

PROPOSED RULEMAKINGS

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Acupuncturists and Practitioners of Oriental Medicine

The State Board of Medicine (Board) proposes to amend Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to read as set forth in Annex A. Specifically, the Board is proposing amendments to §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 18.18 and adding § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine).

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The primary statutory authority to regulate acupuncturists is granted by the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801—1806.1). Specifically, section 3(b) of the ALA (63 P.S. § 1803(b)) authorizes the Board to promulgate regulations requiring the proper training of individuals, including physicians, before they may be licensed to practice acupuncture in this Commonwealth and further authorizes the Board to promulgate other regulations as may be deemed proper and necessary regarding the practice of acupuncture.

Background and Need for Amendments

Beginning in 2018, the Board undertook a comprehensive review of its regulatory scheme for acupuncturists and practitioners of Oriental medicine. As a result of that review, the Board is proposing comprehensive amendments to Chapter 18, Subchapter B to: (1) update outdated terminology; (2) remove outdated licensure provisions; (3) conform the regulations to the act of September 24, 2014 (P.L. 2472, No. 134) (Act 134 of 2014); (4) restructure requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a medical doctor) based on the type of license held; (5) expand the list of opportunities to demonstrate English language proficiency; and (6) rename the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered).

Updating outdated terminology

As part of its review, the Board explored the feasibility of eliminating the words “Chinese” and “Oriental” from the regulations altogether to eliminate terms that may be considered culturally insensitive.

The term “Chinese herbology”

The Board proposes to replace the term “Chinese herbology” with the term “East Asian herbology.” While the term “Chinese herbology” is a term of art accepted and utilized within the regulated community, it is generally associated with the traditional herbal practices and theories commonly associated with those utilized in China, Taiwan, Korea and Japan. During the development of this proposed rulemaking, several alternative terms were discussed, including “herbology,” “Asian herbology,” “Eastern Asian herbology” and “East Asian herbology.” The alternative term which appears to be

most acceptable to the regulated community and the least likely to cause confusion with the public is “East Asian herbology.”

The Board initially considered, but rejected, the simple term “herbology” because it appeared to be overly broad. Other board-regulated practitioners may utilize herbs, minerals and compounds as part of their practice (albeit, utilizing Western herbs and philosophies). Consequently, the term “herbology” without further modification was deemed to be too broad of a term to accurately reflect the intended scope of practice for a practitioner of Oriental medicine.

Similarly, “Asian herbology” was considered but rejected because it too could imply the inclusion of traditional herbal practices and theories which may be inconsistent with traditional herbs and herbal theories from China, Taiwan, Korea and Japan. In theory, the term “Asian herbology” could include herbal therapies and theories from all areas of Asia; including India, Saudi Arabia and north-central Russia. Those locales are likely to have their own distinct herbal remedy traditions and may utilize herbs which do not naturally grow, and until recently, have not been routinely available in areas which traditionally employed what the current regulations refer to as “Chinese herbology.” Consequently, “Asian herbology” appeared to be a term not compatible with the historic traditions and herbs of what the current regulations refer to as “Chinese herbology.”

“Eastern Asian herbology” likewise suffered from encompassing too broad of a geographic area in its potential reach, as it could potentially include areas such as eastern Russia, the Philippines, Thailand and Indonesia—countries which have land masses at similar longitudes as countries which utilize traditional “Chinese herbology,” but which do not necessarily share the same herbal theories and traditions.

East Asia is a generally recognized geographic term encompassing the countries/territories commonly known as China, Hong Kong, Japan, Macau, Mongolia, North Korea, South Korea and Taiwan. Consequently, the term “East Asian herbology” was selected as the most appropriate substitute term for “Chinese herbology” and, where appropriate, the Board has substituted “East Asian herbology” for that term. The Board has also proposed a new definition of “East Asian herbology” to assist the public and regulated community in understanding the scope of the practice. It should be noted that the Board does propose to retain several references to “Chinese herbology” within the regulations. Those instances were limited to circumstances where a third-party certifying organization requires completion of a specified examination or educational program and the examination/educational program continues to utilize the term “Chinese herbology” within the name.

The term “Oriental medicine”

After much deliberation, the Board proposes to keep the term “Oriental medicine.” Comments from interested stakeholders, additional research and discussions with the public during Board committee meetings revealed that the term “Oriental medicine” is currently a generally accepted term of art within the regulated community and is recognized and understood by members of the public who wish to seek those types of services. The term

“Oriental medicine” is used within the name of the specialized school accrediting body recognized by the United States Department of Education (the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM®)), the name of the certifying body recognized/accepted by the Board as well as approximately 45 other states (the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM®)), the name of one of the two recognized programs of study by NCCAOM® (Oriental Medicine Program), and is part of the school name of at least 15 ACAOM® accredited and candidate schools.

The Board noted during its outreach, as well as during committee meetings to discuss drafts of this proposed rulemaking, that there was overwhelming opposition within the regulated community itself to changing the title of the “practitioner of Oriental medicine” license. Additionally, the Board considered the potential impact on the regulated community which may occur by changing the name of the license to some other title. Individuals who previously obtained services from a practitioner of Oriental medicine may become confused as to the services which may be lawfully provided by an individual who would be required to describe his or her practice utilizing a new term.

Similarly, utilizing terminology which is different than that used by the certifying and accrediting bodies and educational facilities could lead to reasonable concern by the public whether a practitioner is truly qualified to engage in these activities. Finally, the selection of a different and unique title which is not generally utilized or recognized within other jurisdictions may impact the portability of licensure.

Given the potential confusion by the public regarding the scope of licensure and services which may be provided if a unique term was utilized, the lack of support within the regulated community to alter the name of the authorization to practice using herbal therapy, and the potential economic impact on the regulated community by altering the name, the Board proposes to maintain the name of the authorization for an acupuncturist to practice East Asian herbology as “practitioner of Oriental medicine.”

The Board additionally noted that it could not control the names utilized by other organizations such as accrediting bodies, certification bodies, schools and the names those organizations may utilize to describe the programs of instruction and examinations they offer. Therefore, in addition to maintaining the name “practitioner of Oriental medicine,” this proposed rulemaking also maintains many of the other references to “Oriental medicine” which currently are used within the existing regulations.

Removal of outdated regulations related to acupuncture licensure

As part of the Board’s ongoing work to continuously review and address outdated regulations, this proposed rulemaking will delete § 18.13(c) (relating to requirements for licensure as an acupuncturist). The specific subsection was related to the registration requirements for medical doctors applying for registration as acupuncturists prior to January 1, 1988. As the provision is no longer relevant, the Board proposes to delete it.

Amendments to conform to Act 134 of 2014

Diagnosis by a physician, dentist or podiatrist

This proposed rulemaking will incorporate statutory amendments to the ALA made by the Act 134 of 2014. Act

134 of 2014 amended the ALA to authorize acupuncturists to treat individuals who do not present any symptoms of a condition for an unlimited period of time. See section 3.1(c) of the ALA (63 P.S. § 1803.1(c)).

The Board proposes to amend its regulations to more clearly state how long an acupuncturist may treat a person without having received a diagnosis from a physician, dentist or podiatrist. The Board did receive a comment during consideration of this proposed rulemaking inquiring why the Board limited the authority to diagnose to only physicians, dentists and podiatrists instead of including in the proposed regulations other practitioners who may be authorized to diagnose conditions, such as chiropractors or certified registered nurse practitioners. The Board notes that the General Assembly specified in section 3.1 of the ALA that the required diagnosis be made by “physician, dentist or podiatrist.” Consequently, the Board determined it is without statutory authority to extend the diagnosis authority to other licensing classifications and did not alter the proposed rulemaking in response to the comment.

Professional liability insurance

Act 134 of 2014 also imposed a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made. See section 3.2 of the ALA (63 P.S. § 1803.2). The Board has already implemented the requirement in practice given the statutory requirements expressed within Act 134 of 2014. Nevertheless, the Board has included with this proposed rulemaking package provisions addressing the professional liability insurance requirement to be consistent with Act 134 of 2014, and so that the regulated community and public may more easily understand the need for acupuncturists to obtain and maintain professional liability insurance.

Restructuring of duties and responsibilities based on license held

The Board proposes to substantially restructure § 18.15 to more clearly reflect the varying duties and responsibilities of: (1) an individual who is licensed as an acupuncturist but who is not licensed as a physician; (2) an individual who is licensed as a practitioner of Oriental medicine but who is not licensed as a physician; and (3) an individual who is licensed as an acupuncturist and who is also actively licensed as a medical doctor by the Board.

By way of example, the existing regulation in § 18.15(a)(4) requires acupuncturists to refer a patient to a physician, dentist or podiatrist for diagnosis if acupuncture services are contraindicated. In general, the concept of requiring an acupuncturist to refer a patient to another type of practitioner when the services which may be provided by means of acupuncture are contraindicated is appropriate. However, in considering the literal wording of the regulation, the Board determined that an across-the-board requirement that all individuals licensed as an acupuncturist make a referral to another practitioner was illogical because there are a number of acupuncturists who are also actively licensed as medical doctors. It appears clear that the ALA contemplated that physicians may also wish to incorporate acupuncture within their practice. See section 3(a) of the ALA, which requires physicians who wish to practice acupuncture to obtain separate licensure as an acupuncturist. There appears to be no compelling reason to require a patient to be referred to a second physician under circumstances where a physician-acupuncturist initially evaluates a patient for

acupuncture services, but determines that acupuncture will not be effective or is contraindicated. The Board could perceive no compelling reason which would prevent the physician-acupuncturist from simply “changing hats” and then providing an evaluation and medical care according to Western modalities. Requiring a physician who happens to also be licensed as an acupuncturist to refer the patient to a second physician simply because the physician-acupuncturist had initially considered, but ultimately excluded, potential acupuncture treatment did not appear in the best interest of patients and, in fact, could potentially harm the public health by delaying treatment and increasing costs.

Similarly, a prohibition on the use of titles or abbreviations implying that an acupuncturist is a doctor or physician could not reasonably be enforced against an acupuncturist already actively licensed as a physician. Consequently, the Board proposes separating the duties and responsibilities of individuals authorized to perform acupuncture by the types of licenses actually held by the individual. This separation will permit the Board to specifically tailor the duties and responsibilities appropriately and will provide the regulated community and the public with clear guidance regarding what a practitioner may and may not do.

English proficiency examination

The Board is proposing to expand the options for an applicant for licensure to demonstrate English language proficiency. The Board’s current regulations offer only two options to demonstrate English language proficiency—either the acupuncture licensure examination was taken in English, or the applicant has obtained a passing score (currently set at 550) on the Test of English as a Foreign Language (TOEFL®) examination. After reviewing English language proficiency requirements for acupuncturists in other states, the Board determined that it should be acceptable for an applicant to demonstrate one of the following: (1) that the applicant’s licensure examination was taken in English, (2) that the applicant’s educational program was conducted in English or (3) that the applicant has achieved an acceptable score on the TOEFL®, the Occupational English Test (OET) for health-related professionals, or a substantially equivalent English language proficiency examination approved by the Board.

With regard to the acceptable score on the TOEFL®, the Board notes that since the last time the Board updated its regulations on this topic, the TOEFL® has been revised numerous times. The current version of the TOEFL® is the TOEFL iBT® (internet-based test). This version of the exam has a total possible scaled score of 120. The Board determined that a score of 83 or higher on this version of the TOEFL® exam (which represents the average score attained by individuals taking the exam for licensure purposes, as well as the average score attained by all test takers) is acceptable to demonstrate English language proficiency for individuals seeking licensure. The Board is providing for the possibility of “a similar score acceptable to the Board” because there is a second version of the TOEFL® which is rarely given and only in those limited circumstances that an individual has no possible access to the Internet—the TOEFL® paper-delivered test. This version only includes three of the four sections of the TOEFL iBT® exam (excluding the speaking portion) and is not given a total scaled score—only individual scores on each portion completed. The Board does not expect any applicants to have completed this version of the exam but wants to provide for that possibility in the regulations. In addition, in the event the

scoring system for the TOEFL® is altered again in the future, the Board would not need to immediately revise its regulations but could accept a comparable score.

Description of Proposed Amendments

The Board is proposing comprehensive amendments to Chapter 18, Subchapter B, including renaming the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered).

The definition of “acupuncture examination” in § 18.11 (relating to definitions) is proposed to be amended to reflect that the Board itself does not offer an examination in acupuncture, and to delete references to herbal therapy and the practice of Oriental medicine to more accurately reflect that the examination required to be licensed as an acupuncturist in the Commonwealth is the NCCAOM Acupuncture Program examination.

This proposed rulemaking would add three new definitions to § 18.11 for “East Asian herbology,” “East Asian herbology examination” and the acronym “TOEFL®.” Additionally, the definition of herbal therapy would be amended by replacing the word “Chinese” with the phrase “East Asian,” and the definition of “Chinese herbology” would be deleted. The definition for the acronym “NCCAOM” would be amended to include potential successor organizations. In addition, minor typographical corrections are being made.

The Board proposes to amend § 18.13(a) to update the list of acceptable methods for demonstrating English language proficiency for those applicants who did not take the acupuncture examination in English. In addition, the Board proposes to delete subsection (c) pertaining to requirements for licensure as an acupuncturist by a medical doctor prior to 1988 because it is no longer relevant.

The Board proposes to amend § 18.13a (relating to requirements for licensure as a practitioner of Oriental medicine) by changing the required program of study from “Chinese herbology” to a program of study consistent with the new definition of “East Asian herbology,” and by changing the required examination from “the NCCAOM examination component on Chinese herbology” to “an East Asian herbology examination.” The Board is retaining the references to the NCCAOM certification in Chinese herbology to be consistent with the name of the credential issued by NCCAOM.

Section 18.15 is proposed to be renamed and substantially reorganized into distinct subsections—one for persons licensed solely as an acupuncturist, a second subsection for persons licensed as a practitioner of Oriental medicine and a third subsection for acupuncturists who are also licensed as medical doctors by the Board.

Subsection (a) is proposed to be amended so that it more clearly sets forth the practice responsibilities to the patient and the public for a person licensed as an acupuncturist who is not also licensed as a physician. In summary, the changes to the subsection incorporate the amendments in Act 134 of 2014 by clarifying that an acupuncturist may treat individuals with no symptoms of a condition for an unlimited time; may treat an individual presenting with symptoms of a condition for up to 60 days before referral for diagnosis by a physician, dentist or podiatrist; and may treat an individual presenting with symptoms of a condition after 60 days if the patient has been examined and diagnosed a physician, dentist or podiatrist. Additionally, due to the restructuring of the subsection, a new paragraph has been added specifically

addressing the name tag or badge which must be worn and the information which may or may not be present on the name tag or badge.

Subsection (b) is proposed to be deleted and a new subsection (b.1) added that would set forth the practice responsibilities to the patient and the public for a person licensed as a practitioner of Oriental medicine who is not licensed as a physician. In summary, a practitioner of Oriental medicine must comply with the general requirements of acupuncturists found in subsection (a)(1)–(9). Additionally, a practitioner of Oriental medicine is required to perform an herbal therapy evaluation and, if appropriate, develop a treatment plan incorporating East Asian herbology modalities. In the event the practitioner of Oriental medicine determines that the patient's symptoms have worsened, that further treatment by East Asian herbology modalities is contraindicated, or that East Asian herbology practices may interfere with known drugs already prescribed to the patient, the practitioner of Oriental medicine must refer the patient to a physician, dentist or podiatrist as appropriate. Finally, paragraph (3) would address the name tag or badge which must be worn and the information which may or may not be present on the name tag or badge.

Subsection (c) is proposed to be added to specifically set forth the practice responsibilities to the patient and the public for a person licensed as an acupuncturist who is also actively licensed as a medical doctor by the Board. Many practice duties and responsibilities are already imposed on medical doctors under Chapter 16 (relating to State Board of Medicine—general provisions), consequently, restating those requirements is not necessary. A medical doctor licensed as an acupuncturist will be required to include in the patient's medical records evidence of having performed an acupuncture evaluation and development of an acupuncture treatment plan for patients who were considered for, or who receive acupuncture services. Additionally, the subsection clarifies the duty of a medical doctor providing acupuncture services to comply with sterilization standards.

Section 18.15a(a) (relating to scope of practice of acupuncturists and practitioners of Oriental medicine) is proposed to be amended to clarify that an acupuncturist may utilize all supplemental techniques except herbal therapy unless licensed by the board as a practitioner of Oriental medicine. The proposed regulation clarifies that non-prescription topical remedies may be utilized by acupuncturists even though they may contain as active ingredients parts of plants, minerals and other organic materials. Subsection (b) is proposed to be amended to clarify that a practitioner of Oriental medicine may utilize therapeutic herbs that contain active ingredients that are similar or equivalent to active ingredients in drugs classified by the Federal Food and Drug Administration unless otherwise prohibited by law or regulation. Additionally, subsection (c) will be amended to correct a typographical error.

Section 18.18 (relating to disciplinary and corrective measures) is proposed to be amended to clarify that an individual licensed as an acupuncturist or as a practitioner of Oriental medicine is subject to all of the disciplinary sanctions authorized under section 42 of the Medical Practice Act of 1985 (MPA) (63 P.S. § 422.42) and 63 Pa.C.S. § 3108(b) (relating to civil penalties) for failing to comply with § 18.15, practicing or holding out as being able to practice acupuncture without a current and valid license as an acupuncturist, practicing or holding out as being able to practice East Asian herbology without a

current and valid license as a practitioner of Oriental medicine, practicing acupuncture or East Asian herbology without current professional liability insurance, and engaging in conduct prohibited under section 41 of the MPA (63 P.S. § 422.41).

Finally, the Board proposes to add § 18.20 (relating to professional liability insurance coverage for acupuncturists). In conformity with Act 134 of 2014, subsection (a) will require an acupuncturist to maintain professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made. Subsection (b) provides that proof of insurance coverage may be provided by: (1) a certificate of insurance or copy of the declaration page from a personally purchased professional liability insurance policy setting forth the effective date, expiration date and dollar amounts of coverage; (2) a certificate of insurance or copy of the declaration page from an employer purchased professional liability insurance policy describing the licensee by name as a covered party under the policy, the effective date, expiration date and dollar amounts of coverage; or (3) evidence of a plan of self-insurance approved by the Insurance Commissioner under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans). Subsection (c) would provide that a licensee who does not have current professional liability insurance coverage as required may not practice as an acupuncturist or practitioner of Oriental medicine in this Commonwealth. Subsection (d) would require that the professional liability insurance coverage for a licensed practitioner of Oriental medicine shall cover claims related to acupuncture as well as claims related to the provision of herbal therapy.

Fiscal Impact and Paperwork Requirements

The only costs and additional paperwork associated with this proposed rulemaking are related to the requirement for acupuncturists and practitioner of Oriental medicine to obtain professional liability insurance and to provide proof to the Board, which was imposed by the General Assembly in 2014, and was implemented by the Board at that time. The Board estimates these costs to be approximately \$425 annually per licensee.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 26, 2022, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Dana Wucinski, Counsel, State Board of Medicine, P.O. Box 69523, Harrisburg, PA 17106-9523, or by e-mail to RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Include in the subject line "16A-4956 (Acupuncturists and Practitioners of Oriental Medicine)" when submitting comments.

MARK B. WOODLAND, MD,
Chairperson

Fiscal Note: 16A-4956. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter B. [**REGISTRATION**] **LICENSURE** AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.11. **Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Acupuncture examination—An examination [**offered or**] recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture [**and herbal therapy**] to qualify for the privilege of practicing as an acupuncturist [**or as a practitioner of Oriental medicine**] **in the Commonwealth**. The Board recognizes the NCCAOM component examinations in acupuncture and sterilization procedures as the examination for [**registration**] **licensure** as an acupuncturist [**and the NCCAOM examination component in Chinese herbology as the examination for registration as a practitioner of Oriental medicine**].

Acupuncture medical program—An academic or clinical program of study in acupuncture which has been given category I continuing medical education credit by an institution accredited or recognized by the Accreditation Council on Continuing Medical Education to conduct category I continuing medical education courses.

Acupuncturist—An individual licensed to practice [**acupuncture**] **acupuncture** by the Board.

[**Chinese herbology**—The study of the use of herbs in the Oriental medicine tradition.]

East Asian herbology—The use of **herbal preparations and products that contain as active ingredients parts of plants, minerals and other organic materials, or a combination thereof, administered according to East Asian medicine tradition to normalize function.**

East Asian herbology examination—An examination recognized by the Board to test whether an acupuncturist has accumulated sufficient academic knowledge with respect to the practice of herbal therapy to qualify for licensure as a practitioner of Oriental medicine in the Commonwealth. The Board recognizes the NCCAOM examination component in Chinese herbology and the NCCAOM examination for Oriental medicine as the examinations for licensure as a practitioner of Oriental medicine.

Herbal therapy—The application of [**Chinese**] **East Asian** herbology to the treatment of acupuncture patients.

NCCAOM—The National Certification Commission for Acupuncture and Oriental Medicine **or its successor organization.**

Practitioner of Oriental medicine—An acupuncturist who is licensed by the Board to use herbal therapy.

Supplemental techniques—The use of traditional and modern Oriental therapeutics, heat therapy, moxibustion, electrical and [**low level**] **low-level** laser stimulation, acupressure and other forms of massage, and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

TOEFL®—The Test of English as a Foreign Language offered by Educational Testing Service (ETS).

§ 18.13. **Requirements for licensure as an acupuncturist.**

(a) The Board will license as an acupuncturist a person who satisfies the following requirements:

(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

(2) Has obtained a passing grade on an acupuncture examination or has been certified by NCCAOM. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant has also [**secured a score of 550 on the test of English as a Foreign Language (TOEFL)**] **demonstrated English language proficiency by one of the following methods:**

(i) **Demonstrating that the applicant's acupuncture educational program was conducted in English.**

(ii) **Demonstrating that the applicant has achieved a scaled score of at least 83, or similar score acceptable to the Board, on the TOEFL®.**

(iii) **Demonstrating that the applicant has achieved a score of at least 350 on each of the four sub-tests of the Occupational English Test for any of the health-related professions.**

(iv) **Demonstrating that the applicant has achieved a passing score on a substantially equivalent English language proficiency examination, as approved by the Board.**

(b) The Board will license as an acupuncturist a medical doctor who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs.

(2) Submits an application to register as an acupuncturist accompanied by the required fee as provided under § 16.13 (relating to licensure, certification, examination and registration fees).

(c) **[Prior to January 1, 1988, the Board will register as an acupuncturist a medical doctor who satisfies the requirements of subsection (a), (b) or the following:**

(1) **Has at least 3 years of acupuncture practice—a minimum of 500 patient visits per year—documented to the satisfaction of the Board.**

(2) **Submits an application to register as an acupuncturist accompanied by the required fee. For the fee amount, see § 16.13.] (Reserved).**

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine.

(a) An acupuncturist who also intends to use herbal therapy is required to be licensed by the Board as a practitioner of Oriental medicine.

(b) The Board will license an acupuncturist as a practitioner of Oriental medicine if the licensee, in addition to meeting the requirements under § 18.13 (relating to requirements for licensure as an acupuncturist) has fulfilled one of the following:

(1) Successfully completed an acupuncture education program that includes the study of **[Chinese] East Asian** herbology and has passed **[the NCCAOM examination component on Chinese herbology] an East Asian herbology examination.**

(2) Has obtained NCCAOM certification in Chinese herbology or Oriental medicine, which includes passing the NCCAOM examination component in Chinese herbology.

(c) An acupuncturist registered with the Board prior to April 14, 2007, may obtain a license as a practitioner of Oriental medicine if the acupuncturist can demonstrate one of the following:

(1) Successful completion of **[a Chinese] an East Asian** herbology or Oriental medicine education program recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine and successful completion of an examination in **[Chinese] East Asian** herbology or Oriental medicine recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine.

(2) NCCAOM certification in Chinese herbology or Oriental medicine.

(3) The achievement of cumulative qualifications that the Board determines to be equivalent to the standard requirements for registration as a practitioner of Oriental medicine.

(d) This **[subsection] section** does not apply to a medical doctor licensed as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is licensed as a medical doctor.

(a) **Responsibilities to patient and public—acupuncturist who is not a physician.** **[In relation to the acupuncture patient, the acupuncturist and the**

practitioner of Oriental medicine] An acupuncturist who is not a physician:

(1) Shall perform an acupuncture **[or Oriental medicine]** evaluation and develop an acupuncture **[or Oriental medicine]** treatment plan.

(1.1) May treat an individual presenting with no symptoms of a condition for an unlimited period of time.

(2) May treat **[the patient's symptoms without the condition being diagnosed by a physician, dentist or podiatrist] an individual presenting with symptoms of a condition** for 60 calendar days from the date of the first treatment **without the condition being diagnosed by a physician, dentist or podiatrist.**

(3) May treat **[the patient's] an individual presenting with symptoms of a condition** beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall promptly refer the patient **presenting with symptoms of a condition** to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist **[or practitioner of Oriental medicine]** determines that further acupuncture **[or Oriental medicine]** treatment is contraindicated for the patient or determines that the patient's symptoms have worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist in regard to the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) May not diagnose a physical or mental ailment or condition or prescribe or dispense a drug. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

(8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with § 16.95 (relating to medical records).

(10) Shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(b) **[Identification of acupuncturist or practitioner of Oriental medicine. An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist" or "practitioner of Oriental medicine," as appropriate. The use of the word doctor on this tag or badge is prohibited.] (Reserved).**

(b.1) Additional responsibilities to patient and public—practitioner of Oriental medicine who is not a physician. In addition to the responsibilities in subsection (a)(1)—(9), a licensed practitioner of Oriental medicine who provides, or contemplates providing, herbal therapy:

(1) Shall perform an herbal therapy evaluation and, if appropriate, develop an appropriate treatment plan utilizing, in whole or in part, East Asian herbology modalities.

(2) Shall promptly refer a patient presenting with symptoms of a condition to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the practitioner of Oriental medicine determines that further treatment of the patient by East Asian herbology modalities is contraindicated for the patient, may interfere with known drugs prescribed to the patient or determines that the patient's symptoms have worsened.

(3) Shall wear a tag or badge with lettering clearly visible to the patient bearing the licensee's name, as well as the title "Practitioner of Oriental Medicine." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(c) Responsibilities to patient and public—acupuncturist who is currently licensed as a medical doctor. An acupuncturist who also holds a current and active license as a medical doctor in this Commonwealth:

(1) Shall include in the patient's medical records evidence of having performed an acupuncture evaluation and development of an acupuncture treatment plan for patients considered for, or who receive, acupuncture services.

(2) Shall comply strictly with sterilization standards relative to aseptic practices when providing acupuncture services to patients.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

(a) An acupuncturist may practice acupuncture and use supplemental techniques, **including the use of non-prescription topical remedies which contain as active ingredients parts of plants, minerals and other organic materials**, but may not use herbal therapy as defined in § 18.11 (relating to definitions) unless licensed by the Board as a practitioner of Oriental medicine.

(b) A practitioner of Oriental medicine may practice acupuncture and use supplemental techniques including herbal therapy. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Federal Food and Drug Administration, **unless otherwise prohibited by law or regulation.**

(c) This [subsection] section does not limit the scope of practice of a medical doctor who is [registered] licensed as an acupuncturist.

§ 18.18. Disciplinary and corrective measures.

(a) The Board may [refuse, revoke, suspend, limit or attach conditions to the license of an acupuncturist or practitioner of Oriental medicine for engaging] impose any of the disciplinary sanctions authorized under section 42 of the Act (63 P.S. § 422.42) or 63 Pa.C.S. § 3108(b) (relating to civil penalties) for any of the following:

(1) Failing to comply with the duties and requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of medical doctor licensed as an acupuncturist).

(2) Practicing or holding out as being able to practice acupuncture without a current and valid license to practice acupuncture.

(3) Practicing or holding out as being able to practice East Asian herbology without a current and valid license as a practitioner of Oriental medicine.

(4) Practicing acupuncture or East Asian herbology without current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act (63 P.S. § 1803.2).

(5) Engaging in conduct prohibited under section 41 of the Act (63 P.S. § 422.41) for Board-regulated practitioners.

(b) The Board will order the emergency suspension of the license of an acupuncturist or practitioner of Oriental medicine who presents an immediate and clear danger to the public health and safety, as required under section 40 of the Act (63 P.S. § 422.40).

(c) The license of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended, as required under section 40 of the Act .

(Editor's Note: The following section is proposed to be added and is printed in regular type to enhance readability.)

§ 18.20. Professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine.

(a) A licensed acupuncturist shall maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made, as required under section 3.2 of the Acupuncture Licensure Act (63 P.S. § 1803.2).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from a personally purchased professional liability insurance policy setting forth the effective date, expiration date and dollar amount of coverage.

(2) A certificate of insurance or copy of the declaration page from an employer purchased professional liability insurance policy describing the licensee by name as a covered party under the policy, the effective date, expiration date and dollar amount of coverage.

(3) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(c) A licensee who does not have current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act may not practice as an acupuncturist or as a practitioner of Oriental medicine in this Commonwealth.

(d) The professional liability insurance coverage for a licensed practitioner of Oriental medicine shall cover claims related to acupuncture as well as claims related to the provision of herbal therapy.

[Pa.B. Doc. No. 22-232. Filed for public inspection February 11, 2022, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 59]

Rulemaking Regarding Hazardous Liquid Public Utility Safety Standards at 52 Pa. Code Chapter 59; Notice of Proposed Rulemaking

Public Meeting held
July 15, 2021

Commissioners Present: Gladys Brown Dutrieuille, Chairperson; David W. Sweet, Vice Chairperson; John F. Coleman, Jr.; Ralph V. Yanora

*Rulemaking Regarding Hazardous Liquid Public Utility
Safety Standards at 52 Pa. Code Chapter 59;
L-2019-3010267*

Notice of Proposed Rulemaking Order

By the Commission:

The Pennsylvania Public Utility Commission (Commission) adopts this Notice of Proposed Rulemaking (NOPR) Order and seeks comment on proposed amendments to our existing regulations and the addition of new regulations in Chapter 59 of Title 52, 52 Pa. Code, Chapter 59, to enable more comprehensive regulation of public utilities that transport petroleum products and other hazardous liquids in intrastate commerce.

Background

Under Section 501(b) of the Public Utility Code, the Commission has the general administrative power and authority to supervise and regulate all public utilities doing business within the Commonwealth and to make such regulations as may be necessary or proper in the exercise of its powers or for the performance of its duties. 66 Pa.C.S. § 501(b). Section 102, in pertinent part, defines a public utility as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

* * * * *

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S. § 102, definition of public utility (1)(v). Accordingly, the Commission has jurisdiction over and authority to regulate, inter alia, the transportation of petroleum products transported via pipeline or conduit for the public for compensation. 66 Pa.C.S. §§ 102, 501(b); see also 66 Pa.C.S. § 506 (inspection of facilities and records). The term “petroleum products” includes refined petroleum products such as fuel oil and diesel as well as natural gas liquids such as ethane, benzene and propane. See e.g., Petition of Granger Energy of Honey Brook, LLC, Docket

No. P-00032043 (Order entered September 8, 2004) (“petroleum products” as used in Section 102 of the Code, has a broad meaning as a “catch all phrase” to include what would otherwise be an exhaustive list of products); see also 49 CFR § 195.2 (defining a petroleum product as “flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.”).

Consistent with that authority, effective September 22, 2012, the Commission amended its regulations at Chapter 59 to address the safety of petroleum products pipelines by incorporating the Federal pipeline safety regulations at 49 CFR Part 195. See 42 Pa.B. 5967; Rulemaking Re Liquid Fuels Pipeline Regulations, Docket No. L-2008-2034622 (Order entered March 1, 2012).

The Commission participates as a certified state in the pipeline safety program administered by the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) under 49 U.S.C. § 60105(a).¹ The Commission incorporated 49 CFR Part 195 in its regulations, in part, to comport with the requirements of PHMSA’s pipeline safety program. Participating certified states must adopt the minimum Federal pipeline safety standards and are permitted to adopt additional more stringent regulations so long as they are compatible with the minimum Federal pipeline safety standards. As stated in Appendix A to Part 195:

For the remainder of pipeline facilities, denominated “intrastate pipeline facilities,” the [Hazardous Liquids Pipeline Safety Act (HLPESA)] provides that the same Federal regulation and enforcement will apply unless a State certifies that it will assume those responsibilities. A certified State must adopt the same minimal standards but may adopt additional more stringent standards so long as they are compatible.

49 CFR Part 195, Appendix A to Part 195—Delineation Between Federal and State Jurisdiction—Statement of Agency Policy and Interpretation. Based on the foregoing, as a certified state in PHMSA’s pipeline safety program, the Commission may adopt additional standards beyond the minimum Federal pipeline safety standards.

Part 195 prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids. 49 CFR 195.0. Under Part 195, hazardous liquids include “petroleum, petroleum products, anhydrous ammonia, or ethanol.” 49 CFR 195.2. In sequence, Part 195 addresses the following: General; Annual, Accident, and Safety-Related Condition Reporting; Design Requirements; Construction; Pressure Testing; Operation and Maintenance; Qualification of Pipeline Personnel; and Corrosion Control. See 49 CFR Subparts A—H.

At present, the safety standards for hazardous liquid public utilities are limited to the Commission’s adoption of the minimum standards in Part 195 in Chapter 59 of the Commission’s regulations. Section 59.33 provides in relevant part, as follows:

(b) *Safety code.* The minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth shall be those included under

¹ Certification is an annual process, in which PHMSA makes available appropriate forms to each State agency, which is included with the annual grant program. Each year, the Commission completes and submits these forms to PHMSA. To view the Commission’s 2021 certification status, refer to Appendix F—State Program Certification/Agreement Status, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation (Last accessed May 12, 2021) available at https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-03/2021%20Appendix%20F%20-%20State%20Program%20Certification%20Agreement%20Status_0.pdf.

the pipeline safety laws as found in 49 U.S.C.A. §§ 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191—193, 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for all natural gas and hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

(c) *Definition.* For the purposes of this section, "hazardous liquid public utility" means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products by pipeline or conduit, for the public for compensation.

52 Pa. Code § 59.33(b)-(c).

In order to more comprehensively regulate the design, construction, and operations and maintenance of public utilities transporting petroleum products and other hazardous liquids under the jurisdiction of the Commission, on June 13, 2019, the Commission entered an Advanced Notice of Proposed Rulemaking (ANOPR) inviting comments on the amendment and enhancement of Chapter 59. In particular, the ANOPR focused on expanding Section 59.33 to provide a more complete regulatory framework for hazardous liquid public utilities. The ANOPR was published in the *Pennsylvania Bulletin* on June 29, 2019, and comments from interested stakeholders were due within 60 days. Upon review and consideration of the comments received, the Commission hereby proceeds with this NOPR to begin the process of modifying the regulations at Chapter 59 as proposed in the attached Annex.

Discussion

Comments

In response to the ANOPR, the Commission received a total of 93 comments, ranging from one-page resolutions to 339-page submissions. A variety of interested stakeholders filed comments including advocates, industry affiliates, local governments, members of the Pennsylvania General Assembly, and private citizens. Below, we summarize the comments received from each of the above groups in the subject areas identified in the ANOPR and in other subject areas. To the extent that the Commission does not identify a particular comment herein, it has nonetheless been duly considered.

Advocates

The following advocates filed comments with the Commission in response to the ANOPR: Bucks County Concerned Citizens Against the Pipelines, the Clean Air Council, the Conservation Voters of PA, Del Chesco United for Pipeline Safety, the Pipeline Safety Coalition, and the Responsible Drilling Alliance (collectively, advocates). The advocates generally seek strengthened regulations for new and existing pipelines. The advocates also express concern about aging pipeline infrastructure and pipeline integrity. They point to pipeline incidents, including spills, leaks, sinkholes, and private well contamination, as the basis for strengthening regulations. The advocates note that any new regulations should consider

the needs of the public, the environment, and pipeline infrastructure. Accordingly, the advocates seek new regulations that provide for meaningful public engagement and take into account industry best practices.

For example, some advocates state that the Commission should develop a regulatory process to address pipeline siting, including a permitting process to determine where pipelines facilities are located. The advocates also recommend that hazardous liquid public utilities be required to periodically review and reassess the depth of pipeline cover. In addition, the advocates suggest that all new valves be remote operated, and that emergency flow restricting devices (EFRDs) be installed in high consequence areas (HCAs) in consultation with public officials. The advocates also suggest additional regulations for HCAs. Moreover, the advocates recommend that the Commission regulate construction techniques, such as horizontal directional drilling (HDD), and require the identification of water supplies as well as the use of geophysical testing.

Further, the advocates recommend enhanced pressure testing and maximum operating pressure requirements. The advocates suggest the use of in-line inspection tools. Additionally, the advocates propose requirements for the placement of additional line markers and the provision of additional information regarding line markers. The advocates also comment on pipeline rights-of-way. One advocate proposes, inter alia, the creation of natural habitats on rights-of-way. Another advocate suggests that the Commission require hazardous liquid public utilities to inspect rights-of-way on foot once per quarter. Some advocates also call for the use of enhanced leak detection technology. Moreover, the advocates suggest improved pipeline personnel training and additional qualifications for individuals acting as land agents. Similarly, at least one advocate recommends that background checks be required for contractors and laborers.

Regarding hazardous liquid public utility interactions with the community, the advocates recommend that the Commission require communications with public officials, emergency responders, and landowners. The advocates also recommend the development of emergency plans, including evacuation plans in areas of high population density. One advocate recommends tabletop and functional exercises for emergency responders, including the creation of After Action Reports by an impartial entity. One advocate also requests that the Commission revise its formal complaint process to be more accessible to all residents regardless of economic or financial resources.

In addition to the advocates identified above, the Commission's Bureau of Investigation and Enforcement (BIE), filed Comments with the Commission in response to the ANOPR. BIE's recommendations are based on the experience of and research conducted by staff in BIE's Safety Division. According to BIE, the objective of its comments is to ensure the safety of utilities, utility personnel, and the general public.

BIE's design and construction comments focus on external loads, miter joints, pipeline location, cover over buried pipelines, and valves. For example, regarding location, BIE recommends that no pipelines be installed under any building or structure intended for human occupancy. BIE also submitted comments regarding HDD techniques, including water well and supply protection. Additionally, BIE commented on pressure testing, including hydrostatic testing. BIE's operation and maintenance comments focus on requiring additional liaison activities, line markers, inspections of pipeline rights-of-way, and leak detection

measures. In this regard, BIE suggests, *inter alia*, enhanced requirements for patrolling pipeline facilities as well as the use of odorant for leak detection purposes. BIE also recommends that hazardous liquid public utilities file notifications with the Commission prior to any major construction or maintenance activities. Further, BIE recommends more stringent qualifications for pipeline personnel, including requalification intervals. Finally, regarding corrosion control measures, BIE focuses on cathodic protection requirements.

Industry Affiliates

The following industry affiliates filed comments with the Commission in response to the ANOPR: the American Society of Civil Engineers, Associated Petroleum Industries of Pennsylvania, the Association of Oil Pipelines, JARI, the Marcellus Shale Coalition, Operating Engineers Local 542, the PA Chamber of Business and Industry, the Pennsylvania Energy Infrastructure Alliance, Schmid & Co., Inc., Steamfitters Local 420, Shepstone Management Company, Inc., SolSpec Aerial Analytics, Sunoco Pipeline, L.P., and the Washington Chamber of Commerce (collectively, industry affiliates). The industry affiliates largely contend that Pennsylvania's energy success relies on increased pipeline construction, that pipelines are the safest and most reliable mode of energy transportation, and that new pipeline regulations will result in increased inefficiencies. The industry affiliates recommend, generally, that the Commission defer to existing Federal regulations and not add to the American Petroleum Institute (API) Recommended Practices already incorporated into PHMSA's regulations. The industry affiliates posit that more comprehensive regulations may reverse hard-earned energy growth that the Commonwealth has experienced.

The industry affiliates also recommend that the Commission exercise caution in integrating new regulation on existing facilities, noting that retroactive applicability is barred in certain instances. They remind the Commission that, while states may promulgate additional regulations for pipelines, new regulations must be compatible with Federal regulations. The industry affiliates also direct the Commission's attention to pending Federal rulemaking proceedings and note that PHMSA's rules are intentionally rigorous to mitigate risks and protect communities as well as the environment. Further, the industry affiliates advise in their comments that many hazardous liquid public utilities face heightened scrutiny and already exceed required standards to ensure public safety.

Regarding construction as well as operation and management standards, the industry affiliates advise that pipelines are built from materials that exceed the Federal density standards, are often buried deeper than required, are pressure tested well above operational level, are treated with cathodic protection, and incorporate required EFRDs. Thus, the industry affiliates argue that any prospective changes to such standards should occur at the Federal level. Some industry affiliates also claim that the Commission has not explained the risk to be mitigated or the basis for needing regulatory changes. In this regard, the industry affiliates generally contend that enhancements to pipeline cover, valve, line marker, and pipeline personnel qualifications are not necessary. The industry affiliates also ask that Federal accident reporting requirements be given great deference.

The industry affiliates also state that the Commission should work with the Pennsylvania Department of Environmental Protection (DEP) and partner with hazardous liquid public utilities to enforce existing regulations, rather than adding additional rules. The industry affil-

ates also suggest that the Commission defer to the expertise of the DEP for HDD standards and standards for other construction techniques. Regarding HDD, the industry affiliates also note that HDD is cost effective and minimizes surface disturbance and environmental impacts. Some commenters also address claims regarding inadvertent returns, noting that there are no long term hazards for ground water.

With regard to utility interaction with public officials and the community, the industry affiliates recommend that the Commission's regulations align with existing API Recommended Practices. Some industry affiliates also stated that they have already developed resources aimed at addressing public awareness. In addition, one industry affiliate suggests that the Commission conduct a survey of past public awareness meetings and emergency drill attendance, noting that public officials rarely attend.

Finally, the industry affiliates stressed the need to safeguard sensitive information and pointed to the Public Utility Confidential Security Information Disclosure Protection Act, 35 P.S. §§ 2141.1—2141.6, and the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, as being provisions that the Commission's NOPR may not override.

Local Government

The following local government bodies and associations also filed comments with the Commission in response to the ANOPR: the Borough of Lemoyne, Capital Region Council of Governments, the Chester County Association of Township Officials, the County Commissioners Association of Pennsylvania, the County of Chester, the Cumberland County Board of Commissioners, Downingtown Area School District, the East Goshen Township Board of Supervisors, the Hampden Township Board of Supervisors, the Lower Allen Township Board of Supervisors, the Monroe Township Board of Supervisors, the Pennsylvania State Association of Township Supervisors, the Silver Spring Township Board of Supervisors, the Township of Middletown in Delaware County, the Uwchlan Township Board of Supervisors, and the West Whiteland Township Board of Supervisors (collectively, government entities). Generally, the government entities seek additional regulations with a focus on public awareness.

A number of government entities filed identical resolutions calling for public awareness meetings. The resolutions noted that the operation of pipelines may pose a danger to the public without adequate safety measures and regulatory oversight, and that efforts should be made to enhance the public's trust. The resolutions stated that one hazardous liquid public utility has refused invitations to county-hosted meetings addressing citizens' concerns on three occasions. The resolutions also noted that, since the Commission has the authority to require hazardous liquid public utilities to conduct regional and periodic public outreach meetings, public awareness meetings should be held at least once a year on a local or regional basis.

Aside from these resolutions, the government entities submitted comments focusing on many of the same areas as the advocates. For example, the government entities suggest, the creation of an approval process for pipeline siting, requirements for the replacement of depth of cover, the installation of remote valves, requirements for additional line markers, mandatory notice to Commission before construction activity, and the registration of land agents.

The government entities also recommend enhancements to pipeline conversion requirements, such as Commission

approval prior to pipeline conversion, including public notice and hearings. In addition, the government entities suggest that the Commission impose strict regulatory practices to protect stored pipelines prior to construction and to limit the exposure of pipelines to natural elements. In this regard, the government entities suggest reporting requirements for construction delays, including the length of pipeline exposure and corrosion data. The government entities also recommend that construction permits consider the impact of HDD on residents. Further, the government entities state that risk information regarding pipelines should be provided to emergency responders and that hazardous liquid public utilities create emergency plans for schools at their own expense. The government entities also suggest that accident reports be filed with the Commission.

Members of the Pennsylvania General Assembly

The following members of the Pennsylvania General Assembly filed comments with the Commission: Representative Carolyn Comitta, Representative Danielle Otten, Senator Andrew Dinniman, Senator Judith Schwank, and Senator Tom Killion (collectively, the legislators). The legislators encourage the Commission to promulgate regulations for all areas of the ANOPR. The legislators note that local and county public officials as well as constituents have concerns regarding pipeline conversion, older pipelines, geophysical testing, the protection of public and private water wells, and communication with public officials and the community. Accordingly, the legislators ask the Commission to consider, *inter alia*, construction methods, leak detection, public notification systems, and the role of land agents. For example, the legislators ask the commission to establish increased requirements for cover over buried pipelines and underground clearances. The legislators also request enhanced requirements for valve spacing and the use of vehicle barriers as well as additional placement of line markers. Moreover, the legislators note the importance of requiring hazardous liquid public utilities to develop emergency response plans in coordination with public officials and emergency responders, as well as public education plans.

Individual Commenters

Finally, approximately 51 individuals filed comments with the Commission. These individuals largely focus their comments on the same areas as the advocates, government entities, and legislators. Many of the individuals included personal anecdotes in their comments regarding experiences they had while living near pipelines in the Commonwealth. For example, some individuals described their experience with the Revolution Pipeline incident in 2018. The individual commenters generally call for additional regulation of hazardous liquid public utilities, and primarily take issue with HDD practices, land agents and the use of eminent domain, and a lack of communication and public outreach by hazardous liquid public utilities.

Regarding HDD, the individual commenters echo concerns regarding geological impacts as well as the contamination of private wells, inadvertent returns, sink holes, and the exposure of adjacent pipelines. Some individuals also note concerns regarding noise. For instance, one individual states that he lives in an area where constant noise and vibrations continued for months due to drilling. The individual commenters maintain that HDD should only be used when absolutely necessary and that hazardous liquid public utilities must be required to adhere to noise ordinances.

As it pertains to land agents, some individuals note that their neighbors have been coerced by land agents, and state that land agents should not bully homeowners into agreeing to allow a pipeline to pass through their property. The individual commenters suggest that land agents be monitored and held responsible for deceiving landowners during negotiations and engaging in fraudulent or unlawful practices. In addition, the individual commenters claim that hazardous liquid public utilities are misusing the eminent domain process and that eminent domain should only be used for the greater good when landowners are adequately compensated.

Finally, regarding public outreach, the individual commenters request that hazardous liquid public utilities be required to provide emergency responders, the affected public, and public officials with contact information prior to the operation of a pipeline. One individual notes that referring to line markers for emergency information is not practical as line markers may be in forests or on property that they do not own. Another individual states that she lives in an “evacuation zone” and has never received information regarding emergency procedures. She notes that the hazardous liquid public utility claims it is not required to provide such information due to security concerns. The individual commenters request meetings with public officials regarding construction and frequent public awareness meetings with the public, emergency responders, and schools.

Gas Service and Facilities Provisions

First, the Commission proposes to create a new heading within Chapter 59 to encompass the “Hazardous Liquid Public Utility Safety Standards.” In conjunction with the creation of this new heading, we propose revising the existing “Service and Facilities” heading for Sections 59.11—59.38 to “Gas Service and Facilities.” This revision is intended to indicate that Sections 59.11—59.38 of the Commission’s existing regulations are applicable to only natural gas distribution public utilities.

§ 59.33. Safety.

Section 59.33, which addresses safety, will continue to fall under the heading for “Gas Service and Facilities.” Currently, Section 59.33 addresses both natural gas distribution utilities and hazardous liquid public utilities. We propose to remove all references to “hazardous liquid public utilities” in Section 59.33. Thus, we will amend Section 59.33(b) and mark Section 59.33(c) as “reserved.” The provisions of Section 59.33 pertaining to hazardous liquid public utilities will now be addressed in “Hazardous Liquid Public Utility Safety Standards.” We do not propose any changes to the remaining portions of Section 59.33.

Hazardous Liquid Public Utility Safety Standards

As noted above, the Commission will create a new heading within Chapter 59 to encompass the “Hazardous Liquid Public Utility Safety Standards.” This heading indicates that Sections 59.131—59.143 of the Commission’s proposed regulations are applicable only to hazardous liquid public utilities.

§ 59.131. Purpose.

Section 59.131 of the Commission’s proposed regulations formalizes the notion that, as a certified State participating in PHMSA’s hazardous liquid pipeline safety program, the Commonwealth must adopt and enforce, as a minimum, all Federal pipeline safety standards at 49 CFR Parts 195 and 199 for hazardous liquid public utilities. As a certified State, however, the Commonwealth

may also promulgate additional regulations for hazardous liquid public utility pipeline safety that are more stringent than the PHMSA federal regulations so long as the state regulations are compatible with the HLPESA and the minimum safety standards in PHMSA's regulations. Thus, Section 59.131 states that the purpose of the proposed regulations encompassed in the Commission's "Hazardous Liquid Public Utility Safety Standards" is to set forth the safety standards for all hazardous liquid public utilities in the Commonwealth, implicitly recognizing that these standards apply only to intrastate hazardous liquid pipelines operated by public utilities.

§ 59.132. *Definitions.*

Section 59.132 of the Commission's proposed regulations sets forth general definitions pertinent to the regulations of hazardous liquid pipeline safety. We define "hazardous liquid public utility" consistent with the definition formally found in Section 59.33 of the Commission's regulations.² Thus, a "hazardous liquid public utility" is a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

Additionally, we explain the difference between the terms "pipe or line pipe," "pipeline," and "pipeline facility" as it pertains to the transportation of hazardous liquids. For example, the term "pipeline" refers to all parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. The definitions are compatible with those in 49 CFR 195.2.

Moreover, in Section 59.132, we delineate key stakeholders implicated in the proposed regulations by defining the terms "affected public," "emergency responders," and "public officials." "Affected public" refers to residents and places of congregation (businesses, schools, etc.) along the pipeline and the associated right-of-way within 1,000 feet, or within the lower flammability limit (LFL), of a pipeline or pipeline facility, whichever is greater. "Emergency responders" refers to local fire, police, and emergency medical services, along with county hazmat teams, Department of Emergency Services, and 911 centers, and other emergency local, city, county, or state officials and representatives. "Public officials" refers to elected local, city, county, and state officials and their staff having land use and street or road jurisdiction along the pipeline route.

Further, in Section 59.132, we incorporate by reference the definitions of a number of technical terms in 49 CFR Part 195, including "computation pipeline monitoring," "external corrosion direct assessment," "EFRD," and "HCA." We incorporate these terms to ensure consistency and compatibility among the proposed regulations and the minimum safety standards in PHMSA's regulations. The definitions of other technical terms are also consistent with PHMSA guidance and documents.

The Commission welcomes comments regarding the definitions proposed in Section 59.132. The Commission also seeks comment regarding the need for additional definitions to enhance the readability of the proposed

² As noted earlier, the definition of "hazardous liquid public utility" was removed from Section 59.33(c) because that portion of the regulations will now address only "Gas Service and Facilities."

regulations and better clarify any technical terms or references to technical documents therein.

§ 59.133. *General.*

Section 59.133 of the Commission's proposed regulations establishes general provisions applicable to hazardous liquid public utilities. Subsection (a) stems in part from the existing regulation at Section 59.33(b) under "Gas Service and Facilities." Subsection (a) here mirrors Section 59.33(b) in that it adopts the Federal pipeline safety standards, as a minimum, as required by the Commonwealth's participation in PHMSA's hazardous liquid pipeline safety program. The Federal pipeline standards are the minimum safety standards, unless otherwise specified in the proposed regulations at Sections 59.131—59.143.³ Future Federal amendments will automatically take effect for purposes of the Commission's regulations after 60 days, unless otherwise directed. In this regard, we created new language to indicate that future amendments to the Federal regulations that are more stringent than the Commission's requirements under proposed Sections 59.131—59.143 will control.

Section 59.133 also addresses enforcement and records. Subsections (b) and (c) provide for the inspection of hazardous liquid public utilities for compliance purposes, require hazardous liquid public utilities to make their facilities, books, and records accessible to the Pipeline Safety Section, and require the provision of reports, data, and other information to the Pipeline Safety Section upon request. These subsections will aid the Commission in ensuring compliance with the proposed regulations.

Finally, Section 59.133 addresses pipeline conversion. Subsection (d) directs hazardous liquid public utilities to notify the Commission's Pipeline Safety Section before a pipeline is converted from service not previously covered by the "Hazardous Liquid Pipeline Safety Standards." This subsection also requires hazardous liquid public utilities engaged in conversion, flow reversal, or commodity change subject to 49 CFR 195.5 to comply with Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, PHMSA Advisory Bulletin ADB-201-04, Docket No. 2014-0040; 79 FR 56121-56122. These requirements will provide additional oversight for pipeline conversions.

With regard to Section 59.133, the Commission seeks comment on the impact of future amendments to the Federal regulations that are more stringent than proposed Sections 59.131—59.143, and the language addressing such amendments in subsection (a). The Commission also seeks comment regarding the pipeline conversion notification and compliance provisions set forth in subsection (c).

§ 59.134. *Accident reporting.*

Section 59.134 of the Commission's proposed regulations set forth requirements for hazardous liquid public utilities reporting accidents. Section 59.134 works in conjunction with 49 CFR 195.50 and 49 CFR 195.52. Subsections (b) and (c) require that, after any accident causing the conditions described in 49 CFR 195.50, a hazardous liquid public utility must provide a failure analysis report and a root cause analysis report to the Commission's Pipeline Safety Section. The failure analysis report and root cause analysis report must be provided within 120 days of the accident or within 10 days of report completion, whichever comes first. The failure

³ The Commission may promulgate additional regulations that are more stringent than the PHMSA Federal regulations so long as the state regulations are compatible with the HLPESA and the minimum safety standards in PHMSA's regulations.

analysis and root cause analysis must be performed by an independent third-party laboratory and an independent third-party consultant, respectively. A hazardous liquid public utility must provide status reports to the Pipeline Safety Section every 14 days if the respective deadlines are not met. Subsection (d) sets forth the process for obtaining approval of a third-party laboratory and consultant.

Subsection (e) requires that, after the release of a hazardous liquid causing the conditions described in 49 CFR 195.52, a hazardous liquid public utility must provide immediate notice to the Pipeline Safety Section and emergency responders. Notice must be provided at the earliest practicable moment and no later than one hour after confirmed discovery. The accident reports required by Section 59.134 will provide the Commission's Pipeline Safety Section, and emergency responders in the case of subsection (e), with additional information regarding pipeline accidents.

The Commission welcomes comment on the accident reporting requirements proposed in Section 59.134, including the timeframe for reporting accidents and the content of a hazardous liquid public utility's accident reports.

§ 59.135. Construction, operation and maintenance, and other reports.

Section 59.135 of the Commission's proposed regulations sets forth requirements for hazardous liquid public utilities reporting construction, operation and maintenance, and other activities. Subsection (b) requires hazardous liquid public utilities to notify the Pipeline Safety Section of (1) proposed major construction, major reconstruction, or major maintenance involving an expenditure in excess of \$300,000 or 10% of the cost of the pipe in service, whichever is less, and (2) maintenance, verification digs, and assessments involving an expenditure in excess of \$50,000, and the unearthing of suspected leaks, dents, pipe ovality features, cracks, gouges or corrosion anomalies, or other suspected metal losses, 45 days prior to commencement and 10 days prior to commencement, respectively. Subsection (b) also requires hazardous liquid public utilities to immediately notify the Commission's Pipeline Safety section of excavation damages, washout, or unplanned replacement of any pipeline section or cut out.

Subsections (c), (d), and (e) detail requirements for the content of these notices. For example, a hazardous liquid public utility must provide the following information in its notice to the Commission's Pipeline Safety Section: name, pipeline route, length, of the pipeline, the counties and municipalities traversed, estimated start and completion dates; pipeline identification information; any change in flow direction, and commodity or product. A hazardous liquid public utility may be required to provide additional information regarding, *inter alia*, the following areas upon request from the Commission's Pipeline Safety Section: project information; pipe specifications; operating pressure and stress; welding; railroad, road, and water crossings; valves; minimum cover and clearance; piping; pressure and leakage tests; and pipeline rights-of-way.

Moreover, Section 59.135 addresses notice for variations from a hazardous liquid public utility's established construction methodologies, requiring notice to the Pipeline Safety Section 30 days prior to commencement, and notice prior to the introduction of a hazardous liquid, requiring notice to the Pipeline Safety Section and public officials 30 days prior to introduction. These notification

requirements and the other notification requirements in Section 59.135 detailed above will provide the Commission's Pipeline Safety Section, and public officials in the case of hazardous liquid introduction, with further information on construction, operation and maintenance, and other activities.

The Commission seeks comment on the construction, operation and maintenance, and other reporting requirements proposed in Section 59.135, including the types of activities for which notice is required, the timeframe for providing notice, and the content of the notice provided to the Commission's Pipeline Safety Section and the information provided to the Pipeline Safety Section upon request.

§ 59.136. Design requirements.

Section 59.136 of the Commission's proposed regulations sets forth design requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. In particular, subsection (b) works in conjunction with 49 CFR 195.410(a) and requires that, in addition to providing external loads for earthquakes, vibration, and thermal expansion and contraction, a hazardous liquid public utility must account for anticipated external loads for landslides, sinkholes, subsidence, and other geotechnical hazards. This requirement is intended to require hazardous liquid public utilities to account external loads for all common geotechnical hazards that may impact pipelines in the Commonwealth.

The Commission seeks comment regarding whether other specific geotechnical hazards should be included in the proposed external load provision at Section 59.136.

§ 59.137. Construction.

Section 59.137 of the Commission's proposed regulations prescribes construction standards for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. Subsection (b) addresses pipeline location and provides that, in addition to the requirements of 49 CFR 195.210, no pipeline may be located under private dwellings, industrial buildings, and places of public assembly. Subsections (c) and (d) address welding, providing that miter joints are not permitted and that all welds must be nondestructively tested using the methods set forth in 49 CFR 195.234. Additionally, subsections (e) and (f) establish requirements for cover over buried pipelines and clearances between pipe and underground structures. Subsection (e) works in conjunction with 49 CFR 195.248, and provides for set-interval testing for depth of cover, which will aid in ensuring the proper depth of cover is maintained. Subsection (f) requires a minimum of 12 inches between the outside of a pipe and any underground structure, including structures owned by the hazardous liquid public utility and foreign structures, without exception.

Further, Section 59.137 addresses valves placement and vehicle barriers. For pipelines transporting HVLs, subsection (g) requires the installation of EFRDs on a main line every five miles and the installation of additional valves based on a pipeline's proximity to schools, churches, hospitals, daycares, nursing facilities, commercial facilities, sport complexes, and public parks with the outer most areas of the LFL. Subsection (g) also requires a hazardous liquid public utility to develop and maintain a risk-based plan addressing valve spacing. Finally, subsection (h) requires a hazardous liquid public utility to install barriers designed to protect against large vehicles

at above-ground valve stations adjacent to roadways. These requirements will provide for enhanced shut off capabilities, including remote shut off, and additional protection for valve stations, including protection from large vehicles.

The Commission seeks comment regarding the construction requirements proposed in Section 59.137. We note that, like the design requirements in Section 59.136, the construction requirements detailed above are applicable to hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines. The Commission seeks comment regarding the applicability of these requirements to other hazardous liquid public utilities.

§ 59.138. *Horizontal directional drilling and trenchless technology, or direct buried methodologies.*

Section 59.138 of the Commission's proposed regulations sets forth requirements for hazardous liquid public utilities using HDD, trenchless technology (TT), or direct buried methodologies in construction or operation and maintenance. Subsection (b) requires a hazardous liquid public utility to provide both a 30-day and a 24-hour notice to the Commission's Pipeline Safety Section and the affected public before beginning HDD, TT, or direct buried construction or operation and maintenance activities. This requirement will ensure that the Pipeline Safety Section and the affected public receive adequate notice of HDD or TT.

Further, subsection (c) requires hazardous liquid public utilities using HDD or TT for construction or operation and maintenance activities to consider geological and environmental impacts and to comply with DEP Trenchless Technology Technical Guidance. For example, this subsection requires a hazardous liquid public utility to, inter alia, conduct a geotechnical evaluation of subsurface conditions along a pipeline facility and conduct geological sampling at locations where suspected anomalous conditions are identified through geophysics, including post-construction geophysics. Subsection (c) also requires the hazardous liquid public utility to provide information, including geotechnical reports, regarding HDD or TT to the Commission's Pipeline Safety Section upon request. These provisions are intended to enhance the safety of hazardous liquid public utilities' service and facilities.

Additionally, Section 59.138 addresses the protection of water wells and supplies. Subsections (d) requires, inter alia, that a hazardous liquid public utility comply with all relevant DEP regulations, including but not limited to 25 Pa. Code § 78a.68a and 25 Pa. Code Chapters 102, 105, and 109, and all DEP Trenchless Technology Technical Guidance when using HDD or TT for construction or operation and maintenance activities near private or public water supply sources, such as wells or reservoirs. In the event that HDD, TT, or direct buried methodologies cause adverse impacts for a private or public water supply source, subsection (e) sets forth certain compliance, notification, and corrective action requirements for hazardous liquid public utilities. Like subsection (c), subsections (d) and (e) are intended to enhance safety.

The Commission welcomes comment regarding the provisions addressing a hazardous liquid public utility's HDD, TT, and direct buried methodologies proposed in Section 59.138, including the requirements for geological testing and the protection of water wells and supplies. The Commission also seeks comment regarding the notice requirements in Section 59.138.

§ 59.139. *Pressure testing.*

Section 59.139 of the Commission's proposed regulations sets forth the pressure testing requirements for hazardous liquid public utilities. Section 59.139 works in conjunction with 49 CFR 195.304. Subsection (b) addresses hydrostatic testing and reassessment, and sets forth requirements for pipelines installed before 1970, pipelines installed after 1970, and pipelines that have been placed back in service after a leak has been repaired. Subsection (c) addresses hydrostatic testing in HCAs. Further, subsection (d) requires that a hazardous liquid public utility notify the Commission's Pipeline Safety Section and public officials prior to beginning testing. Section 59.139 is intended to enhance testing requirements, while ensuring that methods and frequency are suitable for the type of pipeline involved.

The Commission seeks comment regarding the hydrostatic testing requirements proposed in Section 59.139, including the frequency at which testing should be conducted and whether additional testing intervals should be established.

§ 59.140. *Operation and maintenance.*

Section 59.140 of the Commission's proposed regulations sets forth operation and maintenance requirements for hazardous liquid public utilities. In particular, this Section provides standards for emergency procedures manuals, liaison activities with emergency responders, liaison activities with school administrators when a school building or facility is within 1,000 feet or within the LFL of a pipeline or pipeline facility, public awareness communications, line markers, inspections of pipeline rights-of-way, leak detection and odorization, and EFRDs in HCAs.

Subsection (b) requires hazardous liquid public utilities to consult with emergency responders in developing and updating an emergency procedures manual. The manual must address (1) steps to inform emergency responders of the practices and procedures to be followed for providing them with information regarding the pipeline, (2) the development of a continuing education program for emergency responders and the affected public, and (3) tabletop drills to be conducted twice a year and a response drill to be conducted annually to simulate a pipeline emergency.

Subsections (c) and (d) address liaison activities. As it pertains to emergency responders, subsection (c) requires a hazardous liquid public utility to conduct the liaison activities set forth in 49 CFR 195.402(c)(12) via in-person meetings held twice a year. Subsection (c) prescribes the way in which a hazardous liquid public utility must attempt to arrange these meetings, including via mail, or telephone call, facsimile, or e-mail. A hazardous liquid public utility is permitted to utilize alternative conduct liaison activities by alternative means if attempts to arrange an in-person meeting are unsuccessful. Similarly, subsection (d) requires hazardous liquid public utilities to engage in certain liaison activities with school administrators when a school building or facility is located within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, whichever is greater. For example, a hazardous liquid public utility must appear regularly at school administrator meetings for such schools upon request. The liaison requirements in subsections (c) and (d) are similar to those required by other states, including Texas, and are intended to improve relations between hazardous liquid public utilities and the affected public, emergency responders, and public officials.

Moreover, subsection (e) provides for further hazardous liquid public utility interaction with emergency responders, public officials, and the affected public. Subsection (e) works in conjunction with and goes beyond the practices set forth in API Recommended Practice 1162. For example, subsection (e) requires a hazardous liquid public utility to provide baseline messages to the affected public and emergency responders at least twice a year and to public officials annually. This subsection also requires a hazardous liquid public utility to hold at least one open house or group meeting with the affected public annually, meet with emergency responders once per quarter, and meet with public officials annually. These requirements are intended to increase communications and information sharing.

The remaining portions of Section 59.140 address the more technical aspects of operations and maintenance. For example, subsection (f) builds upon 49 CFR 195.410 by setting forth requirements for the placement of additional line markers. Subsection (g) likewise builds upon 49 CFR 195.412 by requiring group patrol of pipeline facilities in non-HCAs at least twice a year and ground patrol in HCAs at least four times a year. Section 59.132 defines “ground patrol” as a method of non-aerial patrol that includes walking, driving, using a low-flying drone with sufficient optical resolution operated by a qualified drone operator with an altitude limit of 25 feet, or other like non-aerial means of traversing a pipeline right-of-way. Further, Section 59.140 addresses leak detection. Subsection (h) builds upon 49 CFR 195.444 by requiring, inter alia, leak detection systems that are Real Time Transient Models under API Recommended Practice 1130. A hazardous liquid public utility is required to odorize an HVL pipeline if it does not meet the requirements of subsection (h) within five years. Finally, subsection (i) builds upon 49 CFR 195.452 by requiring a hazardous liquid public utility to install EFRDs in consultation with public officials in all HCAs, based on limiting the LFL to 660 feet on either side of a pipeline. These provisions are intended to enhance the current operation and maintenance requirements for hazardous liquid public utilities.

The Commission seeks comments on the emergency procedures manual, liaison activity, public awareness, line marker, inspection of pipeline rights-of-way, leak detection and odorization, and HCA EFRD requirements proposed in Section 59.140.

§ 59.141. Qualification of pipeline personnel.

Section 59.141 of the Commission’s proposed regulations prescribes requirements for hazardous liquid public utilities qualifying individuals to perform covered tasks on a pipeline facility. Section 59.141 of the proposed regulations defines “covered task.” The term “covered task” carries the same meaning as in 49 CFR 195.501, but also includes a construction task identified by a hazardous liquid public utility.

Section 59.141 works in conjunction with 49 CFR 195.505, which requires the development of a written qualification program meeting certain criteria. Subsection (b) requires that a hazardous liquid public utility’s qualification program also include (1) the adoption of the provisions for a written qualification program for construction tasks, (2) a process that trains all individuals qualified to identify and react to facility specific abnormal operating conditions, and (3) requalification intervals for each covered task. Additionally, subsection (c) makes the record keeping requirements for covered tasks in 49 CFR 195.507 applicable to construction tasks. These additional requirements will provide increased training opportuni-

ties for individuals performing covered tasks and enhanced oversight of pipeline personnel.

The Commission welcomes comment on the additional qualification program requirements proposed in Section 59.141, including the definition of “covered task.”

§ 59.142. Land agents.

Section 59.142 of the Commission’s proposed regulations sets forth requirements for hazardous liquid public utilities employing or contracting land agents. In particular, Section 59.142 requires land agents to hold a valid Pennsylvania professional license as an attorney, real estate salesperson, real estate broker, professional engineer, professional land surveyor, or professional geologist during the performance of land agent work or services. This requirement will prevent hazardous liquid public utilities from employing or contracting individuals who are not properly qualified to act as a land agent and provide additional accountability in the performance of land agent work or services.

The Commission seeks comment regarding the need for additional requirements addressing hazardous liquid public utilities employing or contracting land agents.

§ 59.143. Corrosion control.

Section 59.143 of the Commission’s proposed regulations prescribes the requirements for hazardous liquid public utilities protecting pipelines against corrosion. Subsection (b) requires written procedures for the design, installation, operation, and maintenance of cathodic protection systems, including, inter alia, the average and the worst-case corrosion rate experienced for each pipeline segment. Subsections (c) and (d) address the level of cathodic protection that a cathodic protection system must provide and the frequency at which a hazardous liquid public utility is required to test a cathodically-protected pipeline, respectively. Subsection (e) requires a hazardous liquid public utility to conduct close interval surveys, including paved surfaces, every three years and to adhere to the standards set forth in NACE International Standard Practice 0207-2007, Performing Close-Interval Potential Surveys and DC Surface Potential Gradient Surveys on Buried or Submerged Metallic Pipelines (March 10, 2007).⁴

The Commission seeks comment regarding the cathodic protection provisions proposed in Section 59.143, including the level of cathodic protection and the frequency of testing to determine the adequacy of cathodic protection. The Commission also seeks comment regarding the requirements for close interval surveys and interference currents at Section 59.143. Finally, the Commission welcomes comment regarding the need for any additional corrosion control measures.

Conclusion

For the reasons set forth above, the Commission commences the rulemaking process. The Commission seeks comments from all interested parties regarding the proposed regulations in the Annex to this Notice of Proposed Rulemaking as well as regarding the need for any additional provisions addressing hazardous liquid pipeline safety standards within the Commission’s jurisdiction.

Accordingly, under 66 Pa.C.S. §§ 501 and 1501 (relating to general powers and character of service and facilities); sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to

⁴ NACE International was initially the National Association of Corrosion Engineers. NACE International and the Society for Protective Coatings are now the Association for Materials Protection and Performance.

as the Commonwealth Documents Law and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5 (relating to notice of proposed rulemaking required; adoption of regulations; and approval as to legality), section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P.S. § 232), and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231, 7.232 and 7.234 (relating to policy; definitions; and responsibilities), the Commission is considering adopting the proposed regulations set forth in Annex A, attached hereto; *Therefore,*

It Is Ordered:

1. That a proposed rulemaking be opened to consider the regulations set forth in the Annex.

2. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and the Annex to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review for fiscal impact.

3. That the Law Bureau shall submit this Notice of Proposed Rulemaking Order and the Annex for review and comment to the Independent Regulatory Review Commission and Legislative Standing Committees.

4. That the Law Bureau shall deposit this Notice of Proposed Rulemaking Order and the Annex with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

5. That interested parties may submit written comments, via the Commission’s electronic filing system, referencing Docket No. L-2019-3010267 within sixty (60) days from the date the Notice of Proposed Rulemaking Order is published in the *Pennsylvania Bulletin*, and reply comments thirty (30) days thereafter. Comments shall be filed consistent with the Commission’s July 27, 2020 Secretarial Letter. Modification to Filing and Service Requirements Emergency Order, Docket No. M-2020-3019262 (Secretarial Letter issued July 27, 2020). Pursuant to this Secretarial Letter, all filings are to be made by e-filing or by electronic mail. This information can be found on the Commission’s website at www.puc.pa.gov/filing-resources/efiling/.

6. That the Secretary shall serve this Notice of Proposed Rulemaking Order and Annex upon all jurisdictional hazardous liquids public utilities; the Office of Consumer Advocate; the Office of Small Business Advocate; and the Commission’s Bureau of Investigation and Enforcement.

7. That a copy of this Order and Annex shall be posted on the Commission’s website, www.pa.puc.gov, at the web page for Pipeline Safety.

8. The contact persons for this matter are Assistant Counsel Colin W. Scott, (717) 783-5949, colin.scott@pa.gov; Hayley E. Dunn, (717) 214-9594, haydunn@pa.gov; Adam D. Young, (717) 787-4700, adyoung@pa.gov; Erin N. Tate, (717) 214-1956, etate@pa.gov; and Melanie J. El Atieh, (717) 783-2811, melatieh@pa.gov in the Commission’s Law Bureau.

ROSEMARY CHIAVETTA,
Secretary

ORDER ADOPTED: July 15, 2021

ORDER ENTERED: July 15, 2021

Fiscal Note: 57-335. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 59. GAS SERVICE
GAS SERVICE AND FACILITIES

§ 59.33. Safety.

* * * * *

(b) *Safety code.* The minimum safety standards for all natural gas [and hazardous liquid] public utilities in this Commonwealth shall be those issued under the pipeline safety laws found in 49 U.S.C.A. §§ 60101—60503 and as implemented at 49 CFR Parts 191—193, [195] and 199, including all subsequent amendments thereto. Future Federal amendments to 49 CFR Parts 191—193, [195] and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission’s regulations with regard to the minimum safety standards for all natural gas [and hazardous liquid] public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

(c) [*Definition.* For the purposes of this section, “hazardous liquid public utility” means a person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.] Reserved.

* * * * *

(*Editor’s Note:* The following sections are proposed to be added and are printed in regular type to enhance readability.)

HAZARDOUS LIQUID PUBLIC UTILITY SAFETY STANDARDS

§ 59.131. Purpose.

For hazardous liquid public utilities in the Commonwealth, under the HLPESA, as implemented at 49 CFR Parts 195 and 199 (relating to transportation of hazardous liquids by pipeline; and to drug and alcohol testing), the Commonwealth, as a certified State participating in PHMSA’s Federal hazardous liquid pipeline safety program, must adopt and enforce, as a minimum, all Federal pipeline safety standards at 49 CFR Parts 195 and 199. As a certified State, the Commonwealth may also promulgate additional regulations for hazardous liquid pipeline safety that are more stringent than the PHMSA Federal regulations so long as the state regulations are compatible with the HLPESA and the minimum safety standards in PHMSA’s regulations.

The purpose of §§ 59.131—59.143 (relating to hazardous liquid public utility safety standards) is to set forth safety standards for all hazardous liquid public utilities in the Commonwealth. These sections establish design and construction standards for hazardous liquids public utilities constructing new pipelines and converting, relocating, replacing, or otherwise changing existing pipelines, as well as accident reporting, other reporting, HDD and TT, pressure testing, operations and maintenance,

qualification of pipeline personnel, land agent, and corrosion control standards for all hazardous liquids public utilities.

§ 59.132. Definitions.

The following words and terms, when used in §§ 59.131—59.143 (relating to hazardous liquid public utility safety standards), have the following meanings, unless the context clearly indicates otherwise:

API RP 1130—API Recommended Practice 1130—The term as defined in 49 CFR 195.3 (relating to document incorporated by reference partly or wholly).

API RP 1162—API Recommended Practice 1162—The term as defined in 49 CFR 195.3.

Affected public—Residents and places of congregation (businesses, schools, and the like) along the pipeline and the associated right-of-way within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, whichever is greater.

As-called anomaly—In-line inspection predicted anomaly.

As-found anomaly—Field measured anomaly.

CPM—Computation pipeline monitoring—The term as defined in 49 CFR 195.2 (relating to definitions).

Covered task—The term as defined in 49 CFR 195.501 (relating to scope) but modifying that term to also include a construction task identified by a hazardous liquid public utility.

EFRDs—Emergency flow restricting device—The term as defined in 49 CFR 195.450 (relating to definitions).

Emergency responders—Local fire, local police and local emergency medical services; county hazmat teams, Department of Emergency Services and 911 centers; and other emergency local, city, county or state officials or representatives.

Geotechnical hazard—A geological and environmental feature which may be caused by natural or human-induced conditions, involve long-term or short-term geological processes, and lead to widespread damage or risk.

Ground patrol—A method of non-aerial patrol that includes walking, driving, using a low-flying drone with sufficient optical resolution operated by a qualified drone operator with an altitude limit of 25 feet or other like non-aerial means of traversing a pipeline right-of-way.

HCA—High consequence area—The term as defined in 49 CFR 195.450.

HDD—Horizontal directional drilling—A trenchless construction methodology for installing pipelines, conduits or cable utilizing drilling fluid, often pressurized, and consisting of a directionally controlled (e.g., steerable) pilot hole drilled along a predetermined path extending from grade at one end of drilled segment to grade at the opposite end; enlarging the pilot hole to a size which will accommodate a pipeline; pulling a pipeline/conduit into the enlarged hole; and a method accomplished using horizontal drilling rig.

HLPSA—Hazardous Liquid Pipeline Safety Act of 1979—Federal safety legislation governing the transportation of hazardous liquids by pipeline at 49 U.S.C.A. §§ 60101—60143, and as implemented at 49 CFR Part 195 (relating to transportation of hazardous liquids by pipeline).

HVL—Highly volatile liquid—The term as defined in 49 CFR 195.2.

Hazardous liquid—Crude oil, gasoline, petroleum or petroleum products.

Hazardous liquid public utility—A person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for transporting or conveying crude oil, gasoline, petroleum or petroleum products, by pipeline or conduit, for the public for compensation.

LFL—Lower flammability limit—Usually expressed in volume percent, the lower end of the concentration range over which flammable mixture of gas or vapor in air can be ignited at a given temperature and pressure; and the flammability range is delineated by the upper and lower flammability limits.

Land agent—A person who negotiates easements on behalf of a hazardous liquid public utility for use in connection with a pipeline.

PHMSA—Pipeline and Hazardous Materials Safety Administration—The administration within the U.S. Department of Transportation responsible for the safe transportation of energy and other hazardous materials.

Pipe or line pipe—A tube that may be used or is used for the transportation of a hazardous liquid.

Pipeline—Parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and break-out tanks.

Pipeline facility—New and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of hazardous liquids.

Pipeline Safety Section—The section of the Safety Division within the Commission's Bureau of Investigation and Enforcement responsible for pipeline safety.

Public officials—Elected local, city, county or state officials, and their staff, having land use and street or road jurisdiction along the pipeline route.

TT—Trenchless technology—A type of subsurface construction work that requires few trenches or no trenches which includes any trenchless construction methodology, including without limitation, horizontal direction drilling, guided auger bore, cradle bore, conventional auger bore, jack bore/hammer bore, guided bores, and proprietary trenchless technology.

§ 59.133. General.

(a) *Minimum safety standards.* The minimum safety standards for all hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. §§ 60101—60503 and as implemented at 49 CFR Parts 195 and 199 (relating to transportation of hazardous liquids by pipeline; and to drug and alcohol testing), including all subsequent amendments thereto, unless otherwise specified herein. Future Federal amendments to 49 CFR Parts 195 and 199, as amended or modified by the Federal government, shall have the effect of amending or modifying the Commission's regulations with regard to the minimum safety standards for hazardous liquid public utilities. The amendment or modification shall take effect 60 days after the effective date of the Federal amendment or modification, unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect. If future Federal

amendments to 49 CFR Parts 195 and 199 have the effect of making a Federal PHMSA safety requirement more stringent than a like requirement under §§ 59.131—59.143 (relating to hazardous liquid public utility safety standards), the more stringent Federal safety standard shall control.

(b) *Enforcement.* A hazardous liquid public utility shall be subject to inspections by the Pipeline Safety Section as may be necessary to assure compliance with the minimum safety standards in subsection (a) and the safety standards in §§ 59.134—59.143. The facilities, books and records of a hazardous liquid public utility must be made accessible to the Pipeline Safety Section for the inspections upon request. A hazardous liquid public utility shall provide to the Pipeline Safety Section the reports, supplemental data and information as the Pipeline Safety Section may request in the administration and enforcement of §§ 59.134—59.143.

(c) *Records.* A hazardous liquid public utility shall keep adequate records to demonstrate compliance with the minimum safety standards in subsection (a) and the safety standards in §§ 59.134—59.143. The records must be made accessible to the Pipeline Safety Section upon request.

(d) *Pipeline conversion.*

(1) A hazardous liquid public utility converting a pipeline from service not previously covered by this part must notify the Pipeline Safety Section no later than 60 days before the conversion occurs. This paragraph shall apply to pipelines already designed for bi-directional flow.

(2) In addition to the requirements set forth in 49 CFR 195.5 (relating to conversion to service subject to this part), a hazardous liquid public utility engaged in conversion, flow reversal or commodity change of pipelines subject to 49 CFR 195.5, shall adhere to Pipeline Safety: Guidance for Pipeline Flow Reversals, Product Changes and Conversion to Service, PHMSA Advisory Bulletin ADB-2014-04, Docket No. 2014-0040; 79 FR 56121-56122, and any updates thereto.

§ 59.134. Accident reporting.

(a) *Scope.* This section establishes requirements for a hazardous liquid public utility reporting an accident.

(b) *Failure analysis reports.* Following an accident that causes any of the results identified in 49 CFR 195.50 (relating to reporting accidents), a hazardous liquid public utility shall provide to the Pipeline Safety Section an unredacted failure analysis report based on laboratory testing within 120 days of an accident or within 10 days of the report completion, whichever comes first. The failure analysis must be conducted by a Pipeline Safety Section-approved independent third-party laboratory. If the report cannot be completed in the allotted time, the hazardous liquid public utility shall provide a status update to the Pipeline Safety Section every 14 days.

(c) *Root cause analysis reports.* Following an accident that causes any of the results identified in 49 CFR 195.50, a hazardous liquid public utility shall provide to the Pipeline Safety Section a root cause analysis report within 120 days of the accident or within 10 days of report completion, whichever comes first. The root cause analysis must be conducted by a Pipeline Safety Section-approved independent third-party consultant. If the report cannot be completed in the allotted time, the hazardous liquid utility shall provide a status update to the Pipeline Safety Section every 14 days.

(d) *Process for obtaining approval of a third-party laboratory and consultant.* This subsection establishes the process through which a hazardous liquid public utility obtains approval of a third-party laboratory and third-party consultant to conduct the analyses required by subsections (b) and (c), respectively.

(1) Upon receipt of an accident notification from the Pipeline Safety Section, a hazardous liquid public utility shall submit a recommendation to the Pipeline Safety Section regarding the third-party laboratory that will conduct the failure analysis and the third-party consultant that will conduct the root cause analysis with 20 days.

(2) The Pipeline Safety Section will review the hazardous liquid public utility's recommendation and make a determination as to whether the third-party laboratory or third-party consultant:

(i) Are not affiliated with the hazardous liquid public utility.

(ii) Have not conducted work on behalf of the hazardous liquid public utility in the past 5 years that would potentially create a conflict of interest.

(iii) Are capable of performing the failure analysis and root cause analysis, respectively, using required equipment and industry best practices.

(3) The Pipeline Safety Section will approve or disapprove the recommendation within 14 days of a hazardous liquid public utility's submission. If the recommendation is not approved or disapproved within 14 days, the hazardous liquid public utility's recommendation is presumed approved. If disapproved, the Pipeline Safety Section will describe in detail the reasons for disapproval. The Pipeline Safety Section will serve its determination on the hazardous liquid public utility.

(4) The hazardous liquid public utility may respond to the disapproval within 5 days. The Pipeline Safety Section will approve or disapprove the recommendation within 14 days of the hazardous liquid public utility's response to the disapproval. The Pipeline Safety Section will serve its determination on the hazardous liquid public utility.

(5) The hazardous liquid public utility may appeal the determination of the Pipeline Safety Section in accordance with § 5.44 (relating to petitions for reconsideration from actions of the staff). An appeal will not stay the requirements of subsection (d).

(e) *Immediate notice of certain accidents.* In addition to the requirement that a hazardous liquid public utility report accident information to the National Response Center under 49 CFR 195.52 (relating to immediate notice of certain accidents), at the earliest practicable moment following discovery of a release of the hazardous liquid transported resulting in an event described in 49 CFR 195.50, but no later than one hour after confirmed discovery, the hazardous liquid public utility shall report the accident to the Pipeline Safety Section and to emergency responders, providing the information listed in 49 CFR 195.52(b).

§ 59.135. Construction, operation and maintenance, and other reports.

(a) *Scope.* This section establishes requirements for a hazardous liquid public utility reporting construction, operation and maintenance, and other activities.

(b) *Timeframe for notice.* A hazardous liquid public utility shall notify the Pipeline Safety Section of the following:

(1) Proposed major construction, major reconstruction, or major maintenance involving an expenditure in excess of \$300,000 or 10% of the cost of the pipe in service, whichever is less, 45 days prior to commencement.

(2) Maintenance, verification digs, and assessments involving an expenditure in excess of \$50,000, and the unearthing of suspected leaks, dents, pipe ovality features, cracks, gouges or corrosion anomalies, or other suspected metal losses 10 days prior to commencement.

(3) Excavation damages, washouts, or unplanned replacements of any pipeline section or cut out immediately.

(4) A variation to the hazardous liquid public utility's established construction methodologies 30 days prior to commencement.

(5) The introduction of a hazardous liquid 30 days prior to the introduction. This notice shall also be given to public officials.

(c) *Content of notice generally.* Notice provided to the Pipeline Safety Section under subsection (b)(1)–(3) must include the following information:

- (1) The hazardous liquid public utility's name.
- (2) Pipeline route.
- (3) Length of the pipeline.
- (4) The counties and municipalities traversed.
- (5) Estimated start and completion dates.
- (6) Pipeline identification information.
- (7) Any change in flow direction.
- (8) Commodity or product.

(d) *Information to be provided upon request generally.* Upon request, a hazardous liquid public utility shall provide the following information to the Pipeline Safety Section with its notice under subsection (b)(1)–(3):

- (1) *Project information.*
 - (i) A description of the work to be completed.
 - (ii) The location of the project, including counties, municipalities and cross streets.
 - (iii) Contact information.
- (2) *Pipe Specifications.*
 - (i) Nominal outside diameter, D (inches).
 - (ii) Nominal wall thickness, t (inches).
 - (iii) Type and grade of pipe.
 - (iv) Manufacturers of steel and pipe.
 - (v) Longitudinal joint type.
 - (vi) Specified minimum yield strength, SMYS (psi).
 - (vii) Nominal ultimate strength (psi).
 - (viii) Fracture toughness (minimum Charpy Energy in ft. lbs. at 20° F for buried pipe and -20° F for exposed pipe).
 - (ix) Mill test pressure (psi).
 - (x) A statement indicating whether pipe is new or used.
 - (xi) If used pipe is employed, a description of the inspection and reconditioning procedures utilized.
 - (xii) The physical and chemical specifications of pipe verified by outside laboratories.

(3) *Operating Pressure and Stress.*

- (i) Maximum operating pressure, P (psi).
- (ii) Calculated pipe stress (hoop stress) = $PD/2t$ (psi).
- (iii) Ratio of pipe stress to SMYS (percent).

(4) *Welding.*

- (i) Percentage of welds to be radiographed, by location.
- (ii) The method for certifying the radiographic technician.

(5) *Railroad, Road, and Water Crossings.*

(i) The location of each pipe at a lake, river, stream, or creek crossing, and a description of special construction precautions to be followed.

(ii) Encroachments to railroads or roads, by location, and a description of special construction precautions to be followed.

(iii) The location of each pipe at a railroad and road crossing and a statement indicating whether each pipe is cased or uncased and whether heavier wall carrier pipe is used. If a pipe is uncased, the notification must provide the reason.

(6) *Valves.*

(i) Number and spacing of manual sectionalizing valves.

(ii) The type, make and location of any automatic valves.

(7) *Minimum Cover and Clearance.*

(i) The location, nature of the problem, cover, and clearance, if the minimum prescribed cover and clearance cannot be maintained.

(ii) Special precautions to be observed.

(8) *Piping.*

(i) The type of field coating.

(ii) The type of coating test.

(iii) The type of cathodic protection system.

(9) *Pressure and leakage tests.*

(i) Test pressure.

(ii) Test medium.

(iii) Test duration.

(iv) The Length of the test section(s).

(10) *Pipeline rights-of-way.*

(i) A statement indicating whether the necessary right-of-way has been maintained from each party having an interest in the right-of-way.

(ii) A statement indicating whether formal approval and all necessary permits have been obtained from appropriate agencies.

(e) *Information to be provided upon request for assessments and verification digs involving an expenditure in excess of \$50,000 and the unearthing of suspected anomalies.* Upon request, a hazardous liquid public utility shall provide the following information to the Pipeline Safety Section with their notice under subsection (b)(2) only as it pertains to assessments and verification digs involving an expenditure in excess of \$50,000, and the unearthing of the suspected anomalies identified in subsection (b)(2):

(1) Identification information for the pipeline to be assessed.

- (2) The location range of the area to be assessed.
- (3) A description of the assessment.
- (4) Discovery method.
- (5) The type and specification of any as-called and as-found anomaly, and the location of the anomaly with latitude and longitude coordinates.
- (6) The estimated assessment start and completion dates and dig dates.

§ 59.136. Design requirements.

(a) *Scope.* This section establishes requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing or otherwise changing existing pipelines.

(b) *External loads.* In addition to the external loads named in 49 CFR 195.110(a) (relating to external loads), a hazardous liquid public utility designing a pipeline shall account for anticipated external loads from landslides, sinkholes, subsidence and other geotechnical hazards.

§ 59.137. Construction.

(a) *Scope.* This section establishes requirements for hazardous liquid public utilities constructing new pipelines, and converting, relocating, replacing or otherwise changing existing pipelines.

(b) *Pipeline location.* In addition to the requirements of 49 CFR 195.210 (relating to pipeline location), no pipeline may be located under private dwellings, industrial buildings, and places of public assembly, including as follows and like locations: a location of assembly for civic, educational, religious, social or recreational purposes; a location provided by a common carrier for passengers awaiting transportation, or a location where persons are housed for medical or charitable care, or held for public, civic or correctional purposes.

(c) *Welding: Miter joints.* Miter joints of any deflection are not permitted.

(d) *Welds: Nondestructive testing.* A hazardous liquid public utility shall nondestructively test all girth welds. Nondestructive testing must be performed under 49 CFR 195.234(b) (relating to welds: nondestructive testing).

(e) *Cover over buried pipeline.* In addition to the requirements of 49 CFR 195.248 (relating to cover over buried pipeline):

(1) Pipe under active commercial farms that have been cultivated 2 or more of the past 5 years, as identified by the farmland owner or farmland operator, must be buried so that it is below the level of cultivation with at least 40 inches of cover. A hazardous liquid public utility shall verify and maintain the depth of cover for active commercial farms at least every 3 years.

(2) A hazardous liquid public utility shall specify the intervals at which to verify and maintain the depth over cover for all pipe.

(f) *Clearance between pipe and underground structures.* A hazardous liquid public utility shall maintain a minimum of 12 inches of clearance between the outside of the pipe and the extremity of any other underground structure, including structures owned by the hazardous liquid public utility and foreign structures.

(g) *Valves for pipelines transporting HVLs.*

(1) A hazardous liquid public utility shall install EFRDs on a main line with lateral spacing not to exceed five miles.

(2) In addition to the requirements of 49 CFR 195.260 (relating to valves: location), a hazardous liquid public utility shall install valves based on a pipeline's proximity to schools, churches, hospitals, daycares, nursing facilities, commercial facilities, industrial facilities, sport complexes and public parks within the outer most area of the LFL.

(3) A hazardous liquid public utility shall develop and maintain a risk-based plan to address valve spacing.

(h) *Vehicle barriers.* A hazardous liquid public utility shall install vehicle barriers at an above-ground valve station adjacent to a roadway. The vehicle barriers must be designed and constructed to protect the above-ground valve station from the largest types of vehicles.

§ 59.138. Horizontal directional drilling and trenchless technology, or direct buried methodologies.

(a) *Scope.* This section establishes requirements for hazardous liquid public utilities using HDD, TT, or direct buried methodologies for constructing new pipelines, and converting, relocating, replacing, or otherwise changing existing pipelines (the foregoing terms individually or in the aggregate shall constitute the term "construction" for purposes of this section), or in the operation and maintenance O&M of pipelines.

(b) *Notification.* A hazardous liquid public utility shall notify the Pipeline Safety Section and the affected public at least 30 days prior to commencement of drilling, and again 24 hours prior to the commencement of HDD, TT, or direct buried construction or O&M activities.

(c) *Geological and environmental impacts.* For a pipeline with a bore diameter 8 inches or greater, a bore depth greater than 10 feet, or pipeline length greater than 250 feet, a hazardous liquid public utility using HDD or TT methodology shall:

(1) Consider geological and environmental impacts and comply with Department of Environmental Protection Trenchless Technology Technical Guidance and subsequent updates thereto.

(2) Conduct a geotechnical evaluation of subsurface conditions along a pipeline facility at a minimum of every 250 feet using seismic, gravitational and electrical resistivity techniques with results of high resolution.

(3) Conduct geological sampling at the locations where suspected anomalous conditions are identified through geophysics and conduct post-construction geophysics within 30 days of pipeline installation using the techniques in paragraph (2).

(4) Maintain the integrity of affected pipeline facilities and take actions to mitigate risk including:

(i) Beginning mitigation of all adverse impacts as soon as practicable, but no later than 30 days after the identification of the impact if anomalous conditions are found.

(ii) Performing pipeline shut in or pressure reductions.

(iii) Following 49 CFR 195.55 (relating to reporting safety-related conditions) and applicable state laws and regulations.

(5) Provide the Pipeline Safety Section with the following upon request:

(i) HDD design plans reviewed and sealed by a licensed Pennsylvania professional engineer and professional geologist, including:

- (A) The exact location and a general area map.
- (B) A description of the project, including the pipeline identification information, size and grade.
- (C) The total project cost.
- (D) The estimated start and completion date.
- (ii) Proof of required notifications.
- (iii) Geotechnical sampling, at a minimum, every 500 feet.
- (iv) Geotechnical report.

(d) *Protection of water wells and supplies.* For HDD or TT construction or O&M activities near a private water supply source, a public water supply source, or both, such as a well or a reservoir, a hazardous liquid public utility shall:

(1) Comply with relevant regulations of the Department of Environmental Protection, including but not limited to 25 Pa. Code § 78a.68a (relating to horizontal directional drilling for oil and gas pipelines), 25 Pa. Code Chapter 102 (relating to erosion and sediment control), 25 Pa. Code Chapter 105 (relating to dam safety and waterway management), and 25 Pa. Code Chapter 109 (relating to safe drinking water), and comply with Department of Environmental Protection Trenchless Technology Technical Guidance and subsequent updates thereto.

(2) Identify public and private water supply wells within 1/2 mile of HDD or TT construction or O&M activities, surface water intakes within one mile downstream, and water supplies deemed at potential risk due to geological structures.

(3) Identify public and private water supply owners within 1,000 feet of HDD or TT construction or O&M activities.

(4) Notify owners of a water supply identified in paragraph (3) prior to HDD or TT construction or O&M activities and provide them with an opportunity to have their water supplies tested before, during and after HDD or TT construction or O&M activities.

(e) *Adverse impacts to water wells and supplies.* In the event that a hazardous liquid public utility's HDD, TT, or direct buried construction or O&M activities cause adverse impacts to a private water supply source, a public water supply source, or both, the hazardous liquid public utility shall:

(1) Comply with all relevant regulations of the Department of Environmental Protection, including but not limited to 25 Pa. Code § 78a.68a, 25 Pa. Code Chapter 102, 25 Pa. Code Chapter 105, and 25 Pa. Code Chapter 109, and comply with Department of Environmental Protection Trenchless Technology Technical Guidance and subsequent updates thereto.

(2) Notify the Pipeline Safety Section, Department of Environmental Protection and affected water supply owners immediately, but not to exceed 24 hours.

(3) Supply affected private or public water supply owners with alternative clean water sources immediately, but not to exceed 24 hours.

(4) Implement corrective action under Department of Environmental Protection regulations that addresses the

impacts caused by the HDD, TT, or direct buried construction or O&M activities, including restoration or water supply replacement.

(f) *Records.* A hazardous liquid public utility shall maintain records documenting compliance with the requirement of this section. The records must be made accessible to the Pipeline Safety Section upon request. A hazardous liquid public utility shall retain the records for the life of the pipeline.

§ 59.139. Pressure testing.

(a) *Scope.* This section establishes requirements for a hazardous liquid public utility conducting pressure testing.

(b) *Hydrostatic testing and reassessment generally.*

(1) Pipelines installed before 1970, must be hydrostatically tested under 49 CFR 195.304 (relating to test pressure) every 10 years and must be assessed using appropriate in-line inspection tools at least every 2 years. In-line inspection tools must be chosen to detect system-specific threats. A hazardous liquid public utility shall use alternating in-line inspection technologies meeting industry best practices, such as deformation, magnetic-flux leakage, ultrasonic testing and electromagnetic acoustic transducer, to monitor pipeline-specific threats.

(2) Pipelines installed after 1970, must be hydrostatically tested under 49 CFR 195.304 at least every 3 years.

(3) A pipeline that has been placed back in service after a leak has been repaired must be reassessed using in-line inspection at least every year until 6 years pass without another leak.

(c) *Hydrostatic testing in HCAs.* A new pipeline, a converted, relocated, replaced, or otherwise changed existing pipeline, or a reactivated segment of pipeline must be hydrostatically tested and reassessed using in-line inspection under subsection (b) to substantiate the current or proposed maximum operating pressure. A pipeline, or segment thereof, for which the maximum operating pressure is to be increased must be hydrostatically tested under subsection (b).

(d) *Notification.* At least 5 business days prior to starting a test, a hazardous liquid public utility shall notify the Pipeline Safety Section of the scheduled testing. To maintain continuity of service during emergencies, shorter notice is permissible. A hazardous liquid public utility shall notify the public officials wherein the test is to be conducted.

(e) *Records.* A hazardous liquid public utility shall maintain records documenting compliance with the requirement of this section. The records must be made accessible to the Pipeline Safety Section upon request. A hazardous liquid public utility shall retain the records for the life of the pipeline.

§ 59.140. Operation and maintenance.

(a) *Scope.* This section establishes requirements for a hazardous liquid public utility operating and maintaining a pipeline.

(b) *Emergency procedures manual and activities.* A hazardous liquid public utility shall establish and maintain liaison with emergency responders and shall consult with them in developing and updating an emergency procedures manual addressing the following:

(1) Reasonable and practicable steps to inform emergency responders of the practices and procedures to be followed to provide them with relevant information, in-

cluding information regarding the product in the pipeline and the associated risk, consistent with the hazardous liquid public utility's emergency procedures manual.

(2) The development of a continuing education program for emergency responders and the affected public to inform them of the location of the pipeline, potential emergency situations involving the pipeline and the safety procedures to be followed in the event of an emergency.

(3) Tabletop drills to be conducted twice a year and a response drill conducted annually by the hazardous liquid public utility to simulate a pipeline emergency. The table-top drills and response drills must be conducted on different pipelines and products and in each geographic area where the hazardous liquid public utility's pipelines are located.

(c) *Liaison activities with emergency responders.* A hazardous liquid public utility shall communicate and conduct liaison activities at least twice a year with emergency responders. The liaison activities are those required by 49 CFR 195.402(c)(12) (relating to procedural manual for operations, maintenance, and emergencies). Liaison activities must be conducted in person, except as provided by paragraph (2).

(1) *Meetings in person.* When a hazardous liquid public utility makes contact with the emergency responders and schedules a meeting in person, no further attempts to make contact under this paragraph are required. If a scheduled meeting does not take place, the hazardous liquid public utility shall make an effort to reschedule the meeting in person using at least one of the methods in this paragraph before arranging liaison activities under paragraph (2).

(i) Mailing a written request for a meeting in person to the emergency responders by certified mail, return receipt requested.

(ii) Making at least one telephone call, facsimile transmission or e-mail message transmission to the emergency responders to request a meeting in person.

(2) *Alternative methods.* A hazardous liquid public utility may conduct required liaison activities by the following alternative methods only if the hazardous liquid public utility has completed at least one of the steps in paragraph (1) to conduct a community liaison meeting in person with the emergency responders. If a hazardous liquid public utility cannot arrange a meeting in person after complying with paragraph (1), the hazardous liquid public utility shall conduct liaison activities by:

(i) Holding a telephone conference with the emergency responders.

(ii) Delivering the liaison information required to be conveyed by certified mail, return receipt requested.

(3) *Hazard assessment zone analysis.* A hazardous liquid public utility shall conduct an annual hazard assessment zone analysis and present its findings to emergency responders that have executed a nondisclosure agreement within 60 days of completion of the analysis.

(4) *Records of liaison activities with emergency responders.* A hazardous liquid public utility shall maintain records documenting compliance with this subsection. Records must be retained for 7 years from the date of the event commemorated by the record.

(d) *Liaison activities with school administrators when a school building or facility is located within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, which-*

ever is greater. A hazardous liquid public utility shall comply with this section when a school building containing classrooms or any other school facility where students congregate is located within 1,000 feet, or within the LFL, of a pipeline or pipeline facility.

(1) *Maintaining records.* For a school building containing classrooms or school facility where students congregate located within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, whichever is greater, a hazardous liquid public utility shall maintain and, upon request, provide the Pipeline Safety Section, with the following information:

(i) The name of the school and the contact information for the school administrators.

(ii) The street address of the school building or facility.

(iii) Pipeline identification information.

(2) *Furnishing records.* A hazardous liquid public utility shall, upon written request from a school administrator with a school building or facility where students congregate within 1,000 feet, or within the LFL, of a pipeline or pipeline facility, whichever is greater, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:

(i) A description of the pipeline or pipeline facilities.

(ii) A list of any product transported in the segment of the pipeline.

(iii) Emergency contact information.

(iv) Information regarding the Commonwealth's One Call system.

(v) Information regarding how to recognize, report and respond to a product release.

(3) *School administrator meetings.* A hazardous liquid public utility subject to paragraph (2) shall appear at a regularly scheduled meeting of school administrators, upon request by the school administration, to explain the items listed in paragraph (1).

(4) *Records.* A hazardous liquid public utility shall retain records documenting compliance with this subsection for 7 years from the date of the event that is commemorated by the record.

(e) *Public awareness communication requirements beyond API RP 1162.* The requirements of this subsection apply to the affected public, emergency responders and public officials within the LFL of a pipeline.

(1) *Baseline messages.* A hazardous liquid public utility shall provide baseline messages, as prescribed in Table 2-1 of API RP 1162:

(i) To the affected public at least twice a year, with additional frequency and supplemental efforts as determined by specifics of the pipeline segment or environment under Section 6 of API RP 1162.

(ii) To emergency responders at least twice a year, with additional frequency and supplemental efforts as determined by specifics of the pipeline segment or environment under Section 6 of API RP 1162.

(iii) To public officials annually with additional frequency and supplemental efforts as determined by specifics of the pipeline segment or environment under Section 6 of API RP 1162.

(2) *Meetings.* A hazardous liquid public utility shall:

(i) Hold at least one open house or group meeting annually whereby the affected public can receive informa-

tion or an overview as part of the hazardous liquid public utility's Supplemental Activities for the Affected Public, as prescribed in Table 2-1 of API RP 1162.

(ii) Meet with emergency responders once per quarter to discuss emergency response as part of the hazardous liquid public utility's Baseline Activities for Emergency Officials, as prescribed in Table 2-1 of API RP 1162.

(iii) Meet with public officials annually, upon request.

(3) *Updates.* A hazardous liquid public utility shall evaluate its written continuing public education program annually. An update to a program must be provided to the Pipeline Safety Section for review for compliance with 49 CFR 195.440 (relating to public education).

(f) *Line markers.* In addition to the requirements set forth in 49 CFR 195.410 (relating to line markers) a hazardous liquid public utility shall place line markers for buried and above-ground pipelines as follows:

(1) Along a pipeline's right-of-way in such a manner that two line markers, one in each direction, are visible at any point while standing at ground level at the pipeline, except in a heavily developed urban areas where the placement of the markers is impractical. In a heavily developed urban environment, the hazardous liquid public utility shall use low-profile markers.

(2) At either side of a water crossing.

(3) At all above-ground pipeline appurtenances.

(g) *Inspection of pipeline rights-of-way.* In addition to the requirements of 49 CFR 195.412 (relating to inspection of rights-of-way and crossings under navigable waters), a hazardous liquid public utility shall inspect pipeline facilities in non-HCAs using ground patrol at least twice a year, not to exceed every 6 1/2 months, and in HCAs using ground patrol at least four times a year, not to exceed every 3 1/2 months. The ground patrol shall include inspection along the right-of-way to ascertain surface conditions on or adjacent to the right-of-way. The ground patrol path must not exceed lateral distance of 25 feet from the center of the right-of-way.

(h) *Leak detection and odorization.* In addition to the requirements of 49 CFR 195.444 (relating to leak detection), a leak detection system must be designed as a robust, Real Time Transient Model, under API RP 1130, capable of identifying small leaks. A CPM system must be designed with high sensitivity to commodity releases. Implementation must be prioritized as set forth in subparagraphs (1)–(4). If these requirements cannot be met within 5 years, a hazardous liquid public utility shall odorize all HVL pipelines.

(1) Pre-1970 HVL pipelines.

(2) Post-1970 HVL pipelines

(3) Pre-1970 pipelines.

(4) Post-1970 pipelines.

(i) *EFRDs in HCAs.* In addition to the requirements of 49 CFR 195.452 (relating to pipeline integrity management in high consequence areas), a hazardous liquid public utility shall determine the need for remote controlled EFRDs in consultation with public officials in all HCAs. The need for emergency flow restriction devices in HCAs must be based on limiting the LFL to 660 feet on either side of a pipeline.

§ 59.141. Qualification of pipeline personnel.

(a) *Scope.* This section establishes requirements for a hazardous liquid public utility to qualify an individual

that performs covered tasks, as defined in § 59.132 (relating to definitions) to include construction tasks, on a pipeline facility.

(b) *Qualification program.* In addition to the provisions of a written qualification program as required in 49 CFR 195.505 (relating to qualification program), a qualification program must include:

(1) The adoption of the provisions for a written qualification program, as required in 49 CFR 195.505, for construction tasks.

(2) A process that trains an individual qualified, as defined in 49 CFR 195.503 (relating to definitions), to identify and react to facility specific abnormal operating conditions.

(3) Requalification intervals for each covered task. A hazardous liquid public utility shall requalify an individual for each covered task at intervals not exceeding those required by the hazardous liquid public utility's qualification program. Requalification must include training and evaluation for a hazardous liquid public utility employee or contractor using the same company procedures and equipment required for initial qualification.

(c) *Records.* In addition to the provisions of recordkeeping as required by 49 CFR 195.507 (relating to recordkeeping), a hazardous liquid public utility shall maintain qualification records as required in 49 CFR 195.507 for construction tasks. A hazardous liquid public utility shall provide qualification records of an individual performing covered tasks, as described in 49 CFR 195.507, to the Pipeline Safety Section upon request.

§ 59.142. Land agents.

A land agent employed or contracted by a hazardous liquid public utility must hold a valid Pennsylvania professional license in one of the following fields: attorney, real estate salesperson, real estate broker, professional engineer, professional land surveyor or professional geologist. A land agent's Pennsylvania professional license must be in good standing during the performance of the land agent work or services on behalf of the hazardous liquid public utility.

§ 59.143. Corrosion control.

(a) *Scope.* This section establishes requirements for hazardous liquid public utilities protecting pipelines against corrosion.

(b) *Procedures.* A hazardous liquid public utility shall have written procedures for the design, installation, operation and maintenance of cathodic protection systems. The procedures must be specific and written for each cathodic protection test, survey, and inspection and must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods. A hazardous liquid public utility shall determine and document the average and the worst-case corrosion rate experienced for each pipeline segment.

(c) *Criteria for cathodic protection.* Each cathodic protection system must provide a level of cathodic protection over the entire pipeline that complies with at least one of the following:

(1) A negative (cathodic) potential of at least 850mV with voltage drops removed from all current sources in the pipe to soil measurement. This potential is measured with respect to a saturated copper/copper sulfate reference electrode contacting the electrolyte.

(2) A negative polarized potential of at least 850mV relative to a saturated copper/copper sulfate reference electrode.

(3) A minimum of 100mV of cathodic polarization between the structure surface and a stable reference electrode contacting the electrolyte. The formation or decay of polarization to satisfy this criterion and the length of time with current sources off must be based upon measured soil resistivities. The length of time must not allow exposure of an area of the pipeline and other foreign pipelines to the detrimental effects of corrosion.

(d) *Adequacy of cathodic protection.* A hazardous liquid public utility shall test a cathodically-protected pipeline at the corrosion test station to determine the adequacy of cathodic protection as follows:

(1) Each pipeline must be tested at least once each calendar year, with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of subsection (c). Each impressed current ground bed must be tested as part of this monitoring.

(2) Each pipeline transporting HVLs must be tested at least twice each calendar year, but with intervals not exceeding 7 1/2 months, to determine whether the cathodic protection meets the requirements of subsection (c). Each impressed current ground bed must be tested as part of this monitoring.

(3) Each cathodic protection rectifier must be inspected once each calendar month but with intervals not exceeding 37 days, to ensure that it is operating properly. Remote monitoring devices are permissible to accomplish monitoring; however, physical inspection of the facilities must occur at least six times per calendar year, in alternating calendar months, to verify the integrity of the impressed current system.

(4) Each reverse current switch, each diode, and each interference bond whose failure could jeopardize structure protection on a pipeline transporting HVLs must be electrically checked for proper performance 12 times each calendar year, with intervals not exceeding 37 days.

(5) A hazardous liquid public utility shall initiate actions to start remedial measures within 14 days upon discovery to correct any deficiencies indicated by the monitoring. At no point shall the completion of the remedial measures exceed the next scheduled inspection.

(e) *Close Interval Surveys.* A hazardous liquid public utility shall conduct close internal surveys, including paved surfaces, every 3 years not to exceed 39 months. A hazardous liquid public utility shall use close interval potential surveys or close interval depolarization surveys. The method used shall determine the adequacy of cathodic protection over the entire pipeline. A hazardous liquid public utility shall comply with NACE International Standard Practice 0207-2007, Performing Close-Interval Potential Surveys and DC Surface Potential Gradient Surveys on Buried or Submerged Metallic Pipelines (March 10, 2007).

(f) *Interference currents.*

(1) A hazardous liquid public utility shall have a written continuing program to minimize the detrimental effects of stray currents from foreign pipelines, railways, mining operations or other direct current sources. The program must include provisions for adequately documenting actions and activities for mitigating interference currents.

(2) Each impressed current system shall be designed and installed to minimize detrimental effects to foreign pipelines and other underground metallic structures.

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