September 8, 2015

Via www.regulations.gov and email

Mr. Jeff Wiese
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes; Proposed Rule, Docket No. PHMSA-2013-0163.

Dear Mr. Wiese:

The Interstate Natural Gas Association of America (INGAA), a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in North America, respectfully submits these comments in response to the Pipeline and Hazardous Materials Safety Administration (PHMSA)'s Notice of Proposed Rulemaking entitled "Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes (the Notice)."[1]

Specifically, INGAA is commenting on six of the twelve proposals in the Notice. INGAA appreciates your consideration of these comments.

Sincerely,

/s/
Brianne Kurdock
Regulatory Attorney
20 F Street, N.W., Suite 450
Washington, DC 20001
(202) 216-5900

[1] Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes, 80 Fed. Reg. 39916 (July 10, 2015).

BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
WASHINGTON, D.C.

Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes	Docket PHMSA-2013-0163

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

September 8, 2015

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Detailed Comments

I. Incident Notification.

INGAA supports PHMSA's proposal to modify the incident reporting requirements in response to the congressional mandate included in the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (the Act).[2] However, INGAA offers several suggested revisions to the proposed regulatory text and highlights a few concerns with the implementation of this proposal.

PHMSA Should Modify the Definition of Confirmed Discovery

INGAA requests that PHMSA consider further revision to the proposed definition of "confirmed discovery" of an incident. Congress purposely characterized the discovery of an incident as "confirmed". PHMSA is proposing to broaden the definition of "confirmed discovery" as when "there is sufficient information to determine that a reportable event *may have occurred even if an evaluation has not been completed.*"[3] If operators were required to report any incident that *may* be reportable *without* the benefit of an evaluation, the discovery of such an incident ceases to be "confirmed." INGAA urges PHMSA to reconsider the practicality of determining whether an event is reportable if an evaluation has not been completed. If, in an abundance of caution, an operator chooses to report all events until the company can conduct and complete an evaluation, the over-reporting that likely will occur could strain the resources of both PHMSA and the National Response Center (NRC).

In addition, the use of the word "may" rather than "has occurred" could lead to inconsistency and subjectivity among PHMSA's enforcement regions. Instead, INGAA suggests that PHMSA replace its proposed definition with the definition the agency used in the preamble to this proposed rule.[4] Specifically, PHMSA proposed that "confirmed discovery" should mean when "there is sufficient information to determine that a reportable event *has occurred.*" This definition is consistent with the term "*confirmed* discovery" (i.e., not just the discovery of a possible incident).

PHMSA Should Modify the Definition of a Reportable Incident

As PHMSA seeks to shorten the permissible timing to report an incident, the agency also should reexamine the existing definition of a "reportable incident".[5] INGAA recognizes PHMSA's concern that federal, state, and local responders need to be notified immediately when a significant pipeline incident has occurred. The proposed one-hour time frame should address

[2] Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Pub. L. No. 112-90, 125 Stat. 1904, 1905-1925 (2012).
[3] 80 Fed. Reg. at 39931 (emphasis added).
[4] In the preamble, PHMSA defined "confirmed discovery" as when there is sufficient information to determine that a reportable event **has occurred** even if an evaluation has not been completed." 80 Fed. Reg. at 39917 (emphasis added). However, in the proposed regulatory text section, PHMSA uses "**may** have occurred". 80 Fed. Reg. at 39931 (emphasis added).
[5] *See* 49 C.F.R. § 191.3.

that concern. However, PHMSA should also acknowledge that not all potential natural gas pipeline incidents can be reported within the one-hour time frame. PHMSA should modify 49 C.F.R. § 191.3 to distinguish between significant events (i.e., a sudden loss of pressure resulting in a large amount of gas released or a potential fatality or injury necessitating an in-patient hospitalization) and those events that ultimately meet the current definition of a reportable incident only on account of property damage estimates. PHMSA should make this distinction in the reportable incident definition and only apply the one-hour timing to significant events.

PHMSA should extend the permissible timing for the remaining events where it is not immediately clear that those events meet the definition of a reportable incident because of ongoing property damage calculations. Realistically, pipeline operators will need more than one-hour from confirmed discovery of an event to determine if the property damage incurred will exceed $50,000. Requiring operators to report minor leaks to avoid missing the one-hour mark prior to conducting an evaluation will unnecessarily burden PHMSA's resources and those of its state and local partners, and result in over-reporting.

PHMSA Will Need to Coordinate with the NRC

In the Notice, PHMSA proposes a new requirement that operators confirm or revise a report submitted to the NRC within 48 hours of the confirmed discovery of an incident. PHMSA should not make this change effective until the NRC has the means to accept supplemental reports, which currently it does not. INGAA recognizes that this proposal responds to a congressional mandate;[6] however, prior to imposing this requirement, PHMSA must ensure that operators *can* revise an original NRC report. To date, the NRC produces a new incident report for any supplemental information transmitted for the same incident. It does not accommodate revisions to initial incident reports. PHMSA should consider the mechanics of requiring supplemental reports and ensure that the NRC has a sufficient process to receive them, prior to mandating their transmittal.

In addition, PHMSA's proposed changes to incident reporting requirements do not include a means to rescind reports that ultimately do <u>not</u> meet the reportable incident threshold. As PHMSA is aware, for years, the NRC has discouraged a rescission of an incident report. PHMSA's proposed revisions to § 191.5 do not include a method to ensure that only reportable events are logged by the NRC. If PHMSA requires operators to submit NRC reports within one-hour of determining that a reportable event *may have occurred* without completing an evaluation, it is highly likely that events that ultimately do not meet the threshold of a reportable incident will be reported. PHMSA must work with the NRC to ensure there is a process to rescind these reports for the sake of accurate incident data.

Finally, PHMSA proposes to add the "amount of product loss" to the list of information an operator must provide to the NRC within one-hour of confirmed discovery of an incident.[7] The amount of product loss cannot be determined definitely within one-hour of confirmed discovery. Therefore, INGAA suggests that PHMSA modify its proposed revisions to § 191.5(b)(5) to

[6] *See* 49 U.S.C. § 60117 (2012).
[7] 80 Fed. Reg. at 39931.

include the "initial estimate of amount of product loss, to the extent practicable". This suggested language mirrors the statutory mandate from Congress.[8]

II. Cost Recovery for Design Reviews.[9]

INGAA is concerned with the scope and methodology for the cost recovery of design reviews, as currently proposed. In the Act, Congress authorized PHMSA to collect the costs incurred by the agency, specific to facility design safety reviews "in connection with any proposal to construct, expand, or operate a gas or hazardous liquid pipeline facility or liquefied natural gas pipeline facility, including construction inspections and oversight..."[10] Specifically, Congress limited PHMSA's cost recovery authorization to proposals with design and construction costs totaling at least $2.5 billion or those projects that "use[] new or novel technologies or design, as determined by the Secretary."[11] Congress required the agency to prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews.

The Proposed Scope is Overbroad

INGAA asserts that the PHMSA definition of "new or novel technologies or design" is overbroad and far exceeds the intent of Congress' authorization. PHMSA is interpreting the phrase "new or novel" to include "any products, designs, materials, testing, construction, inspection, or operational procedures that are not addressed in Title 49 C.F.R. Part 192, 193, or 195 due to technology or design advances and innovation."[12] Congress intended to authorize cost recovery for facility design reviews only. It did not authorize PHMSA cost recovery for any potential review or inspection, including events occurring after design and construction are complete, such as the development of operational procedures or routine enforcement audits.

INGAA questions how testing, inspection, or operational procedures could be categorized as technologies or design. As illustrated in PHMSA's Master Cost Recovery Agreement,[13] the agency is including "regulatory compliance review of operations and maintenance plans" and "operational audits" as activities for which the agency can recover costs. PHMSA's review of operations and maintenance plans is generally included as part of routine enforcement inspections and is not associated with new construction reviews. INGAA can only assume that by including regulatory compliance reviews of operation and maintenance plans in the Master Cost Recovery Agreement and associated Interim Guidance document, PHMSA intends to seek cost recovery for pipeline inspections. These activities are not "design reviews" and are outside

[8] *See* 49 U.S.C. § 60117(b)(3). Congress mandated PHMSA to modify its regulations to "require such owners and operators 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."

[9] INGAA notes PHMSA's acknowledgment in the Notice that the agency will not be able to collect the costs incurred without a statutory change. However, INGAA believes it is still important to comment on this proposal now.

[10] 49 U.S.C. § 60117(n) (2012).

[11] *Id.*

[12] "New or Novel Technologies or Design," PHMSA Interim Guidance (December 27, 2012).

[13] *Id.* at sections 2(ii), 2(vi), and 2(viii). PHMSA references Subpart D as the appropriate regulatory reference in its Master Cost Recovery Agreement. INGAA notes that this subpart should be listed as Subpart E, as Subpart D already exists.

the scope of the authority Congress granted. This proposal by PHMSA to charge fees to conduct inspections is particularly troublesome considering operators are already paying user fees to fund the agency's pipeline safety program. Congress specifically exempted any safety review from cost recovery where the agency was already collecting fees under 49 U.S.C. § 60301 for the same activities.[14] INGAA questions whether PHMSA is seeking to collect duplicate fees for the same activities.

Cost recovery authority for federal agencies is not new, yet PHMSA's cost recovery proposal exceeds the U.S. Supreme Court's standard for lawful cost recovery mechanisms. Congress first authorized cost recovery for federal agencies in 1952 as part of the Independent Office Authorization Act (IOAA).[15] In the authorizing statute, Congress recognized that services provided by federal agencies should be "self-sustaining to the extent possible."[16] Congress required that all charges for services must be fair and based on the actual costs to the government.[17] In 1959, the Office of Management and Budget (OMB) issued Circular No. A-25 (Circular) establishing a policy for fees assessed for government services.[18] In the Circular, OMB stated that all charges issued under the authority of the IOAA must convey "special benefits to recipients beyond those accruing to the general public."[19] In reviewing the bounds of this authority, the U.S. Supreme Court confirmed that cost recovery must be limited to a service or benefit not shared by the general public.[20] In *National Cable Television*, the Court held that agencies can recover costs only for voluntary acts whereby the applicant receives a unique benefit.[21] A voluntary act is characterized as seeking a license or permit, etc. An agency cannot seek cost recovery for an agency's protective services to the public since these activities do not convey a unique benefit upon the operator.[22]

In PHMSA's case, cost recovery for special permit applications meets the limitations set out by the IOAA and companion case law. Specifically, the agency commits time and resources to review a special permit request which represents a benefit not shared by the general public. By comparison, routine pipeline safety inspections and reviews of operations and maintenance procedures are protective services since these types of activities render a benefit to the general public, not a specific operator. These activities do not meet the limitations set out by the IOAA and companion case law. PHMSA must ensure that its cost recovery methodology only includes "specific charges for specific services to specific individuals or companies."[23] The Court was

[14] 49 U.S.C. § 60117(n) (2012).
[15] 31 U.S.C. § 9701 (1952), *amended by* Pub. L. No. 97-258 (1982).
[16] *Id.* at § 9701(a).
[17] *Id.* at § 9701(b).
[18] Office of Management and Budget Circular No. A-25, 58 Fed. Reg. 38142 (September 23, 1959), as amended July 15, 1993. *See* https://www.whitehouse.gov/omb/circulars_a025/ (last accessed on August 21, 2015).
[19] *Id.* at 2.
[20] *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 341 (1974).
[21] *Id.*
[22] *Id.*
[23] *Federal Power Comm'n v. New England Power Co., et al.*, 415 U.S. 345, 349 (1974). INGAA distinguishes pipeline user fees collected under 49 U.S.C. §60301 from fees collected under the IOAA because user fees are not "specific charges for specific services to specific individuals or companies…" and "…whole industries are not in the category of those who may be assessed…"

very specific in stating that "…whole industries are not in the category of those who may be assessed…."[24]

Accordingly, PHMSA should revise its definition of "new or novel" to ensure it complies with the legal authority for cost recovery. Conducting pipeline inspections or reviewing operational procedures should not be included in the cost recovery methodology. These activities are not new or novel. The agency's inclusion of them in a cost recovery methodology could be interpreted as collecting costs for the same activity for which PHMSA is already receiving user fees. Finally, these reviews garner no unique benefit on the regulated entity. INGAA urges PHMSA to apply "new or novel" as it was intended, only to the use of technology, not previously contemplated by the pipeline safety regulations.

PHMSA Needs to Revise its Proposed Cost Recovery Methodology

INGAA questions how costs will be determined. In the Notice and the Master Cost Recovery Agreement, PHMSA states that project applicants will be billed quarterly for design review costs. The only information the agency provides to explain what it is meant by "design review costs" is a reference to "total personnel compensation based upon cost to PHMSA (salary and benefits); travel, lodging, and subsistence; vehicle or vehicle mileage; other direct services, materials and supplies including training, equipment, computer, and telephone, and any office costs."[25] This definition implies that the regulated entity is hiring the PHMSA inspector as a contractor. However, this approach provides little transparency to inform operators of the potential costs and time involved for a design review. Rather, there should be a set fee schedule to put all regulated parties on notice of the projected costs and time involved in the review. This would help inform an operator's decision to use new technology, and therefore seek agency design review and approval.

Most existing federal agency cost recovery methodologies use a fee schedule determined by estimated work hours for a given project or permit approval.[26] For instance, the U.S. Forest Service's 2013 fee schedule for special uses informs the applicant that a project designated as minimal impact (category 1) will result in estimated agency work hours of one to eight hours and therefore have a corresponding fee of $117. In comparison, a project designated as a Category 4 will result in an estimated agency time commitment of 36-50 hours and a processing fee of $1,108. Complex projects involving a larger time commitment could be addressed through a master agreement.

PHMSA should issue a similar fee schedule in order to achieve transparency and a clearer understanding of the potential costs of a PHMSA design review. INGAA recommends that PHMSA identify categories of design reviews and cite examples of certain projects within each category. For example, most special permits would fit into this model. PHMSA could then

[24] *Id.*
[25] PHMSA Master Cost Recovery Agreement, page 2.
[26] *See* U.S. Forest Service Special Uses Handbook (2013) (http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5406363.pdf); *See also*, the Bureau of Land Management's 2015 Right of Way Cost Recovery Fee Schedule (http://www.blm.gov/style/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/row-cr.Par.36062.File.dat/IM%20CY%202015%20Cost%20Recovery_Strict%20Liability.pdf)

associate an appropriate amount of time for each category of review with a corresponding fee amount. PHMSA should reserve the master agreement model for more complex projects that may exceed the time allotted in the fee schedule.

Regardless, PHMSA should not use salary and benefits to calculate a potential review cost. By doing so, operators will not be treated equally. Not all federal employees receive the same salary and benefits. It would be inequitable to calculate cost recovery based on the salary and benefits of a particular federal employee assigned to perform the design review for a particular pipeline.

PHMSA should revise its master cost recovery agreement. INGAA has already highlighted its concerns with section B of the master agreement earlier in these comments.[27] PHMSA should also consider a firm end point for design cost reimbursement. INGAA suggests that it should be when the pipeline is in-service. PHMSA should revise its paragraph A(1) of the agreement, which currently states that the review process begins when PHMSA "accepts" the operator's proposal for the use of new technology. Rather, the review period should commence when the operator submits notice of its proposal. In paragraph B(2)(viii), PHMSA includes "other costs." The agency should include examples of the type of costs included under this catch-all section. Finally, PHMSA should revise the termination date referenced in paragraph E(10) to state "the earlier of the termination of the review or the date the project is in-service."

The regulated community must be able to determine the range of costs and time involved prior to committing to a project. At a minimum, operators must be aware of the maximum potential costs charged for a design review. Without this critical information, the operator cannot determine whether the costs and time for review make it feasible to continue with the project. If PHMSA moves forward with this proposal without modification, it would dissuade operators from using advances in design and technology.

PHMSA Should Revise its Proposed Section 190.405

PHMSA should modify its list of activities used as a benchmark to commence design review. PHMSA proposes that for any new pipeline facility construction project for which the agency will conduct a design review, the applicant must notify PHMSA 120 days in advance of commencing any construction activities and must submit design specifications, construction plans and procedures, a project schedule, and related materials. PHMSA defines construction activities to include "construction route surveys, 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."[28]

There are practical concerns with this list of events used to trigger a design review. Many of these events occur too early in the construction process for a company to commit firmly to a project. For instance, many of the documents PHMSA is asking an operator to submit to commence a design review are not actually available 120 days prior to the event included in the

[27] *See* page 4. PHMSA must remove references to compliance reviews of operation and maintenance procedures and regulatory compliance through operational audits.
[28] 49 C.F.R. § 190.405.

proposed § 190.405. Some of the listed documents predate receipt of a FERC or other authorizing certificate. A notification date following a more certain trigger, i.e., the date that a FERC certificate is received, would allow for timely review while ensuring that the document repository is adequately populated. PHMSA should modify its list of triggering events to ensure that they are more closely aligned with actual construction activities.

III. Operator Qualification Requirements.

INGAA supports PHMSA's inclusion of construction and emergency response tasks in the operator qualification (OQ) requirements and recognizes the need to update these requirements which were first issued in 1999.[29] However, any changes should be commensurate with the anticipated benefits. INGAA is concerned that PHMSA is relying on "unquantified" benefits as a basis of its analysis. Agencies can use unquantified benefits in narrow circumstances. For example, in *F.C.C. v. Fox Television Stations, Inc.*, the U.S. Supreme Court stated that agencies may use "scant empirical" data when a quantification of benefits is truly unobtainable.[30] In PHMSA's analysis, it is not clear that a quantification of the safety benefits of this proposed rule is truly unobtainable.

Further, the anticipated costs of PHMSA's proposal to expand operator qualification requirements are extensive. In the Notice, PHMSA states that the cost of the entire rule would amount to $3.1 million. PHMSA anticipates that the modifications specific to OQ will result in a cost of $160 per employee with 16,008 employees newly subject to OQ. The 16,008 figure includes 7,500 construction employees.

PHMSA significantly underestimates the costs and number of individuals affected by this proposal. The costs involved to comply with changes proposed to operator qualification for new construction alone could easily exceed $322 million (See additional explanation in INGAA Foundation comments filed under separate cover).[31] The INGAA Foundation believes the number of affected employees and contractors for new construction alone could exceed 60,000.

PHMSA included several changes to the operator qualification requirements but failed to include the impacts of these changes in its analysis of costs. For instance, PHMSA did not include the number of contractors affected by these changes, the costs involved with updating each operator qualification program, or the new training requirements. PHMSA also modified its definition of 'qualified' which now includes a demonstration of knowledge of the variations in procedures due to equipment, new operations, and conditions. All of these proposed changes would dramatically affect the true costs of this proposal. PHMSA should make the following modifications to reduce the anticipated costs, while still addressing the agency's concerns.

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[29] INGAA believes that emergency response tasks are already included in operator qualification requirements under operations.

[30] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 520 (2009). The Court stated that demanding a study in which children could be subjected to indecent programming for the sole purpose of gathering the necessary empirical data to support the need for a prohibition against such programming nulled the very purpose of the law. This type of data is truly unobtainable.

[31] It is INGAA's understanding that PHMSA intended to add only construction tasks to the existing operator qualification requirements. If PHMSA intended a broader application of these new requirements, then the INGAA Foundation's estimated costs would be much higher.

PHMSA Should Add Construction to the Existing Four-Part Test

There is no need to remove the four-part test. PHMSA could simply modify the existing regulations. INGAA makes the following recommendation:

> (a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility.
> (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, ~~or~~ maintenance **or construction** task;
> (3) Is performed as a requirement of this part; and
> (4) Affects the operation or integrity of the pipeline.[32]

PHMSA Should Adopt a Comprehensive Task List

PHMSA should adopt a comprehensive task list for operator qualification. A comprehensive list will increase consistency among operators and portability for qualified personnel. Pipeline operators already use and rely on the American Society of Mechanical Engineers (ASME) B31Q as a model to develop operator qualification procedures. Specifically, INGAA members use the Non-Mandatory Appendix 5A (Integrated Task Lists: Definitions) included in ASME B31Q as guidance in developing operator qualification programs. PHMSA could either seek approval from ASME to incorporate this task list into the pipeline safety regulations, or, in the alternative, develop its own comprehensive task list. ASME's task list includes specific construction tasks. Therefore, adoption of this ASME document will aid PHMSA in meeting its goals while reducing the anticipated costs of its proposal by using a standard familiar to industry. If PHMSA elects to develop its own comprehensive task list, the agency should focus on a few specific areas. INGAA has attached a topic list of certain construction tasks included in the ASME standard (Appendix A) that INGAA recommends PHMSA include in any comprehensive task list.

PHMSA Should Consider a Generalized Qualification Approach

PHMSA should consider a generalized qualification process rather than requiring each person to be qualified on individual company procedures for the same task. As stated above, pipeline operators use ASME B31Q as a model to develop individualized operator qualification procedures. Each pipeline operator does not maintain the same procedures for the same task.

Construction personnel should be qualified on the general task, not each company specific procedure. A useful analogy is that young drivers are trained and qualified to drive a car, not each individual model that they may drive in the future. Construction workers would then be briefed on any company procedure distinctions prior to starting the project. Portability among qualified personnel is critical. A qualified person must be able to move from new construction for one owner/operator to a construction job for another owner/operator and carry their

[32] 49 C.F.R. § 192.801.

generalized qualification with them. Second, personnel must be able to take their generalized qualification from one construction contractor to another. A generalized qualification process will reduce the anticipated costs of this rulemaking proposal.

PHMSA Should Revise its Definitions to Focus Qualification Efforts on the Safety and Integrity of the Pipeline

INGAA recommends that PHMSA modify several of its proposed definitions to focus on the pipeline, not the pipeline facility, which includes other structures associated with a pipeline such as the pipeline right-of-way, compressor station, auxiliary equipment or buildings.[33] These revisions will reduce the anticipated cost of this proposal. Accordingly, INGAA requests that PHMSA modify the following definitions:

> *Covered task* means an activity identified by the operator that is an operations, maintenance, construction or emergency response task and affects the safety or integrity of the pipeline ~~facility~~.
>
> *Safety or integrity* means the reliable condition of a pipeline ~~facility~~ (operationally sound or having the ability to withstand stresses imposed) affected by any operation, maintenance or construction task, and/or an emergency response.
>
> *Adversely affects* means a negative impact on the safety or integrity of the pipeline ~~facilities~~.
>
> *Emergency response tasks* are those identified operations and maintenance covered tasks that could reasonably be expected to be performed during an emergency to return the pipeline ~~facilities~~ to a safe operating condition.

PHMSA Should Not Revise the Current Training Requirements

INGAA supports the training requirement currently included in Subpart N of the pipeline safety regulations. PHMSA requires operators to "provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities..."[34] The regulation allows flexibility for operators to provide training as needed. The fact that an individual passes the qualification evaluation proves that he or she has had the necessary training to perform the task.

In the Notice, however, PHMSA has proposed removing the "as appropriate" language and has added an additional program requirement:

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[33] *See* 49 C.F.R. § 192.5. "*Pipeline facility* means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation."
[34] 49 C.F.R. § 192.805(h).

> The operator qualification program must, at a minimum, include provisions to:
> (10) provide supplemental training for the individual when procedures and specifications are changed for the covered task…[35]

PHMSA has also added an additional individual qualification:

> Individual qualification records must include:
>
> (7) Training required to support an individual's qualification or requalification.[36]

PHMSA is not creating any additional assurance by proposing separate training requirements that are already embedded in the qualification program. PHMSA is now proposing explicit training and documentation requirements in order for each individual to be considered qualified. This change could potentially double the costs involved without any incremental gain in personnel competence. Qualification is a process in which an operator verifies that an individual has the knowledge, skills and abilities to perform a task safely and competently. Training is merely a means to that end. Without proper training, individuals cannot demonstrate competence through a qualification evaluation. Operators and contractors should not expend resources unnecessarily to create a training program that will ultimately be duplicative.

PHMSA Should Clarify its Proposal for an Effectiveness Review

PHMSA should consider a longer period for effectiveness reviews. It is not practical to conduct an effectiveness review every year. Instead, PHMSA should use the effectiveness review requirements from the public awareness section of the pipeline safety regulations as a model.[37] Under that section of the code and the API recommended practice incorporated by reference,[38] PHMSA allows operators to conduct effectiveness reviews every four years. Operators could conduct internal reviews of its operator qualification program annually but would need the longer span of time for a full effectiveness review.

PHMSA Should Consider a Phased-In Compliance Period

PHMSA should include a five-year phased-in compliance timeline similar to the phased-in approach the agency used when first introducing the OQ requirements in 1999. As illustrated above, this is an extensive proposal and the regulated community will need additional time to upgrade its programs, qualify all personnel (which has the increasing challenge of a diverse and mobile population), and conduct additional training.

[35] Proposed 49 C.F.R. § 192.805(b)(10).
[36] Proposed 49 C.F.R. § 192.809(a)(7).
[37] *See* 49 C.F.R. § 192.616.
[38] *See* API RP 1162.

IV. Special Permit Renewal.

INGAA understands PHMSA's desire to include a process in the pipeline safety regulations to renew special permits. However, INGAA recommends that PHMSA reexamine the extent of the documentation it requires as part of the renewal process. PHMSA should collect summaries of reports and high-level maps rather than more extensive records. PHMSA can obtain the information it needs to reexamine the permit without the need for an overly burdensome document request. These document requests can drain the resources of both the agency and the applicant.

V. Farm Taps.

INGAA supports PHMSA's proposal to eliminate application of the Distribution Integrity Management Program (DIMP) requirements to farm taps, as illustrated in several agency interpretations.[39] However, INGAA recommends that PHMSA modify its proposed definition of a farm tap included as the proposed § 192.740(a). INGAA is familiar with both the definition proposed by National Association of Pipeline Safety Representatives (NAPSR) in its 2013 resolution and the definition that PHMSA proposed in the Notice.[40] INGAA recommends additional edits to § 192.740(a) for clarity purposes.

> (a) A farm tap is a pipeline that maintains the same designation as the pipeline from which it originates (transmission, storage, gathering or production) and connects to a distribution system or a customer owned service line.

Although it is an improvement to exempt farm taps from DIMP, INGAA supports additional flexibility for categorizing farm taps. Distribution operators will likely want to treat farm taps as part of their distribution system. Meanwhile, operators that exclusively operate transmission pipelines will see no value in creating a distribution program just for the farm tap. Therefore, INGAA submits that operators should have the option of treating a farm tap as either distribution or transmission as long as the necessary safety and reporting requirements are met.

Specifically, INGAA recommends that PHMSA re-designate § 192.740(c) as § 192.740(d). PHMSA then should modify the proposed § 192.740(b) and insert a new subsection (c) to

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[39] The application of DIMP to farm taps was never clearly recognized in the pipeline safety regulations. However, PHMSA previously interpreted the pipeline safety regulations to require operators with farm taps to prepare a DIMP. *See* PHMSA Response to Northern Natural Gas Company, PI-11-0008 (April 19, 2011); PHMSA Response to Atmos Energy, PI-11-0016 (September 12, 2012); PHMSA Response to Kansas Corporation Commission, PI-12-0005 (March 4, 2013). PHMSA should rescind these interpretations when this proposal is finalized to avoid any unnecessary confusion.

[40] NAPSR proposed "pressure regulating and overpressure relief equipment on **a pipeline** that originates from a transmission, gathering, or production pipeline that **serves a service line**" as the definition of a farm tap. *See* National Association of Pipeline Safety Representatives Resolution 2013-2-AC-1 (2013). In response, PHMSA proposed "**any service line** that originates from a production, gathering, or transmission pipeline **that is not operated as part of a distribution system.**" Proposed § 192.740. *See* 80 Fed. Reg. 39916 at 39932.

address inspections of pressure regulating or relief devices and odorization, if applicable. This subsection should apply only to farm taps connected to customer-owned service lines. Farm taps connected to distribution systems are covered under Subpart P (Distribution).
Specifically, INGAA suggests the following modifications to the proposed regulatory language:

> (b) Each pressure regulating/limiting device, relief device, automatic shutoff device, and associated equipment connected to a customer-owned service line must be inspected and tested at least once every 3 calendar years, not exceeding 39 months….
> (c) If the pipeline delivers directly to a customer-owned service line, the pipeline operator must odorize the customer-owned service line or provide enhanced landowner communications.

VI. Reversal of Flow or Change in Product.

In the Notice, PHMSA proposes to include reversal of flow as part of the notification requirements of § 191.22(c).[41] However, predicting the need for a flow reversal 60 days in advance is not always realistic. Flow reversal is dependent on how customers choose to use their transportation contracts, market demand, and changes in weather conditions. The directional flow in a natural gas pipeline can change daily and, in most cases, without the necessary lead time to notify a regulator. The flow direction of a pipeline is determined by the daily (and intra-day) nominations of pipeline shippers on where they choose to deliver gas into and out of the pipeline system. Flow reversals often depend on how pipeline shippers elect to use their contractual entitlements, where they wish to source their gas on a daily basis and where they wish to deliver their gas, and whether firm transportation shippers release their capacity to shippers who transport their gas on a different pipeline path. Therefore, pipeline operators cannot always predict the flow of gas until the shippers nominate and the pipeline operator schedules transportation service for that gas operating day.

INGAA acknowledges that PHMSA has limited the notification requirements to only those reversals that last more than 30 days and specifically exempts pipelines that are designed to flow bi-directionally. Since the market drives where pipeline shippers inject and withdraw gas on the pipeline, a 60-day notification process is impractical. It is also difficult to determine in advance if a flow reversal will exceed 30 days.

INGAA submits that the proposed notification requirement should apply only to permanent flow reversals where an operator must change or modify its compressor facilities and related piping to accommodate a flow reversal in which the pipeline needs FERC certificate authorization under the Natural Gas Act. INGAA recognizes that this notification trigger would only apply to interstate pipelines regulated by FERC. PHMSA would need to create another notification trigger for non-FERC regulated entities. Finally, for pipeline segments that do not currently flow

[41] PHMSA seeks to require operators to give the agency 60 days advance notice prior to the reversal of the direction of product flow.

bi-directionally, INGAA requests that the 60-day notification be waived in an emergency or force majeure situation.

INGAA also urges PHMSA to reexamine its Advisory Bulletin and other associated guidance documents covering reversal of flow and conversion to service. INGAA has several concerns with the guidance itself. For instance, INGAA questions whether a new class location study is relevant to a flow reversal. INGAA also questions the need for an additional pressure test of the entire length of the pipeline segment for a flow reversal. PHMSA should establish a workshop to clarify reversal of flow guidelines including documentation requirements to ensure consistent implementation across the PHMSA regions.

VII. Conclusion.

INGAA recommends that PHMSA amend its proposed definition of "confirmed discovery" and modify the definition of a reportable incident to accommodate those events where an operator will not know within one-hour of confirmed discovery that the property damage estimates exceed $50,000. In terms of cost recovery for design reviews, INGAA is concerned that the proposed scope is overbroad by including routine inspections and reviews of operations and maintenance plans. In addition, INGAA suggests that PHMSA revise its methodology to include a fee schedule to give the regulated community a clearer understanding of the potential costs of a PHMSA design review. PHMSA should also reevaluate the activities used as a benchmark to commence design review. Many of the events PHMSA currently lists as the trigger to begin design review are too early in the process. PHMSA should modify its lists of triggering events to ensure that they are more closely aligned with actual construction activities.

INGAA is also concerned with PHMSA's proposal to amend the operator qualification requirements. PHMSA has significantly underestimated the costs of the proposal. PHMSA asserts that the <u>total</u> cost of the entire rule is $3.1 million. However, INGAA has calculated that the costs for the operator qualification section, as applicable to new construction alone, could easily exceed $322 million. INGAA has summarized a series of actions that PHMSA could take to reduce the costs of the rule, while achieving the agency's goals. PHMSA should also amend its definition of a farm tap, modify its proposed § 192.740(b), and add a new subsection § 192.740(c). Finally, PHMSA should consider applying the notification requirement for reversal of flow only to situations when an operator changes or modifies its facilities.

Appendix A[42]

1. ASME Task 0041 Installation and Maintenance of Mechanical Electrical Connections
2. ASME Task 0051 Installation of Exothermic Electrical Connections
3. ASME Task 0081 Install Cathodic Protection Electrical Isolation Devices
4. ASME Task 0201 Visual Inspection of Installed Pipe and Components for Mechanical Damage
5. ASME Task 0211 Measure and Characterize Mechanical Damage on Installed Pipe and Components
6. ASME Task 0571 Pressure Test: Non-liquid Medium — MAOP Greater Than or Equal to 100 psi
7. ASME Task 0581 Pressure Test: Liquid Medium
8. ASME Task 0601 NDT: Radiographic Testing
9. ASME Task 0611 NDT: Liquid Penetrant Testing
10. ASME Task 0621 NDT: Magnetic Particle Testing
11. ASME Task 0631 NDT: Ultrasonic Testing
12. ASME Task 0641 Visually Inspect Pipe and Components Prior to Installation
13. ASME Task 0711 Joining of Pipe: Compression Couplings
14. ASME Task 0721 Joining of Pipe: Threaded Joints
15. ASME Task 0731 Joining of Pipe: Flange Assembly
16. ASME Task 0801 Welding
17. ASME Task 0811 Visual Inspection of Welding and Welds
18. ASME Task 0821 Tubing and Fitting Installation: Instrument, Control, and Sampling
19. ASME Task 0861 Installation of Steel Pipe in a Ditch
20. ASME Task 0871 Installation of Steel Pipe in a Bore
21. ASME Task 0881 Installation of Steel Pipe Plowing/Pull-In
22. ASME Task 0891 Field Bending of Steel Pipe
23. ASME Task 0951 Installation of Pipe Above Ground
24. ASME Task 0971 Installation and Maintenance of Casing Spacers, Vents, and Seals
25. ASME Task 0981 Backfilling
26. ASME Task 0991 Coating Application and Repair: Brushed or Rolled
27. ASME Task 1001 Coating Application and Repair: Sprayed
28. ASME Task 1011 External Coating Application and Repair: Wrapped
29. ASME Task 1031 Install or Repair Internal Liner
30. ASME Task 1071 Repair of Steel Pipe by Grinding
31. ASME Task 1171 Installing Customer Meters: Large Commercial and Industrial
32. ASME Task 1181 Installing and Maintaining Customer Pressure-Regulating, Pressure-Limiting, and Relief Devices: Large Commercial and Industrial
33. ASME Task 1291 Locate Underground Pipelines
34. ASME Task 1301 Install and Maintain Pipeline Markers
35. ASME Task 1321 Damage Prevention During Excavation Activities by or on Behalf of the Operator
36. ASME Task 1331 Damage Prevention Inspection During Third-Party Excavation or Encroachment Activities as Determined Necessary by Operator
37. ASME Task 1341 Provide or Ensure Adequate Pipeline Support During Operator-Initiated Excavation Activities
38. ASME Task 1631 Launching and/or Receiving Internal Devices (Pigs) With a Temporary Launcher and/or Receiver for Lines Out of Service
39. ASME Task 1651 Purge — Flammable or Inert Gas

[42] These tasks are included in the Appendix 5A to ASME B31Q (2014).