



November 6, 2023

Mr. Alan K. Mayberry
Associate Administrator for Pipeline Safety
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Re: Comments from the Distribution Contractors Association
Pipeline Safety: Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives; Docket No. PHMSA-2021-0046 [FR 88, No. 172; September 7, 2023; pg. 61746]

Dear Mr. Mayberry,

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 fiber optic, cable, and duct systems in communities across the country. DCA appreciates the opportunity to comment on the Notice of Proposed Rulemaking entitled, *Pipeline Safety: Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives*.

In the NPRM, PHMSA proposes several revisions to the pipeline safety regulations in response to congressional mandates and an NTSB recommendation, and to address lessons learned from a 2018 incident resulting from overpressurization of a low-pressure gas distribution pipeline operated in the Merrimack Valley, Massachusetts. The proposals include improved design standards for low-pressure gas distribution systems; enhanced distribution integrity management program requirements; strengthened recordkeeping, planning, and monitoring practices for maintenance and construction activities on gas distribution systems; improved emergency response communication and coordination protocols during emergency events; and increased requirements regarding post-construction inspections of gas transmission and distribution pipelines.

Post-Construction Inspections

Adding a new provision to § 192.305 *Inspections: General*, an operator “must not use operator personnel to perform a required inspection if the operator personnel performed the construction task requiring inspection.” The provision is based on concerns and a 2011 resolution from the National Association of Pipeline Safety Representatives (NAPSR), who called for prohibiting contractor personnel

who install a transmission pipeline or distribution main from inspecting their own work for compliance purposes.

PHMSA also heard concerns from the American Public Gas Association (APGA), who claimed they had more than 500 municipal crews with less than five workers, and the impacts of them as final rule would be impracticable. According to APGA, utilities with only one qualified crew who work together to construct distribution mains would not have anyone working for the utility available and qualified to perform the inspection under the amended language, which could significantly increase the costs for those utilities to contract with third-party inspectors.

In a final rule issued in 2015, PHMSA amended § 192.305 to specify that a pipeline operator may not use the same personnel to perform a required inspection who also performed the construction task requiring inspection.

PHMSA's action sparked further opposition from NAPSRS, who petitioned PHMSA's 2015 rule for not limiting the new prohibition to contractor personnel inspecting the work performed by their own company's crews, contending that such an approach would not resolve what NAPSRS considers a "conflict of interest," and added that prohibition should not apply to an operator's own construction personnel because they would have "less of an incentive to accept poor quality work when conducting an inspection than a contractor inspecting his colleagues' work."

While DCA understands the concerns raised by APGA, DCA believes NAPSRS's position is shortsighted and out of touch. Pipeline contractors maintain elaborate safety programs, and inspections are a significant part of that, and there is no basis or supporting data to show that requirements for post-construction inspections should be consistent for an operator's "in-house" or contract personnel should be the same.

Therefore, DCA appreciates PHMSA's decision to add a paragraph that would provide an exception to the construction inspection requirement for gas distribution mains for small gas distribution operators for whom complying with the new inspection rule may prove difficult due to their limited staffing. Specifically, PHMSA proposes to allow operator personnel involved in the same construction task to inspect each other's work on mains when the operator could only comply with the construction inspection requirement only by using a third-party inspector.

PHMSA proposes to limit this exception to distribution operators because it understands that: (1) many of these operators are likely to have a limited number of employees, thereby necessitating reliance on contractor personnel; and (2) the public safety risks from delays in undertaking safety-improving construction projects (because of a lack of qualified inspection personnel) on these pipelines would be particularly compelling given their typical location near or within population centers.

In the NPRM, PHMSA acknowledges that NAPSRS called for limiting the prohibition to contractor personnel inspecting the work of their own crew, as NAPSRS did not view an “inherent conflict of interest” arising from operator-employed personnel doing the same. While PHMSA agrees with NAPSRS that a lack of independence in inspection activity raises public safety concerns, the agency disagreed that there is a material distinction in risk between those personnel directly employed by the operator and those third-party personnel contracted by the operator.

Further, creating such a distinction could diminish the scope of the safety benefit while placing burden on smaller operators who rely on contractors for a large portion of their construction work. Therefore, PHMSA indicated their refusal to discriminate between operator personnel and contracted personnel for the purposes of post-construction inspections.

DCA appreciates PHMSA’s decision not to subject this requirement only to contract personnel. DCA members, and the gas distribution construction industry, will continue to strongly oppose any regulatory efforts that single out contractors or subject them to additional requirements that do not apply to non-contract personnel. While DCA believes the actual safety benefits of this new requirement will be marginal, the association appreciates PHMSA’s consistent application to all pipeline workers outside those covered by PHMSA’s exception.

We appreciate the opportunity to comment, and we are available to discuss these comments upon your request.