

PHMSA Incorporates New and Updated Consensus Standards into Pipeline Safety Regulations and Clarifies Certain Safety Regulations

By Susan Olenchuk

On August 11, 2010, the Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a final rule incorporating by reference into the federal pipeline safety regulations new and updated voluntary consensus technical standards and making certain regulatory clarifications. The final rule affects operators of gas and hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. The final rule and the newly incorporated standards become effective October 1, 2010.


VOLUNTARY CONSENSUS STANDARDS INCORPORATED BY REFERENCE

As required under 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 that are developed or adopted by voluntary technical and industry organizations. These technical consensus standards apply to pipeline design, construction, maintenance, inspection, and repair.

Pursuant to its statutory authority, PHMSA has issued a final rule incorporating by reference into the federal pipeline safety standards 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 40 new editions of voluntary consensus standards. The standards were developed 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 to be consistent with public safety. Consistent with the proposed rule, PHMSA did not incorporate certain revised ASTM standards for plastic pipe fittings or the 2008 editions of NFPA 58 and NFPA 59.

ASTM D2513: PHMSA did not incorporate the 2007 edition of ASTM D2513 because unfinalized issues, including National Association of Pipeline Representatives (NAPSR) Resolution SR-2-01, marking of materials. PHMSA explained that the outstanding issues, which will affect ASTM standards D638, D2513, D2517, and F1055, include the review of revisions of material categories, PENT test duration for PA-11 and PA-12 materials, development processes for new materials, review of existing standards for regrind, quality assurance, and quality control due to recent failures, cyclic fatigue and long-term cyclic fatigue testing of plastic mechanical appurtenances, the need for new or modified regulations or standards resulting from new materials,



and the impact of findings from Standard Dimension Ratio and side wall fusion R&D programs. PHMSA stated that it intends to address separately requests for a stay of enforcement of Section A.1.5.7 of the 1999 edition of ASTM D2513 to recognize the safe, longer storage time of polyethylene (PE) pipe. PHMSA also noted that operators can use the special permit process to request an extension from the current storage requirements for PE pipe.

NFPA 58 and NFPA 59: PHMSA addressed a couple issues with respect to NFPA 58 and 59, which applies to petroleum gas systems. First, PHMSA decided not to eliminate the current regulation providing that NFPA 58 and NFPA 59 control over Part 192 requirements in the event of a conflict. PHMSA explained that the primacy of NFPA 58 and 59 became an issue with the 2008 edition because, instead of simply serving as design and installation codes, these standards now address corrosion control and other O&M measures, and these provisions are less stringent than Part 192 requirements. Consequently, PHMSA believes that safety would be reduced under the revised standards. This problem is exacerbated by the practice of many petroleum gas system operators to incorrectly conclude that they are not required to comply with a stated Part 192 requirement if NFPA 58 or 59 is either silent or non-specific on the same topic.

In the final rule, PHMSA decided to defer the issue of the primacy of NFPA 58 and 59 to a separate rulemaking. In the meantime, federal regulations will continue to incorporate the 2004 versions of these standards instead of the 2008 editions because inconsistencies with Part 192 will decrease the safety of these petroleum gas systems.


In addition, PHMSA explained how a “conflict” arises between Part 192 and NFPA 58 and 59, emphasizing that a conflict does not exist simply because a stated requirement in Part 192 does not appear or is nonspecific in NFPA 58 and 59. In those circumstances, an operator must comply with the Part 192 standard. A conflict exists only when an operator cannot comply with requirements contained in both. In those circumstances the NFPA requirement continues to prevail.

PHMSA also declined to adopt the 2006 edition of NFPA 59A, finding that revisions to this standard lacked sufficient justification and that the historical basis for adopting some of safety standards could not be explained. Therefore, PHMSA explained that adopting this standard would be premature.

Public accessibility of updated standards. In response to a request that PHMSA make the incorporated standards available on its website for easy access, PHMSA stated that it is prohibited from doing so because most standards have copyright protection.

REGULATORY MODIFICATIONS AND CLARIFICATIONS

PHMSA also adopted a number of “non-substantive” revisions and clarifications to Parts 192, 193, and 195 of its regulations that are not intended to change or increase applicable regulatory requirements. Among other things, PHMSA relocated the 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 modified sections 192.711 and 195.401 to clarify timelines for non-integrity management repairs.

IMPLICATIONS OF PROPOSED REGULATIONS

PHMSA states that the final rule will enable operators to use current technologies, improved materials, and updated industry and management practices, and will not require operators to undertake any significant new safety initiatives. Nevertheless, the updated and new standards have broad application and will affect operators of gas pipelines, LNG facilities, and hazardous liquid pipelines. The final rule also is of interest because it illustrates the standard PHMSA applies when evaluating new standards. PHMSA will not incorporate a new standard into federal regulations if it will not clearly improve safety to the public, the environment, and pipeline safety.

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 or Products Pipeline practice groups.

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