

Pipeline Safety Update: Special Edition- January 23,2017

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On January 23, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule adopting numerous amendments to the pipeline safety regulations. The amended regulations will affect operators of gas distribution, transmission and gathering pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facilities. The final rule responds to issues raised by recent pipeline accidents, implements new requirements in the Pipeline Safety Laws, addresses recommendations of the National Transportation Safety Board, and responds to comments submitted on PHMSA's 2015 Notice of Proposed Rulemaking (NPRM).

Note: As published on January 23, the effective date of the final rule is March 24. However, on January 20, 2017, the Assistant to the President and Chief of Staff for the White House, Reince Priebus, issued a "Memorandum for the Heads of Executive Departments and Agencies," (Memorandum) instructing that agencies postpone the effective date of regulations that have been published in the Federal Register, but have not yet taken effect, so that they can be reviewed for questions of fact, law, and policy. The memorandum further suggests that agencies consider proposing further notice-and-comment on such rules. For regulations that raise substantial issues of law or policy, agencies are instructed to consult with the Director of the Office of Management and Budget for further action. Consequently, the effective date of the amended regulations may be delayed.

Expansion of Operator Qualification requirements is delayed. Notably, the final rule does not adopt the NPRM's proposal to expand the application of Operator Qualification (OQ) requirements to include any operations, maintenance, construction and emergency response activity and to extend the requirements to Type B onshore gas gathering pipelines, Type A gas gathering lines in Class 2 locations, and regulated rural hazardous liquid gathering lines. PHMSA delayed final action on OQ in order to further evaluate the costs and benefits. The agency expects to publish a final rule on OQ in the near future.

The final rule's amendments to Parts 190, 191, 192, 195, and 199 include the following:

- *Modified Incident and Accident Notification Requirements.* Immediate telephonic or electronic notice of an accident or incident to the National Response Center now must be made no later than one hour after "confirmed discovery," defined as the time "when it can be reasonably

determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.” An operator must revise or confirm the initial notification within 48 hours, and provide an estimate of the amount of product released and the number of fatalities and injuries, and provide all other significant facts known by the operator that are relevant to the cause of the incident or accident or the extent of the damage. In response to comments received on the NPRM, the final rule requires that an operator provide the estimate of released product in the 48-hours subsequent report instead of the initial notification. This amended regulation responds to directives contained in the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011.

- *Notification of Pipeline Flow Reversals and Product Changes.* Operators must provide PHMSA with 60-days’ advance notice of certain flow reversals in a mainline pipeline, unless the system is designed for bi-directional flow or the reversal would last for no more than 30 days, and of product changes. The final rule also clarifies that the existing requirement to provide advance notification of the construction of 10 or more miles of new pipeline also applies to the construction of 10 or miles of replaced pipeline. In addition, an operator must provide PHMSA with 60 days’ notice before converting a steel pipeline to service under either Part 192 or Part 195, if the line previously had been used in service that was not subject to Part 192 or Part 195, respectively. *Training Requirements for Control Room Personnel.* The final rule modifies Control Room Management regulations to require that operators define the roles, responsibilities and qualifications of those with the authority to direct or supersede the specific technical actions of a controller. Operators’ controller training programs must be expanded to include team training and exercises that include both controllers and other individuals who would reasonably be expected to collaborate operationally with control room personnel during normal, abnormal or emergency situations.
- *Modified Farm Tap Requirements.* The final rule exempts farm taps from Gas Distribution Integrity Management requirements, and requires instead the inspection of pressure regulating/limiting devices, relief devices, and automatic shutoff devices every three years. Rupture disks are exempt from the inspection requirement. The final rule applies the new regulations to any service line directly connected to a production, gathering, or transmission pipeline that is not operated as part of a distribution system.
- *New Cost Recovery Fee for Design Reviews.* The final rule prescribes a fee structure and assessment methodology under which PHMSA would recover the costs it incurs conducting facility design or construction safety reviews or inspecting proposed gas, hazardous liquid and carbon dioxide pipelines or LNG facilities that have design and construction costs of at least \$2.5 billion, or that employ new or novel technologies or designs.
 - *New and novel technologies* are defined as any products, designs, materials, testing, construction, inspection, or operational procedures that, because of technology or design advances and innovation for new construction, are not addressed in 49 CFR Parts 192, 193, 195, or industry consensus standards that are incorporated by reference into PHMSA’s regulations. The final rule modified the NPRM’s proposed definition to limit it to new construction and to ensure that PHMSA does not review new technologies multiple times.
 - *Notification.* The operator proposing a qualifying project must provide PHMSA with the design specifications, construction plans and procedures, project schedule, and related materials at least 120 days before commencing route surveys, material

manufacturing, offsite facility fabrications, construction equipment move-in activities, onsite or offsite fabrications, personnel support facility construction, and any offsite or onsite facility construction. The final rule modified the NPRM by excluding permitting, material purchases and right-of-way acquisition as activities triggering the notification requirement.

- *New Special Permit Renewal Procedures.* The rule adds procedures for renewing expiring special permits so that PHMSA can assess whether the permit's conditions require updating to maintain safety or protect the environment. An operator must submit a renewal application at least 180 days before the permit expires. The existing special permit remains in effect until final administrative action occurs on the renewal application.
- *Standards for Hazardous Liquid Pipeline Assessment Tools.* The final rule incorporates by reference into Part 195 industry consensus standards addressing the use of inline inspection (ILI) tools to assess in-service hazardous liquid pipelines in order to provide more clear guidance for conducting integrity assessments using ILI. In addition, the final rule adds new regulations requiring that operators using direct assessment to evaluate stress corrosion cracking develop a Stress Corrosion Cracking Direct Assessment (SCCDA) plan that meets all of the requirements and recommendations of NACE SP 0204-2008 and that implements all four steps of the SCCDA process, including pre-assessment, indirect inspection, detailed examination, and post assessment. An operator's SCCDA plan also must comply with new section 195.588(c) that requires that significant SCC be mitigated with a hydrostatic test, including a spike test.
- *Modified Drug and Alcohol Testing Requirements.* The final rule narrows the existing exemption from the requirement to perform drug and alcohol testing of employees after an accident or incident by allowing the exemption only when there is sufficient information that establishes the employee had no role in the accident. Operators will be required to maintain documentation of a decision not to perform a test for at least 3 years. In addition, an operator with more than 50 covered employees must submit an annual report of drug and alcohol testing results electronically. The Administrator may require small operators to submit such reports in the future.
- *New Confidentiality Procedures.* The final rule establishes procedures for requesting protection of confidential commercial information submitted to PHMSA. The rule does not impact the protection of security information.
- *In-Service Welding.* The rule incorporates by reference Appendix B of the American Petroleum Institute's (API) Standard 1104, *Welding of Pipelines and Related Facilities*, which addresses in-service welding procedures and welder qualifications.