

## PHMSA proposes new guidance for farm taps

On April 20, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a request for comments on proposed frequently asked questions (FAQs) for the regulation of farm taps under 49 C.F.R. Parts 191 and 192. The proposed FAQs come nearly two years after the agency posted, and then withdrew, an earlier set of farm tap FAQs on its website. Consistent with the Department of Transportation’s policy on guidance documents, PHMSA is seeking public comment before finalizing the latest version of the farm tap FAQs. The deadline for submitting comments is June 19.

### Why did PHMSA issue the proposed FAQs?

The regulatory status of farm taps has generated significant controversy in the past decade. In 2010, PHMSA issued FAQs for the new Distribution Integrity Management Program (DIMP) regulations stating that the DIMP requirements applied to farm taps, even though that issue had not been specifically discussed or addressed during the rulemaking process. The agency defended that position in the years that followed, but eventually allowed operators to choose to include farm taps in a DIMP plan or follow the three-year periodic inspection requirement for regulators and overpressure protection equipment.<sup>1</sup>

In January 2018, PHMSA published a set of new FAQs for farm taps on its website. The FAQs addressed a range of topics, including the new three-year periodic inspection requirements, annual reporting requirements, operator identification number (OPID) requirements, regulatory status of existing farm taps and those installed prior to 1960, operator qualification, definitional clarifications, and excess flow valve installation. After receiving significant adverse feedback, the agency withdrew

the farm tap FAQs for further review and development. Then in March 2019, the agency issued an Announcement of Enforcement Discretion stating that owners and operators could choose whether to address farm taps under the three-year periodic inspection requirements in 49 C.F.R. § 192.740 or under DIMP requirements.

As discussed in more detail below, the agency’s proposed farm tap FAQs address all the significant developments from the past decade.

### What do the proposed FAQs cover?

The following important topics are covered in the proposed farm tap FAQs:

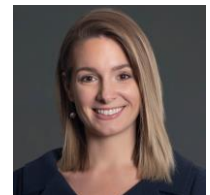
- **What is a farm tap?** Citing the Part 192 definition of service line, PHMSA states that a farm tap is a distribution service line if any portion “transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold,” regardless of whether a sale of gas occurs.<sup>2</sup> However, the agency also recognizes that a farm tap may be used to refer to other piping applications that do not satisfy the service line definition, including where customer-owned piping connects directly to the first isolation point or the farm tap meets the definition of a transmission line.

- **Where does a farm tap begin and end?** In an important clarification, PHMSA explains that a farm tap service line “begins at the first point where the downstream service line can be isolated from source piping (e.g. the inlet to a valve or regulator...)” and “terminates at the outlet of the customer’s meter or the connection to a customer’s piping, whichever is further downstream.” Some of the agency’s other guidance in recent years had suggested that the service line classification begins at the tap on the

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<sup>1</sup> Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps; 84 Fed. Reg. 11,253 (Mar. 26, 2019); Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes, 82 Fed. Reg. 7,972 (Jan. 23, 2017).

<sup>2</sup> 49 C.F.R. § 192.3

mainline or source piping in a farm tap configuration. Note that PHMSA's clarification indicates that the valve or regulator at the first isolation point is part of the distribution service line, not the source piping.

• **What reporting and notification obligations apply to farm tap operators?** If a farm tap is a regulated service line, PHMSA states that the operator must obtain an OPID and submit a distribution annual report form, including operators of production and unregulated gathering lines. PHMSA also explains that only the operator of the service line downstream from the first isolation point is responsible for reporting the service line in its annual reports, and that the most-downstream entity operating the service line is responsible for notifying farm tap customers of their responsibility to maintain customer-owned buried piping under § 192.16(a).

• **What are PHMSA's expectations with respect to testing farm taps under 49 C.F.R. § 192.740?**

PHMSA states that the three-year inspection requirement in § 192.740 for pressure regulating, limiting, and overpressure protection devices applies to all service lines that directly connect to production, gathering or transmission lines, and which are not part of a distribution system, regardless of installation date. The agency clarifies that the regulation does not require testing regulators for lockup, and that other methods may be used to comply with the regulation. PHMSA also explains that operators can use any practicable method to test regulators with an internal relief, so long as the method is documented in the operator's O&M Manual. The agency provides examples of practicable methods, such as installing a test port and then a valve downstream from the regulator with an internal relief.

• **What design and installation requirements apply to service-line farm taps?** Consistent with the nonretroactivity requirement in the Pipeline Safety Act, PHMSA acknowledges that a farm tap installed prior to March 12, 1971, does not need to be redesigned to meet the requirements in § 192.197. However, the agency notes that if the regulators are modified or replaced after the effective date in § 192.13(b) then the affected components must meet the requirements of § 192.197. PHMSA also notes that operators of service-line farm taps must meet the excess flow valve requirements in § 192.381, 192.383, or 192.385, as applicable.

• **What are other requirements operators should be aware of?** PHMSA states that an operator of a service line must comply with all applicable requirements in Parts 191 and 192. The agency notes that production or unregulated gathering operators with regulated serviceline farm taps are required to comply with the operator qualification requirements

in Subpart N for covered tasks performed on the regulated service line and prepare an O&M Manual with respect to the regulated service line. PHMSA also notes that states with certified pipeline safety programs may adopt additional safety regulations applicable to farm taps.

**What are the implications of PHMSA's proposed farm tap FAQs?**

The long-running effort by interested stakeholders to clarify the agency's farm tap policy continues to produce results. After hearing the industry's concerns with the 2010 DIMP FAQs, particularly the effect of requiring interstate transmission operators and production and unregulated gathering operators to apply DIMP to farm taps, PHMSA added an exception that allowed operators to comply with the three-year inspection requirements in § 192.740 instead of the DIMP regulations.<sup>3</sup> The agency also issued a notice of enforcement discretion in response to continued industry concerns that allows operators to manage farm taps under either § 192.740 or DIMP, which remains in effect today. Finally, the latest version of the proposed farm tap FAQs seeks to accommodate many of the concerns that industry expressed with the prior farm tap FAQs and other recent guidance documents, including with respect to the classification of source or mainline piping and the applicability of certain requirements in the Part 192 regulations. The industry has the opportunity to further influence these FAQs in the pending comment period.

Notably, PHMSA is no longer taking the position that the service line starts at the tap on the mainline in a farm tap configuration. Instead, the FAQs state that the service line starts at the first isolation point (the inlet of the valve or regulator) downstream from the source or mainline piping. That clarification is very important because the agency's prior guidance indicated that operators had to treat all piping downstream from the tap as a distribution service line in a farm tap scenario, even if all of the other piping in the system was production, gathering, or transmission. Treating all piping downstream from the tap as part of a distribution service line would have imposed significant compliance burdens on operators without producing any meaningful benefits.

PHMSA has never actually analyzed the costs, benefits or other impacts of applying the gas distribution service line regulations to farm taps. The agency has never added a definition of a farm tap to Part 192 or instituted a specific rulemaking proceeding to acknowledge the status of farm taps as gas distribution service lines. Rather, PHMSA adopted that position in letters of interpretation,

<sup>3</sup> Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Changes, 82 Fed. Reg. 7,972 (Jan. 23, 2017).

guidance documents, and through other rulemakings. Operators have the opportunity to provide cost data to PHMSA through this docket, which would invite the agency to consider such data before issuing final FAQs.<sup>4</sup>

PHMSA notes in the request for comments that as part of the agency's regulatory review process, it is considering changes to the requirements in § 192.740 due to industry comments that PHMSA had underestimated the costs of compliance with the three-year inspection requirements and that existing DIMP requirements, in conjunction with other current requirements such as leak surveys, could provide an equivalent level of safety. PHMSA previously indicated during public meetings that farm taps would be included in the Gas Pipeline Regulatory Reform proposed rule, which is currently under review at the Office of Management and Budget and will likely be published by the agency in the coming months.<sup>5</sup>

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<sup>4</sup> See "Memorandum on the Review and Clearance of Guidance Documents," available at [www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documentssigned-122018.pdf](http://www.transportation.gov/sites/dot.gov/files/docs/regulations/328566/gen-counsel-mem-guidance-documentssigned-122018.pdf).

<sup>5</sup> PHMSA, Pipeline Safety: Regulatory Agenda (Nov. 14, 2019), [primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=1075](http://primis.phmsa.dot.gov/meetings/FilGet.mtg?fil=1075); Office of Information and Regulatory Affairs, Executive Order Submissions Under Review (Apr. 21, 2020), [www.reginfo.gov/public/do/eoReviewSearch](http://www.reginfo.gov/public/do/eoReviewSearch).