

PHMSA Proposes to Incorporate New and Updated Voluntary Consensus Standards into Pipeline Safety Regulations and to Clarify Certain Safety Regulations

On July 22, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notice of proposed rulemaking to incorporate by reference into the federal pipeline safety regulations new and updated voluntary consensus standards and to clarify certain regulatory requirements. The proposal will affect operators of gas and hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. Comments on the proposed rule are due by September 21, 2009.

PROPOSAL TO INCORPORATE BY REFERENCE VOLUNTARY CONSENSUS STANDARDS

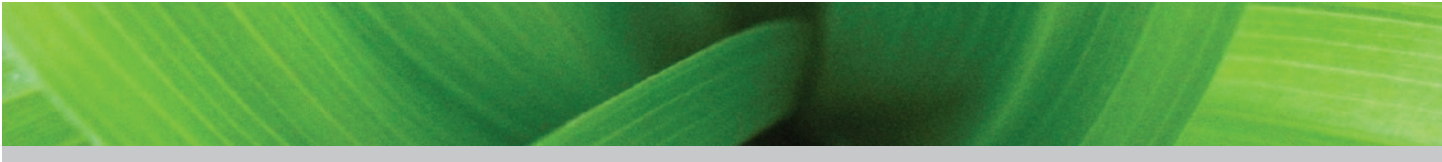
Pursuant to the National Technology Transfer and Advancement Act of 1995, PHMSA periodically incorporates by reference into federal pipeline safety regulations new and updated editions of consensus standards developed or adopted by voluntary technical and industry organizations. Such technical consensus standards apply to pipeline design, construction, maintenance, inspection, and repair.

The notice of proposed rulemaking would incorporate by reference into pipeline safety regulations applicable to operators of gas pipelines (49 C.F.R. Part 192), LNG facilities (49 C.F.R. part 193), and hazardous liquid pipelines (49 C.F.R. Part 195), all or part of 39 updated voluntary consensus standards previously adopted by PHMSA, and two standards adopted for the first time. PHMSA proposes to incorporate by reference standards adopted by the American Petroleum Institute, American Society of Civil Engineers, American Society for Testing and Materials (ASTM), ASME International, Gas Technology Institute, Manufacturers Standardization Society of the Valve and Fittings Industry, Inc., NACE International, the National Fire Protection Association (NFPA), and Plastics Pipe Institute, Inc.

PHMSA incorporates only those standards that it determines are consistent with public safety. PHMSA decided not to propose the incorporation of certain revised standards for plastic pipe fittings adopted by ASTM because of issues associated with appurtenances, marking or traceability, increase in design factor, and qualifications requirements for new materials. PHMSA also is not proposing to adopt two of the NFPA's updated standards, because they conflict with Part 192 of PHMSA's regulations. In this regard, PHMSA is proposing to revise its regulations to require that Part 192 controls in the event of a conflict with either NFPA 58 or NFPA 59.

PROPOSED REGULATORY MODIFICATIONS AND CLARIFICATIONS

PHMSA also is proposing a number of revisions and clarifications to Parts 192, 193, and 195 of its regulations. According to PHMSA, these proposed changes are "nonsubstantive" and are not intended to change or increase



applicable regulatory requirements. In addition to updating references in the regulatory text to editions of consensus standards that PHMSA is proposing to incorporate, PHMSA is proposing other revisions. In particular, PHMSA proposes to relocate definitions of “active corrosion,” “electrical survey,” and pipeline environment” from section 192.465 (external corrosion monitoring) to the general definition section under section 192.3 so that the definitions will have broader application. In addition, PHMSA proposes to clarify timelines for non-integrity management repairs under Parts 192 and 195 and requirements applicable to uprating gas pipe.

IMPLICATIONS OF PROPOSED REGULATIONS

PHMSA states that the proposed amendments to the pipeline safety regulations would not require operators to undertake any significant new safety initiatives. Nevertheless, the 41 updated and new standards that PHMSA proposes to incorporate by reference have broad application, affecting operators of gas pipelines, LNG facilities, and hazardous liquid pipelines. PHMSA states that incorporating updated and new consensus standards will enhance safety, reduce the compliance burden on the regulated industry, allow such operators to utilize established and well-defined proven practices. In addition, PHMSA states that the proposed rule will make important clarifications to existing regulatory requirements.

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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