) The immediate repair criterion for cracks or crack-like anomalies with predicted failure pressures below 1.25 x maximum allowable operating pressure (MAOP) at §§ 192.714(d)(1)(v)(C) and 192.933(d)(1)(v)(C); and
- 3) High-frequency electric resistance welded seams as one of the seam types qualifying for the immediate repair criterion of preferential metal loss on certain seam types at §§ 192.714(d)(1)(iv) and 192.933(d)(1)(iv).³

This notice removes those vacated provisions and makes conforming revisions to align the federal pipeline safety regulations to the result of judicial review.⁴

Additionally, the court's August 16, 2024, decision found the dent engineering critical assessment method at § 192.712(c) to be inadequately justified. However, the D.C. Circuit subsequently, in a December 10, 2024 order, granted an unopposed petition for rehearing by INGAA and remanded this provision to PHMSA without vacatur. Accordingly, the engineering critical assessment method for dents articulated at § 192.712(c) remains in the federal pipeline safety regulations, thereby allowing operators complying with the process to, where appropriate,

² *INGAA v. PHMSA*, No. 23-1173, 114 F.4th 744, 756 (D.C. Cir. Aug. 16, 2024).

³ Preferential metal loss on direct current, low-frequency electric resistance welded pipe, and electric flash welded pipe remain immediate repair conditions when an anomaly on pipe with these seam types meet the conditions under §§ 192.714(d)(1)(iv) and 192.933(d)(1)(iv). *INGAA v. PHMSA*, 114 F.4th at 756 (vacating the provisions "only as applied to seams formed by high-frequency electric resistance welding").

⁴ PHMSA also removes now obsolete cross-references to § 192.478 located in §§ 192.9 and 192.927, without making any other changes to those provisions.

monitor rather than repair certain dents according to the requirements of §§ 192.714(d) and 192.933(d). Section 192.712(c) will remain in effect as PHMSA considers its approach to address the deficiencies in PHMSA's adoption of § 192.712(c) identified in the court's August 16, 2024, decision. PHMSA will announce such regulatory actions in the Federal Register in ordinary course.

PHMSA has good cause to make these conforming corrections without notice and comment pursuant to Section 553(b)(B) of the Administrative Procedure Act (APA, 5 U.S.C. 551, et seq.) because, the D.C. Circuit having vacated these provisions of the 2022 Gas Transmission Final Rule, no comment could "change[] that fact" and additional comment would be "utterly unnecessary." *EME Homer City Generation, LP v. EPA*, 795 F.3d 118, 134–35 (D.C. Cir. 2015) (internal quotations omitted). 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 amendments without providing notice and an opportunity for public comment. Notice and comment on these correction amendments is unnecessary for this ministerial action conforming the pipeline safety regulations to the result ordered by the D.C. Circuit. The Agency simply removes the three discrete provisions (two of which are found at both §§ 192.714 and 192.933) which have been vacated by the court. PHMSA finds that notice and opportunity for public comment are unnecessary under section 553(b)(B) of the APA.

PHMSA also finds good cause for the immediate effective date on publication of these conforming corrections. Section 553(d) of the APA provides that a rule should take effect not less than 30 days after publication in the Federal Register, except for when a rule relieves a restriction or when good cause is found by the agency and published within the rule allowing for earlier effect. 5 U.S.C. 553(d)(1) & (3). These conforming corrections relieve discrete requirements of the 2022 Gas Transmission Final Rule. 5 U.S.C. 553(d)(1). Moreover, good cause exists for immediate effect as, the D.C. Circuit having entered its judgment, the provisions

of the code being removed herein are no longer effective, operators and the public will benefit from regulatory text reflecting the accurate regulatory environment, and no additional time is necessary to conform operator behavior. *Omnipoint Corp. v. F.C.C.*, 78 F.3d 620, 630 (D.C. Cir. 1996); 5 U.S.C. 553(d)(3).

I. Regulatory Analyses and Notices

A. Legal Authority

These conforming corrections are published under the authority of the Secretary of Transportation delegated to PHMSA pursuant to 49 CFR 1.97. Among the statutory authorities delegated to PHMSA are the authorities vested in the Secretary under the Federal Pipeline Safety Statutes (49 U.S.C. 60101 et seq.). Section 60102(a) authorizes issuance of regulations governing design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.⁵

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

These conforming corrections have been evaluated in accordance with Executive Order 12866 (“Regulatory Planning and Review”),⁶ Executive Order 14094 (“Modernizing Regulatory Review”),⁷ and DOT Order 2100.6A (“Rulemaking and Guidance Procedures”) and are considered not significant; therefore, these conforming corrections have not been reviewed by the Office of Management and Budget (OMB). As the conforming corrections herein merely reflect the current state of the regulations following judicial review, PHMSA finds that the conforming corrections themselves impose no incremental compliance costs, nor do they adversely impair safety.

C. Regulatory Flexibility Act

The analytical requirements of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (RFA, 5 U.S.C. 601 et seq.), do not apply

⁵ See 87 FR at 52263 (2022 Gas Transmission Final Rule statutory authorities).

⁶ 58 FR 51735 (Oct. 4, 1993).

⁷ 88 FR 21879 (Apr. 11, 2023).

when the agency finds good cause under the APA to adopt a rule without prior notice and comment.⁸ Because PHMSA has “good cause” under the APA to forgo comment on the corrections herein, no RFA analysis is required.

D. Paperwork Reduction Act

These conforming corrections impose no new or revised information collection requirements. As explained above, the conforming corrections are non-substantive as they reflect the outcome of judicial review, and they will require no change to the current incident and annual reporting forms and their respective instructions as discussed in the preamble of the 2022 Gas Transmission Final Rule.

E. Unfunded Mandates Reform Act of 1995

PHMSA analyzed these conforming corrections pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 *et seq.*) and determined that the corrections do not impose enforceable duties of \$100 million or more, adjusted for inflation, in any one year, on state, local, or tribal governments, or on the private sector. Because the corrections impose no new incremental compliance costs beyond those already assessed in the 2022 Gas Transmission Final Rule, PHMSA’s earlier UMRA analysis need not be changed.⁹

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 2022 Gas Transmission Final Rule in accordance with NEPA, consistent with Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and DOT implementing policies (DOT Order 5610.1C, “Procedures for Considering Environmental Impacts”) and determined the 2022 Gas

⁸ See 5 U.S.C. 603-604. See also Small Business Administration, “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act” 55 (2017).

⁹ Final Regulatory Impact Analysis, Doc. No. PHMSA-2011-0023-0637 (2022).

Transmission Final Rule would not significantly affect the quality of the human environment.¹⁰ PHMSA has determined that the corrections in this document have no effect on its earlier NEPA analysis, as the corrections simply reflect the 2022 Gas Transmission Final Rule as modified by judicial review.

G. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public to inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provided, 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 these conforming corrections in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”).¹¹ PHMSA has previously determined that the 2022 Gas Transmission Final Rule did not impose 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.¹² Because the judicially conforming corrections herein are consistent with the 2022 Gas Transmission Final Rule as modified by judicial review, the consultation and funding requirements of Executive Order 13132 do not apply.¹³

I. Executive Order 13211

PHMSA analyzed the 2022 Gas Transmission Final Rule and determined that the requirements of Executive Order 13211 (“Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use”)¹⁴ did not apply. These judicially conforming

¹⁰ Final Environmental Assessment, Doc. No. PHMSA-2011-0023-0635 (2022).

¹¹ 64 FR 43255 (Aug. 10, 1999).

¹² See 87 FR at 20978.

¹³ Moreover, PHMSA determined that the 2022 Gas Transmission Final Rule did not impose substantial direct compliance costs on state and local governments.

¹⁴ 66 FR 28355 (May 22, 2001).

corrections to the 2022 Gas Transmission Final Rule are not a “significant energy action” under Executive Order 13211, as they are not a significant regulatory action, and they are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated the corrections herein 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”)¹⁵ and DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of these corrections 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”),¹⁶ 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. These conforming corrections do not impact international trade.

L. Regulation Identifier Number (RIN)

A 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

¹⁵ 65 FR 67249 (Nov. 6, 2000).

¹⁶ 77 FR 26413 (May 4, 2012).

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

M. Severability

This makes discrete corrections which conform the regulations with the outcome of judicial review on the 2022 Gas Transmission Final Rule. Each amendment is severable and operates independently.

List of Subjects in 49 CFR Part 192

Corrosion control, Installation of pipe in a ditch, Integrity management, Internal inspection device, Management of change, Pipeline safety, Repair criteria, Surveillance.

In consideration of the foregoing, PHMSA corrects 49 CFR part 192 by making the following correcting amendments:

**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 1.97.

2. Amend § 192.9 by revising paragraphs (b), (c), (d)(2), and (e)(1)(ii) as follows:

§ 192.9 What requirements apply to gathering pipelines?

* * * * *

(b) *Offshore lines.* An operator of an offshore gathering line must comply with requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.485(c), 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714, and in subpart O of this part. Further, operators of offshore gathering lines are exempt from the requirements of §§ 192.617(b) through (d) and 192.635. Lastly, operators of offshore gathering lines are exempt from the requirements of § 192.615 (but

an operator of an offshore gathering line must comply with the requirements of 49 CFR 192.615, effective as of October 4, 2022).

(c) *Type A lines.* An operator of a Type A regulated onshore gathering line must comply with the requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.485(c) 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714, and in subpart O of this part. However, an operator of a Type A regulated onshore gathering line in a Class 2 location may demonstrate compliance with subpart N of this part by describing the processes it uses to determine the qualification of persons performing operations and maintenance tasks. Further, operators of Type A regulated onshore gathering lines are exempt from the requirements of §§ 192.179(e) through (g), 192.610, 192.617(b) through (d), 192.634, 192.635, 192.636, and 192.745(c) through (f). Lastly, operators of Type A regulated onshore gathering lines are exempt from the requirements of § 192.615 (but an operator of a Type A regulated onshore gathering line must comply with the requirements of 49 CFR 192.615, effective as of October 4, 2022).

(d) * * *

(2) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines, except the requirements in §§ 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.485(c), and 192.493;

* * * * *

(e) * * *

(1) * * *

(ii) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines, except the requirements in §§ 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.485(c), and 192.493;

* * * * *

§ 192.478 [Removed]

3. Remove § 192.478.

4. Amend § 192.714 by revising paragraphs (d)(1)(iv) and (v) to read as follows:

§ 192.714 Transmission lines: Repair criteria for onshore transmission pipelines.

* * * *

(d) * * *

(1) * * *

(iv) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency electric resistance welding, electric flash welding, or has a longitudinal joint factor less than 1.0, and the predicted failure pressure determined in accordance with § 192.712(d) is less than 1.25 times the MAOP.

(v) A crack or crack-like anomaly meeting any of the following criteria:

(A) Crack depth plus any metal loss is greater than 50 percent of pipe wall thickness; or

(B) Crack depth plus any metal loss is greater than the inspection tool's maximum measurable depth.

* * * *

5. Amend § 192.927 by revising paragraph (c)(4)(iii)(A) to read as follows:

§ 192.927 What are the requirements for using Internal Corrosion Direct Assessment

(ICDA)?

* * * *

(c) * * *

(4) * * *

(iii) * * *

(A) Conduct excavations of, and detailed examinations at, locations downstream from where the electrolytes might have entered the pipe to investigate and accurately characterize the nature, extent, and root cause of the corrosion; or

* * * * *

6. Amend § 192.933 by revising paragraphs (d)(1)(iv) and (v) to read as follows:

§ 192.933 What actions must be taken to address integrity issues?

* * * * *

(d) * * *

(1) * * *

(iv) Metal loss preferentially affecting a detected longitudinal seam, if that seam was formed by direct current, low-frequency electric resistance welding, electric flash welding, or has a longitudinal joint factor less than 1.0, and the predicted failure pressure determined in accordance with § 192.712(d) is less than 1.25 times the MAOP.

(v) A crack or crack-like anomaly meeting any of the following criteria:

(A) Crack depth plus any metal loss is greater than 50 percent of pipe wall thickness; or

(B) Crack depth plus any metal loss is greater than the inspection tool's maximum measurable depth.

* * * * *

Issued in Washington, DC on December 30, 2024, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,
Deputy Administrator.

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