



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

NOV 05 2018

Mr. Michael J. Schmitt
Chairman, Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Dear Mr. Schmitt:

Thank you for your letter of September 6, 2018, requesting an interpretation on whether 49 CFR 192.740 applies to certain “farm taps” required by Kentucky statute, and if so, whether responsibility for maintaining regulators in accordance with that section lies with the production or gathering line operator, or with the customer.

Part 192 defines a service line as a “distribution line that transports gas from a common source of supply to an individual customer.” (49 CFR 192.3). A “farm tap” is not defined in Part 192, but commonly refers to a pipeline directly connected to a source pipeline that transports natural gas to a customer along the source pipeline right-of-way, and thus, meets the definition of a service line in the pipeline safety regulations. A non-regulated production or gathering pipeline may be the common source of supply for a regulated service line. The pipeline upstream of the service line retains its original functional identity or classification.

Because “farm taps” meet the definition of service lines, piping and appurtenances that comprise a “farm tap” that are owned or maintained by an entity engaged in the transportation of gas, are subject to the requirements of Parts 191 and 192 as a distribution service line, including the requirements at § 192.740.

However, a service line ends at the connection to customer owned piping, or the outlet of the meter, whichever is further downstream. Such piping and appurtenances that are owned by a customer or person not engaged in the transportation of gas (e.g., a farmer or residential customer) are not service lines and are not subject to requirements in Part 191 or Part 192. Therefore, neither the customer nor the operator are required by federal regulation to maintain a customer owned regulator on a customer fuel line in accordance with § 192.740.

I hope this information is helpful. If you require additional information or assistance, please contact John Gale by phone at 202-366-0434 or by e-mail at John.Gale@dot.gov.”

Sincerely,

A handwritten signature in blue ink, appearing to read "Alan Mayberry".

Alan Mayberry
Associate Administrator for Pipeline Safety



Matthew G. Bevin
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Secretary
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September 6, 2018

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Re: Interpretation and Implementation of 49 CFR §192.740 in light of Kentucky Farm Tap Statute

Dear Mr. Elliot and Mr. Roberti,

As you know, the Kentucky Public Service Commission (Commission) is the Kentucky state agency charged with enforcing the applicable regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA) within the Commonwealth of Kentucky. The purpose of this letter is to request guidance regarding the applicability of 49 CFR §192.740 to certain natural gas installations that are required by a seemingly unique Kentucky statute.

Specifically, Kentucky Revised Statute (KRS) 278.485 requires every gas pipeline company that produces or gathers natural gas produced in Kentucky to make gas service available to owners of property located within one-half air mile of its wells or gathering

lines. This statute was designed to give people living in isolated areas access to residential natural gas that otherwise would not be available to them. These installations are commonly referred to as “farm taps.” To distinguish them from other kinds of taps on production or gathering lines, I will refer to the taps required by KRS 278.485 as “Statutory Farm Taps.”

Most gas producer/gatherers subject to the statute do not voluntarily choose to provide direct taps on their lines to consumers; rather, this is an obligation imposed on them by statute. The Commission does not consider gas producer/gatherers that only furnish gas service to customers if required by KRS 278.485 to be natural gas utilities.

KRS 278.485 and its implementing regulations allocate specific ownership, installation and maintenance obligations between the gas company and the “applicant” for gas service. KRS 278.485(2) states as follows:

The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install and maintain the necessary gas meters. (Emphasis added)

KRS 278.485 also exempts producer/gatherers from various service obligations and liabilities applicable to natural gas utilities and distribution companies, such as maintaining consistent pressure and assuring gas quality and availability. Importantly, the statute also shields producer/gatherers from tort liability for damages caused by “any defect or failure of any automatic gas regulator.”

Commission regulations also recognize that the Statutory Farm Tap customer, not the producer/gatherer, is responsible for maintaining any required pressure regulator. 807

KAR 5:026, which applies specifically to Statutory Farm Taps, defines “customer line” as “all equipment and material required to transfer natural gas from the tap on the gathering line to the customer’s premises and includes the saddle or tapping tee, the first service shutoff valve, the meter, and the service regulator, if one is required.” Section 3(6) allocates the ownership and maintenance of “the meter and the service tap, including saddle and first service shutoff valve” to the company. Section 3(7) provides, “All other approved equipment and material required for the service shall be furnished, installed, and maintained by the customer at his expense and shall remain his property.”

The Commission seeks clarification of PHMSA’s intention as to the applicability of 49 CFR §192.740 to these Statutory Farm Taps. 49 CFR §192.740, effective March 24, 2017, imposes a new requirement that each pressure regulating device on a service line directly connected to a production, gathering or transmission pipeline that is not operated as part of a distribution system must be inspected at least once every 3 calendar years.¹ Initially, the Commission requests a determination as to whether 49 CFR 192.740 is

¹ In pertinent part, the regulation provides:

- (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.
- (b) Each pressure regulating or limiting device, relief device (except rupture discs), automatic shutoff device, and associated equipment must be inspected and tested at least once every 3 calendar years, not exceeding 39 months, to determine that it is:
 - (1) In good mechanical condition;
 - (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;
 - (3) Set to control or relieve at the correct pressure consistent with the pressure limits of §192.197; and to limit the pressure on the inlet of the service regulator to 60 psi (415 kPa) gauge or less in case the upstream regulator fails to function properly; and
 - (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.


applicable to Statutory Farm Tap installations, which exist almost exclusively on pipelines that are not considered to be “regulated onshore gathering lines” within the meaning of 49 CFR §192.8(b) and hence are not otherwise subject to 49 CFR Part 192.

Our second question is, if it is PHMSA's position that 49 CFR §192.740 applies to Kentucky's Statutory Farm Taps, who does PHMSA consider responsible for performing the inspections required by that regulation? We note that 49 CFR §192.740 does not impose the inspection obligation on any particular person or entity; but rather, only requires that the inspection be done. If it is PHMSA's position that the gas pipeline company is responsible for performing the inspection required by 49 CFR §192.740, we would appreciate PHMSA's guidance in reconciling the requirements of that regulation with the allocation of ownership and maintenance obligations under Kentucky law.

As noted, the installation, maintenance and repair of the pressure regulating equipment subject to the inspection requirement imposed by 49 CFR §192.740 is specifically allocated by state statute to the *customer* in the case of a Statutory Farm Tap. Industry representatives have expressed concern that if the inspection requirements of 49 CFR 192.740 are placed on the producer or gatherer, they will be required to access, manipulate, evaluate and opine on the sufficiency of equipment that belongs to the Statutory Farm Tap customer. Requiring gas producer/gatherers to inspect someone else's private property and possibly act upon the results of those inspections (e.g. shutting off service until the consumer's equipment is replaced or repaired) raises a host of legal issues in the context of Statutory Farm Taps that may be unique to Kentucky and that PHMSA may not have anticipated or intended in promulgating 49 CFR 192.740.

In light of these issues, we request PHMSA's guidance on whether 49 CFR 192.740 applies to these Statutory Farm Taps, and, if so, whether the producer/gatherer or the Statutory Farm Tap customer is responsible for performing the periodic inspection mandated by the regulation.

Sincerely,



Michael J. Schmitt
Chairman
Kentucky Public Service Commission

Cc: Charles G. Snavelly, Secretary, Kentucky Energy and Environment Cabinet
Robert J. Cicero, Vice Chairman, Kentucky Public Service Commission
Talina R. Mathews, Commissioner, Kentucky Public Service Commission
Gwen R. Pinson, Executive Director, Kentucky Public Service Commission