

PHMSA Issues Final Rule Allowing Certain Gas Transmission Pipelines to Operate at Higher Pressures

On October 17, 2008, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a final rule allowing operators of gas transmission pipelines to elect to calculate higher maximum allowable operating pressures (MAOP) for certain lines by using higher design factors. Under the new regulations, pipeline operators will no longer require special permits to operate at higher pressures. The final rule takes effect November 17, 2008.

BACKGROUND

The federal pipeline safety regulations setting forth how gas transmission pipeline operators are to calculate MAOP were adopted in 1970. Since that time, however, significant improvements in steel pipe manufacturing, metallurgy, and assessment tools and standards have reduced the risk of defects in materials that can lead to failure over time. In addition, modern maintenance practices, including integrity management requirements, have reduced the risk of corrosion and other defects that affect pipeline integrity and have enhanced operators' understanding of pipe condition and other factors affecting risk. Given these developments, PHMSA has concluded that certain gas transmission pipelines can be operated safely and reliably at pressures that exceed current federal pipeline safety design limits, and that allowing operation at higher pressures will increase energy capacity and efficiency without compromising safety.

Currently, PHMSA authorizes gas transmission pipelines to operate particular pipeline segments at higher MAOP than permitted under existing design requirements by issuing pipeline-specific special permits. Before issuing a special permit, PHMSA conducts detailed individualized investigations into the design, construction, and operation and maintenance procedures of the applicant pipeline to ensure that the pipeline segment can be operated safely at higher pressures. In addition, each special permit requires that the operator comply with additional safety criteria that exceed existing federal requirements.

In March 2008, PHMSA proposed to replace the existing individualized special permit approach with a rule of general applicability under which pipelines can elect to operate certain pipe at an alternative MAOP that is based on higher stress factors, if the pipeline meets certain qualifying criteria. In general, PHMSA proposed to codify the supplemental safety requirements contained in previously issued special permits, and to allow pipelines meeting rigorous design, construction, inspection, and operation and maintenance (O&M) standards to calculate higher MAOP for certain qualifying pipeline.

STANDARDS FOR OPERATING AT AN ALTERNATIVE MAOP

The final rule largely adopts, with some technical modifications, the standards of general applicability proposed in the March 2008 notice of proposed rulemaking.

Requirements to Operate at Alternative MAOP

New § 192.620 to Subpart L of the current federal safety regulations describes the conditions a pipeline operator must satisfy to operate at an MAOP that is higher than allowed by current design requirements. In order to qualify to operate under an alternative MAOP, a pipeline segment must (1) be located in a Class 1, 2, or 3 location; (2) meet the additional, more rigorous design requirements set forth in new § 192.112; (3) have a supervisory control and data acquisition system that includes monitoring of pressures and flows, compressor start-ups and shut-downs, and remote closure of valves; (4) satisfy the additional construction requirements of new § 192.328; (5) not contain any mechanical couplings used in place of girth welds; (6) not have experienced any failure during normal operations indicative of a systemic fault in materials as determined by a root cause analysis; (7) for pipe constructed before November 17, 2008, have subjected at least 95 percent of girth welds on the segment to non-destructive examinations. In addition, an operator that establishes an alternative MAOP for a pipeline segment must comply with the additional O&M requirements specified in § 192.620(d).

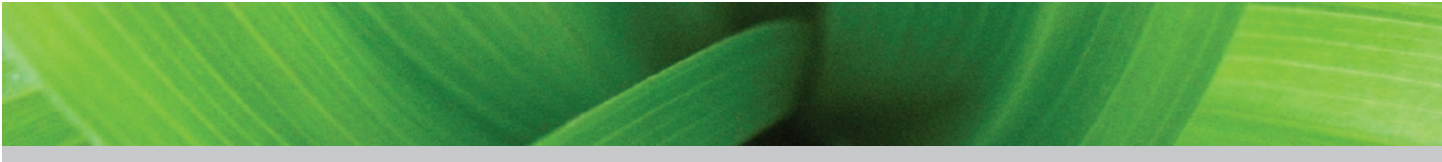
Certain pipelines will not qualify under PHMSA's final rule. Non-qualifying pipeline includes: (1) segments located in Class 4 locations; (2) pipeline already operating at a higher stress level, but not constructed in accordance with modern standards; (3) bare or ineffectively coated pipe; (4) pipe with wrinkle bends; (5) pipe experiencing failures indicative of a systemic problem; (6) pipe manufactured by certain processes, such as low frequency electric welding; and (7) pipe segments that cannot accommodate internal inspection devices.

New § 192.620 also describes numerous actions a pipeline operator must take when electing to operate a pipeline segment at a higher MAOP. Among other things, an operator must notify each PHMSA pipeline safety regional office where the pipeline is in service of the election at least 180 days before operating at the MAOP. An operator also must notify state pipeline safety authorities if the pipeline is located in a state where PHMSA has an interstate agent agreement, or an intrastate pipeline is regulated by that state. No later than 30 days before operating at the alternative MAOP, an operator must provide to each regional PHMSA pipeline safety office and, if necessary, offices of state regulatory authorities, a certification, signed by a senior executive officer of the company, that the pipeline meets the specified conditions, that O&M procedures include additional required elements, and that review and any required upgrades to the pipeline's damage prevention program have been completed.

Existing Special Permits And Pending Applications For Special Permits

PHMSA acknowledges that some of the technical requirements of the final rule differ from the additional safety criteria adopted in previously-issued pipeline-specific special permits. PHMSA states that existing special permits remain in effect and are not considered to be "reopened" by the final rule. PHMSA explains that although some pipeline segments operating under existing permits may not meet all the final rule's requirements, the operators' previously reviewed operational history and O&M practices provide an equivalent level of safety as provided by the requirements of the final rule.

With respect to pending applications for special permits, PHMSA states that consideration of them is unnecessary now that the final rule has been published. Consequently, PHMSA intends to terminate these proceedings with appropriate notice to the individual applicants.



IMPLICATIONS OF THE FINAL RULE

PHMSA has concluded that allowing qualifying pipelines to operate at higher MAOP will, with appropriate conditions and controls, increase energy capacity and efficiency without diminishing pipeline safety. PHMSA estimates that approximately 3,500 miles of existing pipeline will be updated to an alternative MAOP. With demand for natural gas forecasted to increase, and as domestic gas production continues to proliferate, new infrastructure to transport gas to markets will likely be necessary, and the final rule's impact could be far-reaching. In fact, PHMSA estimates that about 700 miles of new pipeline each year will use a higher MAOP.

FOR ADDITIONAL INFORMATION

Van Ness Feldman regularly counsels clients on issues related to pipeline construction, permitting, safety, and operation. Specifically, the firm has in-depth experience counseling clients on compliance with pipeline safety statutes and regulations. If you are interested in additional information regarding PHMSA's final rule, or any other energy-related federal activity, please contact Susan Olenchuk in our Washington, DC office at (202) 298-1800, or Pam Anderson in our Seattle office at (206) 623-9372, or any member of the firm's Natural Gas Practice Group.

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