

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

[Docket No. PHMSA-2003-15852]

RIN 2137-AE17

Pipeline Safety: Applicability of Public Awareness Regulations to Certain Gas Distribution Operators

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

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA proposes to relax regulatory requirements governing public awareness programs conducted by operators of master meter systems and certain operators of petroleum gas systems. These operators typically manage property and incidentally provide gas service to customers located on the property. The proposed change provides a less burdensome means for these operators to satisfy public awareness needs.

DATES: Anyone interested in filing written comments on the rule proposed in this document must do so by November 28, 2006. PHMSA will consider late filed comments so far as practicable.

ADDRESSES: Comments should reference Docket No. PHMSA-2003-15852 and may be submitted in the following ways:

- *DOT Web site:* <http://dms.dot.gov>. To submit comments on the DOT electronic docket site, click "Comment/Submissions," click "Continue," fill in the requested information, click "Continue," enter your comment, then click "Submit."
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Hand Delivery:* DOT Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *E-Gov Web Site:* <http://www.Regulations.gov>. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, PHMSA-2003-15852, at the beginning of your comments. If you submit your comments by mail, you

should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at <http://www.regulations.gov>, and may access all comments received by DOT at <http://dms.dot.gov> by performing a simple search for the docket number.

Note: All comments will be posted without changes or edits to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For information about this rulemaking contact Barbara Betsock by phone at (202) 366-4361, or by e-mail at barbara.betsock@dot.gov. For information about public awareness programs, contact Blaine Keener by phone at (202) 366-0970 or e-mail at blaine.keener@dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

PHMSA published a final rule on public awareness programs on May 19, 2005 (70 FR 28833). The rule requires each pipeline operator to develop a written public awareness program following American Petroleum Institute Recommended Practice 1162 (API RP 1162) and to carry out that program on a continual basis. A public awareness program includes outreach to populations near the pipelines on safety and environmental issues involving pipelines and to emergency responders on identifying and responding to pipeline emergencies. The American Public Gas Association (APGA) filed a petition for reconsideration of the public awareness regulations on June 10, 2005, seeking to change the regulatory requirements for master meter systems. In a written response to the APGA and through public workshops and an advisory bulletin (71 FR 34998), PHMSA has indicated its intention to relieve operators of master meter and petroleum gas distribution systems from some of these requirements.

Applicability to Operators of Master Meter Systems

A master meter system is defined in 49 CFR 191.3. An operator of a master meter system receives gas through a meter as the customer of a local distribution company and then redistributes the gas on its own property. The operator of a master meter system distributes gas as an incidental part of a primary business. For example,

a typical master meter operator manages a trailer park or apartment complex and may charge residents for the gas service through the rent. The master meter system is typically located on the property of the master meter operator. Data received from forty-seven state pipeline safety agencies in 2005 shows over 6,500 master meter systems in operation. Because an operator of a master meter system does not file annual reports with PHMSA, we have no quantified data about the size of the systems, either by mileage or by number of customers.

The customers of a master meter operator live near pipelines operated by the gas distribution company supplying the master meter system. Because of this proximity, APGA notes, in its petition for reconsideration, the requirement for the gas distribution company to conduct outreach to these residents and to the local emergency responders. Messages from the master meter operator might differ from those of the gas distribution system serving the master meter. APGA, which represents distribution companies owned by municipalities, expresses concern these different messages might confuse both the public and emergency responders. We agree with this concern. However, we do not agree with APGA's suggested alternative approaches, complete relief from public awareness regulations or a requirement to pass along information received from the distribution company providing gas service to the master meter operator.

Given the proximity of the master meter system to the gas distribution company's pipeline, customers of the master meter operator may already receive information from the gas distribution company. The gas distribution company will provide information about recognizing and reporting a pipeline safety issue. However, this would not ordinarily include information about the master meter system or how to notify the master meter operator about pipeline events on the master meter system. The master meter operator needs to fill this information gap for its customers. We propose to require a master meter operator to conduct a limited public education program reaching (1) customers of the master meter system and (2) persons controlling other property, if any, the master meter system crosses.

Proposed 49 CFR 192.616(j) provides the alternative approach to public awareness programs just described. We based it on the communication requirements for customers described in API RP 1162. To make compliance

easier for these operators, we have spelled out the requirements in the language of the proposed rule rather than in cross-referencing API RP 1162.

We are proposing to relieve the master meter operators of the rest of the requirements of the more extensive API RP 1162 public awareness program. The damage prevention regulations have long excepted master meter operators from requirements to extend outreach activities to excavators and the public. (49 CFR 192.614(e)). In excepting master meter operators, we found their participation in the activities unnecessary for safety. These outreach activities are consistent with damage prevention outreach described for public awareness programs in API RP 1162. As a pipeline operator, the operator of a master meter has a continuing duty, under 49 CFR 192.615, to maintain liaison with local emergency responders. This liaison ensures communication and coordination if a pipeline emergency occurs. A pipeline emergency on a master meter system will likely be contained on the property owned by the operator of the master meter system. However, the operator of a master meter system lacks the expertise of the local gas distribution company in pipeline safety issues needed to effectively conduct the more extensive public awareness program described in API RP 1162 for outreach to the responders, local officials, excavators, and the general public.

Applicability to Operators of Petroleum Gas Systems

Many operators of petroleum gas systems are similar to operators of master meters because they distribute gas as an incidental part of their primary business. The operator of a petroleum gas system receives a supply of propane (or similar petroleum product), frequently by truck; vaporizes it; and supplies its customers with petroleum gas. A petroleum gas system may be in a remote area without gas distribution service, for example a ski lodge. Data received from forty-eight state pipeline safety agencies in 2005 shows over 1,000 petroleum gas systems in operation. Operators of petroleum gas systems with more than 100 customers file annual reports with PHMSA along with other gas distribution operators. However, because these reports do not identify the type of gas distributed, we have no quantified data about the size of petroleum gas systems, either in terms of mileage or of number of customers.

Some operators of a petroleum gas system distribute gas as a major part of

their business. These operators have pipeline safety expertise equivalent to other gas distribution companies and should develop and implement public awareness programs. Others, like operators of master meter systems, distribute gas incidentally to a primary business, such as property management. These petroleum gas operators need to communicate with their customers and those persons controlling property they cross. They also need to maintain liaison required by 49 CFR 192.615 with emergency responders. However, they will be less effective in the remaining outreach activities required for public awareness. We propose to relieve them of public awareness requirements to the same extent as master meter operators, retaining the same communication requirements. Proposed 49 CFR 192.616(j), which provides the alternative for master meter operators, also addresses petroleum gas operators.

Compliance Dates

The regulations currently require development and implementation of public awareness programs meeting API RP 1162. This proposal provides less onerous requirements for master meter and petroleum gas operators (for whom gas transportation is not a primary business activity) regardless of size. We propose to require compliance in early 2007. We believe this will allow sufficient time for compliance.

Statutory Considerations

PHMSA has broad authority to issue safety standards on the operation and maintenance of gas and hazardous liquid pipelines. This authority is in 49 U.S.C. 60102(a). In addition, 49 U.S.C. 60116 provides specific requirements for operators to develop public awareness programs and authorizes PHMSA to issue implementing regulations. Although this proposed rule provides less onerous requirements for certain master meter and petroleum gas system operators, compliance with it would satisfy the requirements 49 U.S.C. 60116 places on operators. Under 49 U.S.C. 60102(b), a pipeline safety standard must be practicable and designed to meet the need for pipeline safety and for protection of the environment. To satisfy this requirement, PHMSA must consider several factors in issuing a safety standard. These factors include the relevant available pipeline safety and environmental information, the appropriateness of the standard for the type of pipeline, the reasonableness of the standard, and reasonably identifiable or estimated costs and benefits. PHMSA has considered these

factors in developing this proposed rule. PHMSA must also consider any comments received from the public and any comments and recommendations of the Technical Pipeline Safety Standards Committee on gas pipeline safety standards and the Technical Hazardous Liquid Pipeline Safety Standards Committee on hazardous liquid pipeline safety standards (pipeline advisory committees). This document seeks public comment on the proposed rule; the pipeline advisory committees will formally consider it in a future meeting. PHMSA will address the public comments and the recommendations of the pipeline advisory committees when the agency prepares a final rule.

Regulatory Analyses and Notices

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Executive Order 12866 and DOT Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget. This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This proposed rule would affect operators of master meters and petroleum gas systems. Although we do not have quantitative data, we believe many of the operators of these systems are small entities. This proposed rule would relieve regulatory burden for most of these operators. PHMSA concludes this proposed rule would not have a significant negative economic impact on any small entity.

Executive Order 13175

PHMSA has analyzed this proposed rulemaking according to Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the

funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act

PHMSA has analyzed the proposed rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and preliminarily determined the proposed rulemaking is unlikely to affect the quality of the human environment significantly. An environmental assessment document is available for review in the docket. PHMSA will make a final determination on environmental impact after reviewing the comments to this proposal.

Executive Order 13132

PHMSA has analyzed the proposed rulemaking according to Executive Order 13132 ("Federalism"). The proposed rule does 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. The proposed rule does not impose substantial direct compliance costs on State and local

governments. This proposed regulation would not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

Transporting gas impacts the nation's available energy supply. However, this proposed rulemaking is not a "significant energy action" under Executive Order 13211. It also is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, the Administrator of the Office of Information and Regulatory Affairs has not identified this proposed rule as a significant energy action.

List of Subjects in 49 CFR Part 192

Pipeline safety.

For the reasons provided in the preamble, PHMSA proposes to amend 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: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, and 60118; and 49 CFR 1.53.

2. Amend § 192.616 as follows:

- a. Revise paragraph (a);
- b. Amend paragraph (h) by revising the second sentence; and
- c. Add paragraph (j).

The changes read as follows:

§ 192.616 Public awareness.

(a) Except for an operator of a master meter or petroleum gas system covered under paragraph (j) of this section, each pipeline operator must develop and

implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's (API) Recommended Practice (RP) 1162 (IBR, see § 192.7).

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(h) * * * The operator of a master meter or petroleum gas system covered under paragraph (j) of this section must complete development of its written procedure by March 31, 2007. * * *

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(j) Unless the operator transports gas as a primary activity, the operator of a master meter or petroleum gas system is not required to develop a public awareness program as prescribed in paragraphs (a) through (g) of this section. Instead the operator must develop and implement a written procedure to provide its customers public awareness messages twice annually. If the master meter or petroleum gas system is located on property the operator does not control, the operator must provide similar messages twice annually to persons controlling the property. The public awareness message must include:

- (1) A description of the purpose and reliability of the pipeline;
- (2) An overview of the hazards of the pipeline and prevention measures used;
- (3) Information about damage prevention;
- (4) How to recognize and respond to a leak; and
- (5) How to get additional information.

Issued in Washington, DC, on September 19, 2006.

Theodore L. Willke,

Acting Associate Administrator for Pipeline Safety.

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