

Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Changes

**(RIN 2137-AE94)
Docket: PHMSA-2013-0163**

June 2, 2016



NPRM Publication

- Notice of Proposed Rulemaking published - July 10, 2015 (80 FR 39916)
- Comment Period Closed - September 8, 2015
- PHMSA received comments from 35 entities including:
- NTSB
- Private Citizens
- Pipeline Safety Trust
- Trade Associations
- Individual Operators
- ASME B31Q Qualification of Pipeline Personnel Technical Committee
- American Medical Review Officers and the Pipeline Testing Consortium
- Pipeline Safety Consultants

2



Congressional Act/ NTSB Recommendations

- **Section 9 of the 2011 Act** - Accident and Incident reporting.
- **Section 13 of the 2011 Act** - Cost Recovery of Design Review.
- **NTSB Recommendation P-11-12** - require drug and alcohol testing of each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.
- **NTSB Recommendation P-12-3** - addresses part of the recommendation by incorporating by reference in part 195 assessment tools.
- **NTSB Recommendation P-12-7** - team training of control center staff.
- **NTSB Recommendation P-12-8** - extending operator qualification training requirements for all hazardous liquid and gas transmission control center staff involved in pipeline operational decisions.



Summary of Proposed Rules

- Specifying an operator's **accident and incident** reporting time to within one hour.
- Setting up a **cost recovery** fee structure for design review of new gas and hazardous liquid pipelines.
- Expanding the existing **OQ** scope to cover new construction and previously excluded operation and maintenance tasks, addressing NTSB recommendation, and extending the requirements to operators of Type A gathering lines in Class 2 locations and Type B onshore gas gathering lines.
- Providing a renewal procedure for expiring **special permits**.
- Excluding **farm taps** from the DIMP requirements.
- Requiring pipeline operators to report to PHMSA permanent **reversal of flow**.

4



Summary of Proposed Rules Continue

- Providing methods for **assessment tool selection** by incorporating consensus standards by reference in part 195 for stress corrosion cracking direct assessment.
- Requiring electronic reporting of **drug and alcohol testing** results in part 199, and modifying the criteria used to make decisions about conducting post accident drug and alcohol tests.
- Adding a procedure to request **PHMSA keep submitted information confidential**.
- Adding reference to Appendix B of API 1104 related to **in-service welding in parts 192 and 195**.



Accident and Incident Notification

- **Background** - Section 9 of the 2011 Act requires PHMSA to specify a time limit for telephonic or electronic reporting of pipeline accidents and incidents within 1 hour following the time of such confirmed discovery
- **NPRM**
 - telephonic or electronic notification of an accident or incident must be reported following the confirmed discovery of an accident or incident, but not later than 1 hour
 - Report amount of product loss
 - Updated/confirmed reports must be submitted within 48 hours
- **Confirmed discovery** means there is sufficient information to determine that a reportable event may have occurred even if an evaluation has not been completed.

6



Comments

Commenters stated that:

- The proposed definition for “confirmed discovery” (§§ 191.3 and 195.2) **is confusing** because it suggests operators have **sufficient information that an event has occurred**, and it also contains the phrase “may have occurred.”
- It is **not possible to provide meaningful estimates of gas loss within one hour** and, therefore, the estimates should be included in the update to the one hour notification within 48 hours of confirmed discovery of an incident.
- PHMSA should not make the 48 hours reporting change effective until the NRC has the means to accept supplemental reports.



Responses

- The term “confirmed discovery” is in the 2011 Congressional Act and cannot be replaced by the term “accident notification” or “provisional discovery.” PHMSA proposed “may have occurred” in the definition of “confirmed discovery” to abide by the Congressional mandate requiring operators to alert the National Response Center to accidents and incidents, despite not having a complete assessment, in order to allow the appropriate emergency personnel or investigators could respond in a timely manner to mitigate the consequences of such occurrences.
- The 2011 Act also directs PHMSA to require owners and operators of pipelines to revise their initial telephonic or electronic notice to the Secretary and the National Response Center with an estimate of the amount of the product released, an estimate of the number of fatalities and injuries within 48 hours.



Responses - continued

- PHMSA has no authority to require the National Response Center to update initial operator's report without generating a new report.
- The National Response Center informed PHMSA that it would require a substantial amount of funding for the Center to have this capability.



PHMSA Recommendations

- Adopt as proposed



Sample language – agree as proposed

“The proposed rule, ***relative to Accident and Incident Notification***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are technically feasible, reasonable, cost-effective, and practicable.**”



Sample language – not in agreement

“The proposed rule, ***relative to Accident and Incident Notification***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to Accident and Incident Notification***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made** - * * *



Cost Recovery of Design Review

- **Background:** Section 13 of the 2011 Act allows PHMSA to prescribe a **fee structure and assessment methodology to recover costs** associated with design reviews for:
 - design and construction costs totaling at least \$2,500,000,000, and
 - new or novel technologies or design, as determined by the Secretary
- **NPRM:** PHMSA proposed to create new Subpart D in Part 190. The Subpart would include: **Scope, Applicability, Notification, Master Agreement, Fee Structure, and Procedures for Billing and Payment of Fee.** Also, PHMSA provided a **sample Master Cost Recovery Agreement.**
- ***New and novel technologies*** means any products, designs, materials, testing, construction, inspection, or operational procedures that are **not addressed in 49 CFR parts 192, 193, or 195, due to technology or design advances and innovation.**

14



Comments

- PHMSA should **revise the definition for “new and novel technology.”**
- PHMSA should clarify whether identical new technology is **reviewed once or multiple times**, and whether consensus standards and incorporated by reference are considered “new or novel technologies.”
- Conducting pipeline inspections or reviewing operational procedures should not be included in the cost recovery methodology.
- PHMSA should revise its proposal **to commence design review 120 days prior to the event** because many of the proposed trigger events occur too early in the construction process.
- The sample Master Cost Recovery Agreement does not relate to activities related to the reach and validation of new or novel technology.



Responses

- PHMSA recommends revising the definition of *“new and novel” in § 190.3 to limit its applicability to new construction - by adding “for new construction.”*
- Conducting pipeline inspections or reviewing operational procedures are a main function of PHMSA inspections for new pipeline facilities.
- PHMSA agrees with the **trigger events occurring too early and recommends modifying § 190.405** to exclude permitting activities, material purchasing, and the right of way acquisition from the notification requirement.
- The Master Cost Recovery Agreement detailed in § 190.407 would be written to **recover PHMSA costs of personnel involved in the review of the new or novel technology.**



PHMSA Recommendations

- *New and novel technologies* means any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in 49 CFR parts 192, 193, or 195, due to technology or design advances and innovation for new construction. Technologies that are addressed in consensus standards that are incorporated by reference into Parts 192, 193, and 195 are not “new or novel technologies.”



PHMSA Recommendations

§ 190.405 – Notification

For any new pipeline facility construction project in which PHMSA will conduct a design review, the applicant proposing the project must notify PHMSA and provide the design specifications, construction plans and procedures, project schedule and related materials at least 120 days prior to the commencement of any of the following activities: route surveys for construction, ~~permitting activities~~, material ~~purchasing and~~ manufacturing, ~~right-of-way acquisition~~, offsite facility fabrications, construction equipment move-in activities, onsite or offsite fabrications, personnel support facility construction, and any offsite or onsite facility construction. To the maximum extent practicable, but not later than 90 days after receiving such design specifications, construction plans and procedures, and related materials, PHMSA will provide written comments, feedback, and guidance on the project.

18



Sample language – agree as proposed

“The proposed rule, ***relative to Cost Recovery of Design Review***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

“The proposed rule, ***relative to Cost Recovery of Design Review***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to Cost Recovery of Design Review***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made -**



Operator Qualification Requirements

- **Background:** Sections 101 and 201 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561; October 31, 1988) authorize PHMSA to require all individuals responsible for the operation and maintenance of pipeline facilities to be tested for qualifications and to be certified to perform such functions.
- **Proposed rule:** PHMSA proposed to amend the Federal pipeline safety regulations in 49 CFR parts 192 and 195 relative to operator qualification requirements by:
 - expanding the scope of OQ requirements to cover new construction and certain previously excluded operation and maintenance tasks
 - requiring program effectiveness of operators OQ programs, and
 - extending the OQ requirements to operators of Type A gas gathering lines in Class 2 locations, Type B onshore gas gathering lines, and regulated rural hazardous liquid gathering lines.



Comments

- PHMSA should revise the definition for "covered task."
- Keep the 4-part test and add supplemental list of covered tasks including new construction.
- The definition for "qualified" should not include periodic testing for physical abilities such as color, vision or hearing.
- For the definition of "significant changes," the phrase "wholesale changes to the program" is open to differing interpretations.
- Non-task-specific abnormal operating conditions should be removed from the proposal.
- Training should not be required if the individual already possesses the requisite knowledge, skills and abilities for the covered task.
- Extending OQ requirements to Type B gathering lines in Class 2 locations would create an undue burden on operators and provide no real safety benefit.



Comments - continued

- The requirement to establish a management of change program should be limited to operators having more than 50 employees who perform covered tasks.
- Does PHMSA allow operators to use non-qualified personnel to perform covered tasks during emergencies where no one else is available to perform the covered task.
- Limiting an operator's Span of Control will not increase safety or better ensure qualified personnel; does the requirement mean a qualified individual cannot provide span of control for a non-qualified individual performing multiple covered tasks, or that a qualified individual cannot provide span of control for more than one non-qualified individual at a time?



Comments continue

- The program effectiveness review period should be every four years rather than the proposed one year; PHMSA should allow a program implementation time of five years.
- Currently qualified workers should not be required to requalify solely as a result of promulgation of the proposed rule.
- The operator should have the authority to determine which personnel types should be involved during team training.



Responses

- PHMSA recommends to revise the proposed definition for “covered task” to address comments.
- The change from the requirements of the 4-part test is intended to ensure that all work performed on a pipeline facility that could affect the safety or integrity of the pipeline is performed by qualified personnel. Under the 4-part test, operators have omitted, from qualification requirements, personnel who perform important covered tasks.
- The items listed under the definition of “qualified” are not all inclusive, the items listed are meant to serve as reminders to operators to take these items into account, if applicable.
- PHMSA recommends modifying the language in the definition of “significant changes” to remove the term “wholesale changes.”
- As to the term “non-task specific covered task,” PHMSA recommends deleting the term.



Responses - continued

- As to extending OQ requirements to Type B gathering lines in Class 2 locations would create an undue burden on operators, OQ is intended to reduce human error and, therefore, all regulated gathering lines are included to provide a consistent level of safety across all regulated pipelines.
- As to operator size limit, a management of change process is critical for all regulated operators to have, regardless of size, so that changes made in such things as operator processes, procedures, and equipment are properly captured in the necessary portions of the OQ program.
- As to emergencies, PHMSA recommends modifying the language to include, “on behalf of the operator” to the “emergency response task” definition.
- The purpose of this rule is to ensure that those persons performing covered tasks on the pipeline facility have been evaluated and determined to be qualified; therefore, training is a means to ensure that a person performing a covered task qualified. Also, training is an existing OQ requirement.

27



Responses - continued

- As to span of control limit, no qualified person can effectively direct and observe more than one task performance by a non-qualified person at a time.
- As to the program effectiveness review period should be extended to a 4-year timeframe as set forth in the public awareness program requirements, the public awareness program requirements are substantially different from the OQ requirements in that the OQ requirements can achieve measurable outcomes in a much shorter time period.
- As to currently qualified workers should not be required to requalify, if the prior qualification includes and meets all applicable requirements of the control room management plan and associated activities, the individual in question does not need to requalify.
- As to the operator should have the authority to determine who should be involved during team training, it remains the responsibility of the operator to define the training and qualification requirements for personnel performing covered tasks on their pipeline facility.



PHMSA Recommendations

Covered task means an activity identified by the operator that affects the safety or integrity of the pipeline facility. Design and engineering activities or tasks performed off the pipeline facility are excluded. A covered task includes, but is not limited to, the performance of any operations, maintenance, construction or emergency response task.

Direct and observe means the process where a qualified individual observes the work activities of an individual not qualified ~~to~~ while performing a single covered task, and is able to take immediate corrective action when necessary.

Emergency response tasks are those identified operations and maintenance covered tasks that could reasonably be expected to be performed on behalf of the operator during an emergency to return the pipeline facilities to a safe ~~operating~~ condition.

Qualified as it applies ... (5) Meet the physical abilities required to perform the specific covered task (e.g., color vision, smell, strength, agility, or hearing).



PHMSA Recommendations

Significant changes means changes to the program, which include, but are not limited to:~~the following as it relates to operator qualification:~~

- (1) Rewrite of the program or sections of the program, or program changes resulting from an acquisition or merger, or Wholesale changes to the program;
- (2) Change in evaluation methods (i.e. performance and written to written only); or
- (3) Any iIncreases in evaluation intervals ~~(i.e. from 1 to 5 years)~~; or
- (4) Removal of covered tasks ~~(not including combining covered tasks)~~.

§§ 192.805(b)(3)(ii) & 195.505(b)(3)(ii) Observation of on-the-job performance is not used as a sole method of evaluation. However, when on-the-job performance is used as part of an individual's evaluation of a covered task,~~to complete an individual's competency for a covered task,~~ the operator ~~qualification procedure~~ must define the measures used to determine successful completion of the on-the-job performance evaluation.

§§ 192.805(b)(7) & 195.505(b)(7) Establish and maintain a management of change program that will communicate changes that affect covered tasks to individuals performing those covered tasks to include field employees, contractors and supervisors;



PHMSA Recommendations

§§ 192.807(c) & 195.507(c)

(vi) Individual failed to recognize an abnormal operating condition, ~~whether it is task specific or non-task specific, which occurs anywhere on the system;~~

(vii) Individual failed to take the appropriate action following the recognition of an abnormal operating condition ~~(task specific or non-task specific) that occurs anywhere on the system;~~

§§ 192.809(a)(5) & 195.509(a)(5) Evaluation criteria used to recognize and react to an abnormal operating condition, ~~whether it is~~ both task-specific and non-task specific, ~~which occurs anywhere on the system;~~

§§ 192.809(b) & 195.509(b)

(5) Covered task list ~~to include all task specific and non-task specific covered tasks;~~

(7) ~~Reevaluation~~ Requalification intervals for each covered task;



Sample language – agree as proposed

“The proposed rule, ***relative to the Operator Qualification requirements in Subpart N of Part 192 and Subpart G of Part 195***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

“The proposed rule, ***relative to the Operator Qualification requirements in Subpart N of Part 192 and Subpart G of Part 195***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to the Operator Qualification requirements in Subpart N of Part 192 and Subpart G of Part 195***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made**

- * * *



Special Permit Renewal

- **Background:** As defined in § 190.341(a), a special permit is an order by which PHMSA waives compliance with one or more of the pipeline safety regulations if it determines that granting the permit would not be inconsistent with pipeline safety.
- **NPRM:** PHMSA proposed to amend § 190.341 of the Federal pipeline safety regulations to **add procedures for renewing expiring special permit.**



Comments

- PHMSA should make it clear that any renewal applications will be treated the same as current initial applications in that they will be public, published on the PHMSA website, and subject to NEPA.
- PHMSA should re-examine the extent of the documentation it requires as part of the renewal process. For example, aerial photography data would not provide any meaningful information and should be deleted.
- PHMSA should only review the special permit to confirm satisfactory performance by permitting continued pipeline operation without expiration date.
- The proposed language in § 190.341(e) is ambiguous and unclear.



Responses

- PHMSA agrees renewal applications should be treated the same as initial applications and, therefore, recommends revising the amendatory language in § 190.341(d)(1) by **replacing the word “application” with “application or renewal.”**
- PHMSA believes § 190.341 has the correct requirements for special permit renewal documentation. PHMSA recommends revising § 190.341(f) to limit **aerial photography** of pipeline segments where special permits affect public safety such as a class location special permit that allows a less stringent design factor in a populated area, and revising § 190.341(f)(1)(v)(F) to allow only a summary of **in-line inspection survey** results to be submitted with the permit renewal.
- PHMSA will evaluate each special permit renewal to determine if its issuance, and conditions, are **consistent with pipeline safety, environmental protection, and in the public safety interest.**
- In response to comments PHMSA recommends revising § 190.341(e) to make it clear that a special permit renewal must be submitted 180 days prior to the grant expiration.

37



PHMSA Recommendation

- § 190.341(d) How does PHMSA handle special permit applications?
(1) Public notice. Upon receipt of an application or renewal of a special permit, PHMSA will provide notice to the public of its intent to consider the application and invite comment. In addition, PHMSA may consult with other Federal agencies before granting or denying an application or renewal on matters that PHMSA believes may have significance for proceedings under their areas of responsibility.
- § 190.341(e) *How does PHMSA handle special permit renewals?*(1) ~~To continue using a special permit after the expiration date, the~~ The grantee of the special permit must apply for a renewal of the permit 180 days prior to the permit expiration.
- § 190.341(f)(iii) (F) In-line inspection (ILI): Summary of ILI survey results from all ILI tools used on the special permit segments during the previous five years or latest ILI survey result;



Sample language – agree as proposed

“The proposed rule, ***relative to the Special Permit Renewal***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

“The proposed rule, ***relative to the Special Permit Renewal***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to the Special Permit Renewal***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made** - * * *



Farm Tap – Gas Only

- **Background:** PHMSA regulates farm taps as service lines - a subset of distribution pipelines. On December 4, 2009; PHMSA published the Distribution Integrity Management Program (DIMP) final rule that applies integrity management requirements to all distribution pipelines.
- **NPRM:** PHMSA proposed to exclude farm taps from the DIMP requirements, and to amend Part 192, to add a new section that prescribes inspection activities for pressure regulators and over-pressurization protection equipment on service lines that originate from transmission, gathering, or production pipelines.



Comments

- PHMSA should maintain enforcement flexibility for operators by allowing operators to treat farm taps as either distribution or transmission.
- As drafted, § 192.740(a) could be interpreted to exempt additional lines from the requirements of the section because it is not directly connected to an upstream production, gathering or transmission pipeline.
- Limit the exception proposed in § 192.1003(b) to the components of the farm tap regulator and valve assembly between the transmission, gathering, or production line and the service line pipe.
- Provide a five year interval for inspection of farm taps.
- Define a farm tap as a pipeline that maintains the same designation as the pipeline from which it originates (transmission, storage, gathering or production).



Responses

- PHMSA does not see the need to maintain flexibility for operators. Operators do not have the option of treating a farm tap as either distribution or transmission because farm taps are distribution service lines.
- PHMSA recommends to revise § 192.740(a) to reflect the comment that the language be clear.
- PHMSA recommends to revise § 192.1003(b) to reflect the comment that the exemption be limited to the farm tap regulator and valve assembly between the service and the upstream line.
- PHMSA believes a five-year inspection interval is too long and recommends keeping the interval as proposed at three years.
- Regarding to define a farm tap as suggested, there is no new definition of a farm tap as it is a distribution service line



PHMSA Recommendations

§ 192.740 Pressure regulating, limiting, and overpressure protection – Individual service lines directly connected to production, gathering, or transmission pipelines.

(a) This section applies, except as provided in paragraph (c) of this section, to any service line directly connected to a production, gathering, or transmission pipeline that is not operated as part of a distribution system.

§ 192.1003(b) Exceptions. This subpart does not apply to ~~a~~ an individual service line directly connected to a transmission, gathering, or production pipeline.



Sample language – agree as proposed

“The proposed rule, ***relative to the Farm Tap***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA*** ***recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

“The proposed rule, ***relative to the Farm Tap***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to the Farm Tap***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made** - * * *



Pipeline Assessment Tools – Liquid Only

- **Background:** When the **integrity management regulations were established, consensus standards did not exist** in addressing how these techniques should be applied. Since then, the American Petroleum Institute, National Association of Corrosion Engineers, and the American Society for Non-Destructive Testing published standards for using ILI and SCCDA as assessment techniques. In addition, PHMSA received a petition from NACE for incorporation some of its ANSI/NACE Standards into 49 CFR Parts 192 and 195.
- **Proposed rule:** PHMSA proposed to incorporate by reference into 49 CFR part 195: **API STD 1163**, “In-Line Inspection Systems Qualification Standard” (August 2005); **NACE Standard Practice SP0102-2010** “Inline Inspection of Pipelines” **NACE SP0204-2008** “Stress Corrosion Cracking Direct Assessment;” and **ANSI/ASNT ILI-PQ-2010**, “In-line Inspection Personnel Qualification and Certification” (2010).



Comments

- Incorporating by reference the industry consensus standards listed in Section VII of the NPRM will improve operator pipeline assessment consistency, accuracy, and quality.
- Why is PHMSA proposing additional requirements above and beyond NACE SP0204-2008.
- Why incorporate API STD 1163 (2005) when that standard has been updated recently.
- NACE SP0102-2010 does not provide detailed procedures that are applicable in all situations on all pipelines and instead provides general recommendations; the ANSI/ASNT ILI-PQ – 2010 should not be incorporated by reference in part 195; clarify any instances where the requirements outlined in SP0204-2008 are intended to serve as industry guidance; NACE SP0204-2008 is out of date and creates ambiguity both in terms of interpretation and enforcement.
- The language in § 195.591 removes the ability for operating personnel to use their engineering judgment when outlining a company's strategy for in-line inspection; the capabilities of in-line inspection tools should be the operator's choose; the pipeline operator should be responsible for determining the required testing parameters

50



Responses

- PHMSA is incorporating NACE SP0204-2008 into part 195 because it provides **comprehensive guidelines on conducting SCCDA** which are commensurate with the state of the art technology.
- Per commenter request, PHMSA recommends adopting the **2013 version of API STD 1163** (instead of the 2005 version as proposed) into part 195.
- As to comments on the proposed industry standards, PHMSA is incorporating API STD 1163-2013, NACE Standard Practice SP0102-2010, NACE SP0204-2008, and ANSI/ASNT ILI-PQ-2010 into the regulations to provide clearer guidance for conducting integrity assessments with in-line inspection. **These standards complement each other and they will promote a higher level of safety by establishing a consistent methodology to qualify the equipment, people, processes, and software utilized by the ILI industry.**
- With regard to inspection tools selections, operators always have option of using their alternative to these standards as long as the **alternative tools meet equivalency or exceed the provisions in these standards.**



PHMSA Recommendations

- Adopt as proposed



Sample language – agree as proposed

“The proposed rule, ***relative to the Pipeline Assessment Tools***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are technically feasible, reasonable, cost-effective, and practicable.**”



Sample language – not in agreement

“The proposed rule, ***relative to the Pipeline Assessment Tools***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to the Pipeline Assessment Tools***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made** - * * *



Post-Accident Drug and Alcohol Testing

- **Background:** NTSB recommended that PHMSA should amend §§ 199.105 and 199.225 to eliminate operator discretion with regard to testing of covered employees. PHMSA should require drug and alcohol testing of each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.
- **Proposed rule:** PHMSA proposed to modify §§ 199.105 and 199.225 by requiring drug testing of employees after an accident and allowing exemption from drug testing only when there is sufficient information that establishes the employee(s) had no role in the accident. In addition, PHMSA proposed to require documentation of the decision and to keep the documentation for at least three years.



Comments

- National Transportation Safety Board commented that it believes the **proposed change is responsive to its recommendation.**
- This requirement could be misinterpreted to require the operator to document actions of every utility employee after a reportable incident occurs.
- PHMSA should generate a standard form to be used for decisions not to test.
- The word “severity,” should be removed from the proposed language because severity of any accident will vary, but does not affect whether a test is conducted.



Responses

- As to requirements, this **rulemaking does not establish new requirements for post-accident drug and alcohol testing**. It would only modify the conditions under which an operator may decide not to test covered employees and establish a recordkeeping requirement for these decisions.
- As to creating a standard form, each accident is unique. PHMSA can neither state affirmatively which employees must be tested nor create a template for making the decision about post-accident testing.
- As to removing the word “severity,” an individual could “contribute” to an accident by causing it or by making the consequences more severe. The overall severity of the accident is irrelevant to the post-accident testing decision. The relevant question for severity is whether an employee’s performance of a covered function affected the severity of the accident. However, **PHMSA recommends deleting the last part of the second sentence in § 199.105(b) starting “... or because of the time ... by drug use.”**



Possible Vote Language

§ 199.105(b)

(b) *Post-accident testing.* (1) As soon as possible but no later than 32 hours after an accident, an operator must drug test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph but such a decision must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident ~~or because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.~~



Sample language – agree as proposed

- “The proposed rule, ***relative to the Post-Accident Drug and Alcohol Testing***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

- “The proposed rule, ***relative to the Post-Accident Drug and Alcohol Testing***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

- “The proposed rule, ***relative to the Post-Accident Drug and Alcohol Testing***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made -**



Information Made Available to the Public and Request for **Protection of Confidential Commercial Information Treatment**

- **Background:** PHMSA does not currently have a procedure in the pipeline safety regulations setting out how a request can be made for **confidential treatment** of information.
- **Proposed rule:** PHMSA proposed a procedure where a submitter of information to PHMSA may request confidential treatment of that information. The proposal included a provision regarding PHMSA's decision.



Comments

- PHMSA should include the criteria by which it will make the decision about whether the information requested to be confidential is determined to be confidential. Commenters referred to the FOIA exemptions and requested clarification that all existing protections for confidential business information are retained.
- Several commenters requested appeal rights for PHMSA's decision.
- Regarding notification of a PHMSA decision to disclose the information, commenters requested that five business days be granted before the information is publicly disclosed.
- All existing confidential business information protections should be retained.
- Several commenters raised concerns about the protection of security-related information.



Responses

- After reviewing the comments received, PHMSA recommends making some revisions to the regulatory text in § 190.343 (b) to clarify that PHMSA will follow the criteria under FOIA and the procedures under the Department's FOIA regulations to make its decision, and if, after the consultation is complete, a decision is made to disclose, PHMSA will notify the submitter five business days before the intended disclosure date.
- Prior to disclosure, PHMSA reviews information to determine whether it is protected for security reasons and applies all applicable FOIA exemptions and Federal laws. DOT and the Department of Homeland Security have procedures in place to protect information that is determined to be Sensitive Security Information (SSI). The intent of this rule is to set out the steps for requesting protection of confidential commercial information. Accordingly, we recommend revising the title and regulatory text of § 190.343 to clarify that this section applies to confidential commercial information.

65



PHMSA Recommendation

§ 190.343. Information made available to the public and request for protection of confidential commercial information.

When you submit information to PHMSA during a rulemaking proceeding, as part of your application for special permit or renewal, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential.

(a) Asking for protection of confidential commercial information. You may ask us to give confidential treatment to information you give to the agency by taking the following steps:

(1) Mark “confidential” on each page of the original document you would like to keep confidential.

(2) Send us, along with the original document, a second copy of the original document with the confidential commercial information deleted.

(3) Explain why the information you are submitting is confidential commercial information.



PHMSA Recommendation

§ 190.343(b) PHMSA Decision.

PHMSA will treat as confidential the information that you submitted in accordance with this section, unless we notify you otherwise.

If PHMSA decides to disclose the information, PHMSA will review your request to protect confidential commercial information under the criteria set forth in the Freedom of Information Act (FOIA), 5 U.S.C. § 552, including following the consultation procedures set out in the Departmental FOIA regulations, 49 C.F.R. section 7.29.

If PHMSA decides to disclose the information over your objections, we will notify you in writing at least five business days before the intended disclosure date.



Sample language – agree as proposed

“The proposed rule, ***relative to the Information Made Available to the Public and Request for Confidential Treatment***, as published in the *Federal Register* and the Draft Regulatory Evaluation ***with PHMSA recommended changes*** are technically feasible, reasonable, cost-effective, and practicable.”



Sample language – not in agreement

“The proposed rule, ***relative to the Information Made Available to the Public and Request for Confidential Treatment***, as published in the *Federal Register* and the Draft Regulatory Evaluation **are not (or cannot be)** made technically feasible, reasonable, cost-effective, and practicable.”



Final language – proposing changes

“The proposed rule, ***relative to the Information Made Available to the Public and Request for Confidential Treatment***, as published in the *Federal Register* and the Draft Regulatory Evaluation are technically feasible, reasonable, cost-effective, and practicable **if the following changes are made -**

