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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket ID: PHMSA-2018-0086]

Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps

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

ACTION: Announcement of enforcement discretion.

SUMMARY: PHMSA is announcing its exercise of enforcement discretion with respect to portions of its regulations that pertain to farm taps. Pursuant to the exercise of enforcement discretion announced in this document, PHMSA will not take enforcement action against operators who forego the new maintenance and inspection requirements established in March 2017 and instead mitigate any future risk associated with farm taps through compliance with the existing Distribution Integrity Management Program (DIMP) regulations. This will provide regulatory flexibility to pipeline operators while at the same time maintaining an equivalent level of safety.

DATES: This action is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For additional information or questions, contact Chris McLaren at chris.mclaren@dot.gov or 281-216-4455.

SUPPLEMENTARY INFORMATION:

I. Background

On January 23, 2017, PHMSA published in the Federal Register a final rule titled, “Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes.”¹ This final rule, effective March 24, 2017, modified 49 CFR 192.1003 by adding an exemption from the distribution integrity management program (DIMP) regulations for an individual service line directly connected to a transmission, gathering, or production pipeline. Additionally, PHMSA added maintenance and inspection requirements in a new section (§ 192.740) to ensure the safety of pressure regulating, limiting, and overpressure protection for individual service lines directly connected to production, gathering, or transmission pipelines.

Individual service lines directly connected to transmission, gathering, or production pipelines are also called “farm taps.” Farm taps are typically located in rural areas, and provide gas to a customer. Prior to the final rule, PHMSA worked with stakeholders to best identify how to address risk with farm taps in an appropriate and cost efficient manner. The result of this work is contained in the final rule with the exemption of farm taps from the DIMP regulations in § 192.1003(b), and the addition of § 192.740, which requires certain maintenance and inspection tasks be performed on a periodic basis.

On September 18, 2017, the American Gas Association (AGA) sent to PHMSA a Regulatory Impact Position Paper titled, “Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes Final Rule.” In its paper, AGA encourages PHMSA to consider revising §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. On November 9, 2017, AGA, the American Petroleum Institute, and the Interstate Natural Gas

¹ 82 FR 7972, also available in Docket No. PHMSA 2013-0163 at www.regulations.gov.

Association of American submitted joint comments to DOT's Regulatory Reform Docket, which sought comment on whether existing regulations may be repealed, replaced, or modified without compromising safety (e.g., for burdening domestic energy production, for imposing costs that exceed benefits, or for eliminating jobs or inhibiting job creation).² The joint comments endorsed the recommendations of the AGA paper, and included that paper as an appendix.

AGA believes that PHMSA significantly underestimated the costs associated with the new farm tap inspection requirements. AGA also questions the pipeline safety enhancements attributed to the new regulatory requirements, noting that operators have continuously monitored farm taps for heightened levels of risk under their DIMP plans since 2011, when the DIMP rule became effective. AGA also notes that operators currently are obligated to periodically perform leak surveys on farm taps under § 192.723(b)(2), and these activities provide operators an opportunity to verify their functionality and identify any existing abnormal operating conditions.

As part of DOT's regulatory review process, PHMSA is considering AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. AGA contends that this action would provide industry with cost savings, while simultaneously improving pipeline safety by allowing operators to mitigate any future risk associated with farm taps through their DIMP plans. PHMSA believes that the two regulatory sections provide equivalent levels of safety.

II. Announcement of Exercise of Enforcement Discretion

PHMSA is exercising enforcement discretion while it considers AGA's request to revise §§ 192.740 and 192.1003 to give operators the choice of managing the risk to farm taps under either of these regulatory sections. PHMSA will not take any enforcement action relating to

² See <https://www.regulations.gov/document?D=DOT-OST-2017-0069-1504>.

violations of § 192.740 with respect to operators that choose to include farm taps in their DIMP plans, and will instead require that such operators comply with the existing DIMP regulations of 49 CFR part 192, subpart P. This exercise of enforcement discretion provides operators with the flexibility to choose to either address the safety of farm taps under the current regulatory framework of §§ 192.740 and 192.1003(b), or under the regulatory framework that was in place prior to March 24, 2017, by including farm taps in their DIMP. Operators who choose the second option should continuously monitor their farm taps for heightened levels of risk under their DIMP. All operators of farm taps, moreover, should comply with other regulatorily required programs (e.g., §§ 192.603(c)(4) Abnormal Operations; 192.613(a) Continuing Surveillance; and, 192.617 Investigation of Failures).

PHMSA is issuing this document while it continues to evaluate and analyze the technical aspects of this matter. This exercise of enforcement discretion will remain in effect until further notice. Nothing in this document prohibits PHMSA from rescinding this document and pursuing an enforcement action if it determines that a significant safety issue warrants doing so. Furthermore, this document does not relieve operators from compliance with any other applicable provisions of the pipeline safety regulations.

Issued in Washington D.C. on March 20, 2019, under authority delegated in 49 CFR 1.97.

Linda Daugherty,

Deputy Associate Administrator for Field Operations.

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