

PHMSA Proposes to Extend Safety Regulations to Rural Large-Diameter Low-Stress Hazardous Liquid Pipelines

May 22, 2007

On May 18, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a supplement to its pending notice of proposed rulemaking (Supplemental Notice) that would extend all Part 195 safety regulations to rural large-diameter low-stress hazardous liquid pipelines. The Supplemental Notice addresses some of the new requirements adopted in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act). **PHMSA will accept comments on the Supplemental Notice until June 18, 2007.**

Background

PHMSA's original notice of proposed rulemaking, issued on September 6, 2006, proposed to extend only certain threat-based pipeline safety regulations to rural onshore low-stress hazardous liquid pipelines located within a quarter-mile buffer of an "unusually sensitive area" (USA) (i.e., an area that contains sole-source drinking water, endangered species, or other ecological resources that could be adversely affected by a hazardous liquid pipeline accident or leak). Specifically, PHMSA proposed to require operators of rural onshore low-stress pipelines (i.e., those operating at or below a stress level of 20% of the specified minimum yield strength (SMYS) of the line pipe) to comply only with those safety requirements of Part 195 that address the most common threats to the integrity of rural lines, including corrosion and third party damage.

On December 29, 2006, the President signed into law the PIPES Act, which requires PHMSA to issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines, with a few limited exceptions. PHMSA's 2006 notice of proposed rulemaking – which was pending when the PIPES Act was enacted – addressed only certain of PHMSA's safety requirements and would not have satisfied the PIPES Act's broad mandate. Accordingly, to partially comply with the PIPES Act, PHMSA issued the Supplemental Notice.

Supplemental Notice of Proposed Rulemaking

Phased Approach. PHMSA proposes to implement the PIPES Act's requirements for low-stress hazardous liquid pipelines in two phases. The Supplemental Notice is the first phase, whereby PHMSA will extend all of its Part 195 safety requirements (including integrity management, operations and maintenance, and qualifying personnel) to higher-risk, larger-diameter rural low-stress pipelines (i.e., pipelines 8 inches or greater in diameter operating at or below 20% SMYS and located within one-half mile of a USA) (Phase I pipelines). In the second phase, PHMSA will initiate a separate rulemaking to apply its Part 195 safety standards to all remaining (i.e., smaller diameter) rural low-stress pipelines. One of the main reasons for the two-phase approach is to gather data concerning the extent of smaller-diameter rural low-stress pipelines.

Buffer Area. The Supplemental Notice proposes to modify the definition of rural low-stress pipelines subject to regulation to include lines located within a half-mile of a USA in order to ensure that a release from a low-stress pipeline does not affect a USA. This reflects an expansion from the previously proposed quarter-mile buffer. For purposes of applying PHMSA's specific integrity management requirements, however, the Supplemental Notice would give Phase I pipeline operators the option of using comprehensive spread analyses, under which an operator would determine the extent to which spilled product would spread, considering local topography and other conditions, in lieu of the half-mile buffer, to determine which portions of their pipelines could affect a USA.

Smaller-Diameter Rural Low-Stress Pipelines. PHMSA will address applying Part 195 safety requirements to smaller-diameter rural low-stress pipelines during the second phase of its rulemaking. To better understand the rural low-stress infrastructure and its risks, however, PHMSA is proposing

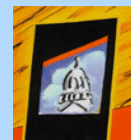
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in Phase I to require that such pipelines comply with the reporting requirements of Subpart B of Part 195. Therefore, any operator of a rural low-stress pipeline would be required to file annual reports, accident reports, and reports on significant conditions affecting safety.

Economic Burdens of Compliance. The Supplemental Notice proposes to provide relief to operators of Phase I pipelines in certain circumstances where the operator decides to abandon a Phase I pipeline because of the economic burdens of complying with PHMSA's integrity management assessment requirements. Specifically, the operator of a pipeline that carries oil from a production facility at a rate equal to or lower than 14,000 barrels per day could obtain relief from the integrity management assessment requirements if compliance would be economically infeasible. PHMSA recognizes that it may be impractical to use smart pigs at such flow rates because there may be insufficient movement within the pipeline to propel the pig. In such cases, PHMSA will evaluate the operator's request for waiver in consultation with the Department of Energy and the state where the pipeline is located, as appropriate.

Deadline for Compliance

PHMSA proposes to require that all pipeline operators identify all pipeline segments meeting the Phase I pipeline criteria and comply with the Subpart B reporting requirements within 6 - 12 months following the effective date of the final rule. For pipelines subject to the final rule, operators would be required to comply with most Part 195 requirements within 12 - 24 months of the effective date of the final rule. Operators would be permitted 24 - 36 months to implement Subpart H corrosion control requirements and 12 months to implement an integrity management program.

Implications of the Proposed Rulemaking

Based on the comments and testimony of pipeline operators during Congressional consideration of the PIPES Act, PHMSA believes that many operators of Phase I pipelines already use Part 195 of its safety regulations as guidelines for their daily operations and maintenance. Although PHMSA believes that requiring compliance with Part 195 will only slightly increase operators' costs, the PIPES Act – and PHMSA's Supplemental Notice – nonetheless requires a class of previously unregulated pipeline operators to comply with an entire class of new safety regulations.

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 statutes and regulations. If you are interested in additional information regarding PHMSA's rule, or any other energy-related federal activity, please contact Susan Moore in our Washington, DC office at (202) 298-1800, or Pam Anderson in our Seattle office at (202) 623-9372, or any member of the firm's Natural Gas practice group.

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