

PHMSA Proposes to Apply Pipeline Safety Requirements to Low-Stress Hazardous Liquid Pipelines

By Susan Olenchuk and Harold Bulger

On June 22, 2010, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Notice of Proposed Rulemaking (NOPR) that would amend existing pipeline safety regulations to make them applicable to all low-stress hazardous liquid pipelines. The NOPR represents the second phase of PHMSA's implementation of the requirement in the Pipeline Inspection, Protection, Safety, and Enforcement (PIPES) Act of 2006 that PHMSA subject low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines. Comments on the NOPR are due by August 23, 2010.

BACKGROUND

Until 2008, hazardous liquid low-stress pipelines operating in rural areas were not subject to Federal pipeline safety regulations, unless the pipeline crossed a commercially navigable waterway. The PIPES Act of 2006, however, required that PHMSA regulate low-stress hazardous liquid pipelines under the same regulations as other hazardous liquid pipelines. PHMSA implemented this congressional mandate in two phases. In phase one, PHMSA applied all of the Part 195 regulations to higher risk, larger diameter (8^{5/8} inches or greater) low-stress rural onshore pipelines located in, or within one-half mile of, an unusually sensitive area ("USA"). A USA is any area with drinking water or other ecologically sensitive resources. These larger pipelines were prioritized partially because of their higher environmental risk, but also because PHMSA had adequate data to prepare a regulatory cost/benefit analysis on these pipelines. PHMSA published the phase one final rule on June 3, 2008. At that time, PHMSA also required operators of low-stress lines to comply with the annual reporting and incident reporting requirements of PHMSA's Part 195 pipeline safety regulations and requested operators of such pipelines to submit information regarding the mileage and characteristics of these pipelines.

All Rural Onshore Low-Stress Hazardous Liquid Pipelines Would Be Subject to Federal Pipeline Safety Regulations

PHMSA's NOPR represents phase two of its approach to regulating rural low-stress hazardous liquid pipelines and addresses all such pipelines not covered by phase one, that is, all rural low-stress pipelines less than 8^{5/8} inches in diameter and located in, or within one-half mile of a USA and rural low-stress pipelines of any diameter not located in, or within one-half mile of a USA.



PHMSA explains that its phased approach, as reflected in the NOPR creates three “categories” of rural low-stress pipelines:

- Category 1 includes rural low-stress pipelines that cross navigable waterways and pipelines $8^{5/8}$ inches or greater in diameter that are located within one-half mile of a USA. Category 1 pipelines are already subject to PHMSA’s Part 195 regulations.
- Category 2 includes rural low-stress pipelines less than $8^{5/8}$ inches in diameter that are located within one-half mile of a USA. These pipelines would be subject to the same Part 195 regulations as Category 1, but with different compliance deadlines.
- Category 3 includes rural low-stress pipelines of any diameter that are located more than one-half mile from a USA. These pipelines would be subject to all Part 195 safety regulations except for integrity management (IM) requirements.

Application of Integrity Management Requirements. Under PHMSA’s IM regulations, a pipeline operator must identify each pipeline segment that could affect a high consequence area (HCA) (populated areas, commercially navigable waterways, and USAs). Because performing this “could affect” analysis proved to be more burdensome than PHMSA originally contemplated, PHMSA concluded during the phase one rulemaking that a pipeline operator could instead evaluate whether a pipeline segment was located within a one-half mile buffer around a USA to determine if the segment could affect an HCA. Pipeline segments located within such buffers would be subject to IM requirements. In the NOPR, PHMSA proposes to retain this option for Category 2 pipelines, based on the finding that the one-half mile buffer reflects a reasonable “could affect” area for the vast majority of rural low-stress pipelines. In addition, PHMSA is proposing to require that Category 1 and 2 pipelines continue to apply IM requirements, even if the USA’s boundaries are redefined so the USA is no longer within one-half mile of the segment, unless the operator determines that the segment could not affect the USA.

Excessive Economic Burden Showing. The phase one rule gave pipeline operators who met certain criteria, the option of notifying PHMSA when compliance with an IM assessment would result in an excessive economic burden. The criteria were designed for rural pipelines carrying oil from a production facility where the economic burden associated with performing IM assessments would result in abandonment or shut down of the line, affecting oil supply or forcing use of truck transportation. In these circumstances, PHMSA has the ability to issue the pipeline operator a special permit setting forth alternate safety requirements. In the NOPR, PHMSA has determined that extending this option to Category 2 pipelines is unnecessary because, if they connect to oil production lines, they are defined as gathering lines, and are exempt from PHMSA’s IM regulations. PHMSA invites comment on this reasoning and whether the economic burden provision applicable to Category 1 pipelines should be extended to Category 2 pipelines.




Under the NOPR, compliance deadlines for Category 1 pipelines (low-stress rural pipelines already subject to Part 195 requirements) remain unchanged. With respect to Category 2 and Category 3 pipelines, PHMSA proposes the deadlines set forth below. Recognizing the amount of time since enactment of the PIPES Act and the small number of miles of pipeline that would be subject to these proposed Part 195 compliance requirements, PHMSA proposes that all Category 2 baseline assessments be completed within 5 years of the effective date of the final rule. Half of the assessments must be completed within 30 months of the effective date of the final rule. PHMSA invites comments on the proposed deadlines for completing baseline assessments.

More specifically, PHMSA proposes the following compliance deadlines:

| | Category 1 | Category 2 | Category 3 |
|---|-----------------------------|---|--------------------------------------|
| | Already subject to Part 195 | Rural low-stress pipelines less than 8 ^{5/8} inches in diameter and within ½ mile of a USA | All other rural low-stress pipelines |
| Identify all pipeline segments | April 3, 2009 | 9 months after effective date | 9 months after effective date |
| Comply with reporting requirements | January 3, 2009 | January 3, 2009 | January 3, 2009 |
| Establish written IM program | July 3, 2009 | 12 months after effective date | N/A |
| Complete baseline assessment | | | |
| -50% | January 3, 2012 | 30 months after effective date | N/A |
| -All Pipe | July 3, 2015 | 60 months after effective date | N/A |
| Comply with all other safety requirements except for corrosion control | July 3, 2009 | 12 months after effective date | 12 months after effective date |
| Comply with corrosion control requirements | July 13, 2011 | 36 months after effective date | 36 months after effective date |

IMPLICATIONS OF THE PROPOSED REGULATIONS

Under PHMSA’s NOPR, all small diameter rural low-stress hazardous liquid pipelines would become subject to federal pipeline safety requirements, as required by Congress in the PIPES Act of 2006. Small diameter low-stress pipelines located in or within one-half mile of a USA would be required to comply with all Part 195 regulations, including IM requirements, within 5 years of the effective date of the final rule. PHMSA estimates that pipeline operators will incur \$104.9 million in costs, over a period of 30 years on a net present value basis,



to comply with the changes included in the NOPR. At the same time, PHMSA estimates the 30-year net present value of the NOPR's benefits to be \$326.5 million, based upon the reduction or avoidance of incidents and their associated costs and consequences. PHMSA also expects that the NOPR could produce further benefits by reducing disruptions in fuel supply caused by pipeline failures, which can put upward pressure on fuel prices and negatively impact national security.

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 the Pipeline Safety Act 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, or Jonathan Simon at (202) 298-1932, or any member of the firm's Natural Gas or Oil and Products Pipeline practice groups.

Harold Bulger, a Summer Associate at the firm, contributed to this Alert.

© 2010 Van Ness Feldman, P.C. All Rights Reserved.

This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.