

PHMSA Proposes to Modify Reporting and Notification Requirements for Pipelines and to Establish New Requirements for LNG Facilities

On July 2, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed new regulations that would revise reporting and notification requirements applicable to operators of gas and hazardous liquid pipelines and implement new reporting and notification requirements for operators of liquefied natural gas (LNG) facilities. Comments on the notice of proposed rulemaking are due by August 31, 2009.

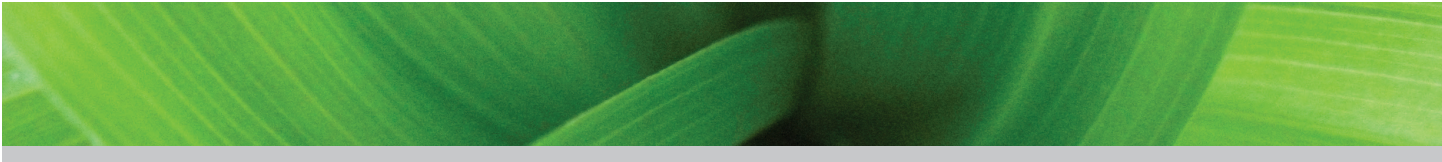
BACKGROUND

PHMSA explains in the notice that government organizations, industry stakeholders, the public, and the media use pipeline safety data collected by PHMSA for many purposes. To ensure that information collected is reliable, useful, and complete, PHMSA states that it must periodically modify its reporting requirements to reflect changes in business practices, regulations, and its data analysis strategies and objectives. In addition, PHMSA states that the proposed rule supports the agency's strategic objectives of reducing risk and improving the integrity of the nation's pipeline systems and that improving data collection will enhance the agency's analytical capability and its understanding of risk. The information collected will help determine program priorities and resource decisions, improve detection of emerging risks, and focus prevention activities. Finally, PHMSA states that the proposed rule responds to requests from the pipeline industry and recommendations of the Government Accountability Office (GAO) and National Transportation Safety Board (NTSB) to modify certain reporting requirements.

PROPOSED CHANGES TO REPORTING AND NOTIFICATION REQUIREMENTS

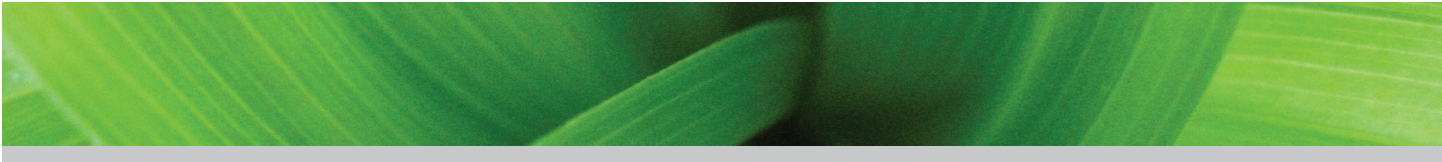
PHMSA is proposing to make numerous modifications to the reporting and notification requirements applicable to operators of gas and hazardous liquid pipelines and to establish new reporting and notification requirements for operators of LNG facilities.

- *Participation in National Registry and Notification of Facility Changes.* PHMSA is proposing to create a National Registry of Pipeline and LNG Operators that will serve as a storehouse for operators' reporting requirements and enable PHMSA to monitor and assess the performance of regulated entities over time. All operators of regulated pipelines and LNG facilities would be required to obtain an Operator Identification (OPID) number and submit all reports using the assigned OPID. In addition, PHMSA is proposing to require that all operators notify the agency at least 60 days in advance of certain profile or other changes to facilities which could impact public safety. Reportable events include (1) a change in the responsible operating entity; (2) a change in the entity responsible for managing or administering a safety program; (3) the acquisition or divestiture of 50 or more miles



of existing regulated pipeline or segment; (4) any rehabilitation, modification, replacement, upgrade, or update costing \$5 million or more; (5) construction of 10 or more miles of new pipeline transmission facilities or other construction project costing \$5 million or more; and (6) construction of a new LNG plant or LNG facility or the sale of an existing LNG plant or LNG facility. According to PHMSA, this data is needed so that the agency is aware of potential safety-altering activities that PHMSA may need to inspect, investigate, or otherwise oversee.

- *Merged Gas Transmission Semi-Annual Reports and Annual Reports.* PHMSA is proposing to require that the gas transmission Integrity Management Program semi-annual performance measures be reported in a pipeline's annual report. In addition, PHMSA proposes to revise the annual report form to replace the existing seven annual leak cause categories with the nine leak cause categories reflected in ASME B31.8S. The revised annual report also would require expanded information on gas gathering line mileage, class location by specified minimum yield strength, and transported volumes and commodities.
- *Submission of Hazardous Liquid Pipeline Operators Annual Report Information by State.* The proposed rule would require that hazardous liquid pipeline operators submit certain infrastructure and integrity management data in their annual reports for each State a pipeline crosses. PHMSA states that it requires more detailed information in order to effectively understand, monitor, and assess safety performance and risks. PHMSA also requests comments on whether infrastructure and integrity management information should be collected through the National Pipeline Mapping System, and whether there are pipeline operators that cannot provide this information via a geospatial tool.
- *Modified Telephonic Notification Requirements for Hazardous Liquid Operators.* Responding to a recommendation of NTSB, PHMSA is proposing to require that hazardous liquid pipeline operators have a procedure to calculate and provide a reasonable initial estimate of released product in telephonic reports to the National Response Center. Operators also would be required to submit additional telephonic reports if significant new information becomes available during the emergency response phase of a reported event.
- *New Reporting and Notification Requirements for LNG Operators.* PHMSA is proposing to require that LNG operators submit annual and incident reports. PHMSA states that the proposed requirements are consistent with reporting requirements applicable to gas and hazardous liquid pipeline operators. PHMSA also explains that the proposal responds to recommendations of the GAO for improved data quality regarding LNG operations and will provide timely information necessary to improve PHMSA's ability to effectively evaluate the safety performance of the LNG industry and to aid regulatory decision making regarding LNG operations.
- *Definition of "Incident."* PHMSA is proposing to revise the definition of "incident" by establishing as a new reporting category, an explosion or fire not intentionally set by the operator, and by establishing a volumetric threshold of 3,000 Mcf for reporting unexpected or unintentional gas loss. PHMSA declined to adopt the gas pipeline industry's recommendation that the volume-based threshold be set at 20,000 Mcf.

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- *Modified Scope of Part 191.* PHMSA is proposing to modify the scope of Part 191, containing reporting requirements, to match the definition of “gas gathering line” that was adopted in 2006.
 - *Electronic Reporting Requirement.* PHMSA proposes to require that operators of regulated facilities submit all reports electronically. PHMSA would permit any operator lacking the technological capacity for electronic reporting to notify the agency by mail or fax and request an alternative method for compliance. PHMSA requests comments on the burden the electronic reporting requirement would impose. PHMSA also proposes to require that safety-related condition reports and offshore pipeline condition reports be submitted on a new standardized form.

IMPLICATIONS OF PROPOSED REGULATIONS

The proposed rule significantly modifies reporting requirements and would establish new notification requirements for operators of pipelines and LNG facilities. In particular, all operators would be required to provide advance notification to PHMSA of certain facility and operational changes, and LNG operators would be subject to a new requirement to submit annual reports and incident reports. In addition, the proposed rule modifies the incident reporting requirement for gas pipeline operators by establishing a volume-based threshold for unintended releases.

PHMSA states that the proposed regulations reflect its efforts to become a more risk-based and data-driven organization, and that the proposed operating requirements will enhance its ability to make critical safety-related decisions based on more precise and complete information. According to PHMSA, the proposed regulations will enhance its ability to understand, measure, and assess performance of individual operators and the industry as a whole, and integrate pipeline data in a way that will permit more rigorous and comprehensive understanding and assessment of risk. PHMSA states that the revised reporting requirements also will facilitate its allocation of inspection and other resources based on a more accurate accounting of risk.

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 proposed rule, or any other energy-related federal activity, please contact Susan Olenchuk at (202) 298-1896, Jonathan Simon at (202) 298-1932, Mona Tandon at (202) 298-1836, or any member of the firm’s Natural Gas practice group.

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