



**September 8, 2015**

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**

**Comments on Notice of Proposed Rulemaking  
Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification,  
and Other Pipeline Safety Proposed Changes**

**Docket No. PHMSA-2013-00163**

The Distribution Contractors Association (DCA) represents contractors, suppliers and manufacturers who provide construction services including installation, replacement and rehabilitation of gas distribution and transmission pipelines as well as water, sewer, fiber optic, cable and duct systems in communities across the country. DCA appreciates the opportunity to comment on the Pipeline and Hazardous Materials Administration's (PHMSA) Notice of Proposed Rulemaking (NPRM) entitled, *Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes*, published on July 10, 2015 (80 FR 39916). The NPRM includes provisions that will expand the scope, content and recordkeeping requirements included in PHMSA's "Operator Qualification" (OQ) regulations. The "real life" impacts of the NPRM would affect not only gas operators but also the contractors who regularly perform construction work on their pipeline systems.

While the proposed rule, and the federal pipeline safety regulations in general, is directed to natural gas and hazardous liquid pipeline operators, the contractors who work for them are on the front lines in terms of ensuring compliance. Therefore, DCA looks forward to working with PHMSA as well as our customers in the natural gas pipeline industry to improve the proposed rule and facilitate compliance with new OQ regulations as they are implemented.

**General Comments**

On August 27, 1999, the Research and Special Programs Administration (now PHMSA) published the final rule on *Qualification of Pipeline Personnel* (64 FR 46853). The rule was the product of a Negotiated Rulemaking, which the agency said was "intended to make the rule more acceptable to all affected interests and minimize the likelihood of petitions for reconsideration and litigation." A Negotiated Rulemaking Committee was established which included 14 stakeholder organizations and was facilitated by the Federal Mediation and Conciliation Service. While the broad range of stakeholders included representatives of gas and hazardous liquid pipeline operators, state utility officials and pipeline inspectors, first responders, labor unions and others, the contractor community was not provided a seat at the table. Although the preamble of the final rule states that the agency "believed that the negotiated

rulemaking process would provide ample opportunity for all affected parties to present their views and to reach a consensus on a proposed qualification rule,” the process unfortunately omitted the important perspective of gas construction contractors who currently provide a significant amount of work covered by the OQ rule. In fact, the majority of gas pipeline construction work is performed by contractors.

Nevertheless, gas pipeline contractors working for multiple pipeline operators often face multiple and sometimes conflicting requirements from OQ programs administered by individual operators. While DCA understands that PHMSA’s jurisdiction and its enforcement of OQ requirements is limited to pipeline operators, more consistency provided in operator OQ programs would enhance productivity, program effectiveness, and provide for a more qualified workforce.

DCA is currently working with regional gas associations across the country to discuss how to provide more consistency in the OQ process and enhance the “portability” of OQ programs maintained by pipeline contractors, allowing them to employ their OQ programs while performing covered tasks for multiple operators. We encourage PHMSA to be cognizant of these concerns as the agency evaluates industry comments and develops a final rule on new and revised OQ requirements.

As described in the following specific comments, some significant adjustments will be necessary for compliance with the new requirements. More tasks will be generated for new construction. Additional personnel will be needed for increased evaluations as well as additional costs associated with “onboarding” new people. Some DCA members also anticipate an increased role played by subcontractors and the resources needed to make them ‘OQ compliant.’

DCA encourages that the compliance date be at least six (6) months following publication of the final rule. This will provide ample time for pipeline contractors to fully discuss the changes to OQ requirements and subsequent adjustments to OQ programs by both operators and contractors.

## **Specific Comments**

### **§ 192.801 Scope.**

The NPRM proposes to apply OQ requirements to new construction by expanding the scope of the OQ rule in § 192.801 to revise the method of determining a covered task subject to OQ requirements. The pipeline safety regulations currently require pipeline operators to identify covered tasks by using a “4-part test.” Specifically, current law defines a covered task as an activity identified by the operator that is performed on a pipeline facility, an operations or maintenance task, is required by the pipeline safety regulations, and affects the operation or integrity of the pipeline.

In lieu of determining a covered task using the current 4-part test, the NPRM proposes to define a covered task as follows:

*“Covered task means an activity identified by the operator that affects the safety or integrity of the pipeline facility. A covered task includes, but is not limited to, the performance of any operations, maintenance, construction or emergency response task.”*

According to PHMSA, the 4-part test omitted important tasks such as all construction of new pipelines and certain operation and maintenance tasks. DCA understands PHMSA's reasoning behind covering new construction in OQ regulations. In fact, several operators already include new construction as part of their existing OQ programs. Subsequently, over the years many DCA members have incorporated new construction into their internal OQ training and testing programs.

However, DCA believes PHMSA's goal of including new construction in OQ requirements can be achieved without throwing out the 4-part test, which is widely known and clearly understood in the pipeline construction industry. Eliminating use of the 4-part test and the clearly defined parameters of the tasks that require qualification will create a slippery slope in terms of identifying which of the countless activities performed on a pipeline facility would require qualification.

The same slippery slope applies to pipeline inspectors. OQ regulations already allow for significant interpretation as to what constitutes a "qualified" individual and an effective qualification program. Removing the 4-part test would leave too much room for interpretation of the adequacy of an operator's list of covered tasks. While some operators provide an all-inclusive covered task list to their contractors, the contractor is often required to choose which tasks are included in the qualification process. The 4-part test provides an effective path to identifying covered tasks.

PHMSA can attain the objective of covering new construction by adding it to the existing 4-part test, thereby retaining its clear parameters of activities that must be covered by OQ requirements. Therefore, DCA suggests PHMSA revise § 192.801(b) to read:

*“(b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that:*  
*(1) Is performed on a pipeline facility;*  
*(2) Is an operations, maintenance, or construction task;*  
*(3) Is performed as a requirement of this part; and*  
*(4) Affects the operation or integrity of the pipeline.”*

If PHMSA opts to remove the four-part test from the pipeline safety regulations, it should consider recognizing a comprehensive and consistent list of covered tasks. Several gas distribution and transmission pipeline operators utilize the ASME B31Q standard as guidance in developing their list of covered tasks. While DCA believes flexibility is needed for operators to evaluate and address their unique pipeline systems to ensure that qualified individuals are working on them, PHMSA should provide consistency with regard to OQ requirements to the extent possible to facilitate compliance.

#### **§ 192.803 Definitions.**

The NPRM includes a definition of “knowledge, skills and abilities” (KSAs) as it applies to individuals to mean *“that an individual can apply information to the performance of a covered task, has the ability to perform mental and physical activities developed or acquired through training, and has the mental and physical capacity to perform the covered task.”*

Physical and mental preparedness of those performing covered tasks is already included in most human resources programs overseen by pipeline operators as well as by pipeline construction contracting firms and is part existing hiring processes. Adding physical and mental considerations to the OQ process could force altered requalification intervals without addressing an individual's ability to perform covered tasks.

Requiring additional training and evaluation of mental and physical abilities would expand the scope NPRM well beyond ensuring the KSAs of those performing covered tasks. DCA encourages removal of these proposed new requirements.

***§ 192.805 Qualification Program.***

*Management of Change*

DCA believes the “Management of Change” program proposed in § 192.805(b)(7) exceeds the scope of the OQ regulations. Work change procedures are currently used in the pipeline industry, where operators communicate changes in procedures with “in-house” employees as well as contractors working on their systems. Changes in work procedures include, but are not limited to, those related to compliance with OQ regulations.

DCA is actively working with pipeline operators to enhance and improve coordination, cooperation and communication between operators and the contractors who work for them through annual industry workshops, working groups and other forums addressing OQ compliance and other industry issues. If PHMSA seeks to further regulate change management, DCA believes this will likely require the development of a significant rulemaking, one that would certainly extend beyond OQ regulations.

*Supplemental Training*

Changes to operating procedures and specifications related to a covered task are not necessarily significant and do not always necessitate additional training, and DCA believes the “supplemental training” as proposed in § 192.805(b)(10) is excessive. In April of 2014, DCA held a Utility Contractor Workshop with the American Gas Association which included a panel that discussed how operators and contractors deal with changes in work procedures. Participants agreed that work procedure changes occur mostly in response to regulatory requirements, such as those driven by PHMSA’s Distribution Integrity Management Program, as well as increasing state and local regulations. Rising demands on municipalities and development of new and improved technologies can also dictate changes in construction company policies. Both operators and contractors agreed that procedural changes are either forced through regulation or, if voluntary, are done so to preempt pending or anticipated regulation.

Changes in operating procedures are passed down from operators to contractors and both sides work together to fully communicate expectations and what is needed to meet them. While communication and cooperation is essential, additional training requirements is unnecessary. Changes are effectively communicated through meetings, emails and other existing methods. DCA encourages PHMSA to remove the supplemental training requirements in the final rule.

***§ 192.807 Program Effectiveness.***

The NPRM would add a new “program effectiveness” requirement to ensure that operators complete a review of the overall effectiveness of their OQ program. The new provision would require operators to review their OQ process to ensure its provisions are implemented and executed as written, and that operators amend the program to address any problems identified.

Operators would also be required to develop measures to determine effectiveness of the program based on the number of occurrences caused by an individual whose performance affects the safety &

integrity of pipeline. These would include problems with regard to evaluation; determination of knowledge, skills and ability; inadequate training; communication of programmatic changes; failure to recognize and react to abnormal operating conditions; work performed by individuals who were either not qualified or directly observed by qualified individuals; failure to follow procedures and/or use of approved equipment; or failure to follow the OQ program.

Although DCA sees merit in reviewing OQ programs to ensure their effectiveness, the “deficiencies” described in § 192.807(c)(1) and the requirement to measure effectiveness by “number of occurrences” is not necessarily the most effective benchmark. A significant amount of operators administer their OQ programs through third-party vendors who provide the training, testing and other qualification methods. In these cases it is the vendors who determine deficiencies as they relate to that operator’s pipeline system. The list of deficiencies proposed in the NPRM may not be appropriate to measure the effectiveness of every operator’s OQ program.

Additionally, § 192.807(c)(xiii), which includes a “*qualified individual supervised more than one covered task at the time*” as a possible deficiency, suggests that a qualified individual cannot observe more than one task at a time. If this is the intent of this language, DCA disputes the need for this provision. While some operators require one qualified individual to observe one covered task at a time, others allow “OQ compliant” personnel to oversee several covered tasks on a particular project. DCA does not believe expanding the pipeline safety regulations to limit an operator’s Span of Control will increase safety or better ensure qualified personnel.

#### **§ 192.809 Recordkeeping.**

The proposed rule would add new requirements addressing management of change to OQ programs and the communication of those changes. This proposed section is intended to ensure that weaknesses are found, corrections are made, and those affected are notified. New recordkeeping requirements are also included to ensure documentation of evaluators’ performance and overall program effectiveness.

As with compliance with virtually all OQ requirements, pipeline contractors are required by their operator customers to meet all recordkeeping requirements. Gas pipeline operators generally do not maintain the training records of the contractors who work on their systems. However, the NPRM would require records of “[t]raining required to support an individual’s qualification or requalification,” to be included in the OQ recordkeeping requirements. Records should focus on the qualification and requalification of individuals performing covered tasks, not specific training requirements.

The addition of a new training requirement on top of existing qualification requirements will add significant cost and unnecessary burden to operators and contractors alike without assuring qualified workers. Therefore DCA believes § 192.809(a)(7) should be removed in the final rule or adjusted to focus recordkeeping requirements on qualification.

#### **Conclusion**

DCA appreciates the opportunity to comment on the NPRM, and we encourage PHMSA to recognize that while pipeline operators are technically the entities subject to the federal pipeline safety regulations, the reach of PHMSA regulations extends well beyond pipeline operators. Compliance with them ultimately lies with the operator but the responsibilities are effectively passed on to the

contractors working in the industry. OQ compliance, including tracking, generating and managing the documentations needed to comply is often passed from operators to their contractors. While this may be considered a cost of doing business, the contractor perspective should be considered a valuable one, and one coming quite literally from the trenches.

DCA is available to discuss these comments with PHMSA staff or other interested parties.

Best regards,

A handwritten signature in black ink, appearing to read 'RD', with a long horizontal flourish extending to the right.

Robert G. Darden CAE, CMP  
Executive Vice President