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December 23, 2009

The Honorable John D. Rockefeller
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Pipeline and Hazardous Materials Safety Administration: Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA), entitled "Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines" (RIN: 2137-AE15). We received the rule on December 10, 2009. It was published in the *Federal Register* as a final rule on December 4, 2009. 74 Fed. Reg. 63,906.

The final rule amends the Federal Pipeline Safety Regulations to require operators of gas distribution pipelines to develop and implement integrity management programs. The purpose of these programs is to enhance safety by identifying and reducing pipeline integrity risks. The rule allows for risk-based adjustment of prescribed intervals for leak detection surveys and other fixed-interval requirements in PHMSA's existing regulations for gas distribution pipelines. The rule establishes simpler requirements for master meter and small liquefied petroleum gas operators, reflecting the relatively lower risk of those small pipelines. Finally, the final rule requires operators to install excess flow valves on new and replaced residential service lines, subject to feasibility criteria.

The final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of February 2, 2010. CRA requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). The rule was published in the *Federal Register* on December 4, 2009, but it was not received by GAO until December 10, 2009. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of PHMSA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that, with the exception of the delay in the rule's effective date, PHMSA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Patricia Burke
Assistant Chief Counsel for
General Law
Department of Transportation

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
ENTITLED
"PIPELINE SAFETY: INTEGRITY MANAGEMENT PROGRAM
FOR GAS DISTRIBUTION PIPELINES"
(RIN: 2137-AE15)

(i) Cost-benefit analysis

PHMSA prepared a cost-benefit analysis in conjunction with this final rule. PHMSA estimated that the monetized benefits resulting from this rule will be between $165 million and $170 million per year. The benefits include reductions in the consequences of reportable and non-reportable incidents, reduction in the probability of a catastrophic incident, reductions in lost natural gas, reductions in emergency response costs and evacuations, reductions in dig-ins impacting non-gas underground facilities, and the end of the existing excess flow valves (EFV) notification requirement.

PHMSA estimates that the costs of the final rule will be $130 million in the first year and $101 million in each subsequent year. The costs include development of an integrity management program; implementation of an integrity management program, including data acquisition and analysis; mitigation of risks, including leak management and excess flow valve installation; reporting to PHMSA and state regulators; recordkeeping; and management of the integrity management program.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

PHMSA determined that the final rule will have a significant effect on a substantial number of small entities. PHMSA estimated that the final rule will affect approximately 9,090 small operators, consisting of 1,090 small operators among the local gas distribution utilities with 12,000 or fewer services, and approximately 8,000 master meter and liquefied petroleum gas (LPG) systems, all of which are small. PHMSA estimates that the final rule will cost each of the 1,090 small operators and the 52 LPG operators serving 100 or more customers from a single source, on average, approximately $33,600 in the first year, and $15,400 in each subsequent year. PHMSA also estimates that the final rule will cost each of the 8,000 master meter and small LPG systems, on average, approximately $2,900 in the first year, and $1,100 each subsequent year. PHMSA did not have information on the operators' revenues, but believed that the costs associated with the final rule could exceed 1 percent of revenues for at least some of the small entities. PHMSA has minimized the costs to small operators by subjecting small operators to more limited documentation requirements and providing guidance for small operators.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

PHMSA determined that the final rule imposes an unfunded mandate under the Unfunded Mandates Reform Act. PHMSA estimates that the final rule will cost operators $155.1 million in the first year of the regulations. PHMSA performed an analysis as required under the Act and concluded that the approach taken in the final rule is the least burdensome alternative for achieving the rule's objectives.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

PHMSA published a notice of proposed rulemaking on June 25, 2008. 73 Fed. Reg. 36,015. PHMSA received 143 comments on the proposed rule and responded to those comments in the final rule. 74 Fed. Reg. 63,906.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements under the Act. The final rule requires operators to report four distribution integrity management program performance measures in the annual report, which has been previously approved by the Office of Management and Budget (OMB) with Control Number 2137-0522. One of the measures required to be reported has historically been a part of the annual report; however, the three other measures will require modifications to the annual report. In the final rule, PHMSA gave 60-day notice to revise the annual report information collection. PHMSA estimates that the additional average time for completing the annual report, beyond that time that gas distribution operators are already expending, is 6 hours per year per operator. The result is a total burden increase of 8,058 hours per year for all 1,343 operators that have to comply with annual reporting requirements.

The final rule also contains a non-reporting requirement. The final rule requires each affected operator to develop and maintain a written integrity management plan, which includes initial plan development, recordkeeping, and updates. OMB has assigned Control Number 2137-0625 to these requirements but has withheld approval pending publication of a 30-day notice for the information collection requirement included in the final rule. Each operator, other than master meter operators and small LPG operators, must also collect and record one other specified performance measure and any other performance measures unique to the operator's pipeline that are needed to evaluate the effectiveness of the integrity management program. PHMSA estimates that these tasks will require an additional 2,289 hours for all 9,343 operators.

Statutory authorization for the rule

The final rule is issued under the authority of the Federal Pipeline Safety Law (49 U.S.C. 60101 et seq.), and section 9 of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (49 U.S.C. 60109(e)).

Executive Order No. 12,866 (Regulatory Planning and Review)

The notice was deemed economically significant under Executive Order No. 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

PHMSA concluded that the final rule does not have federalism implications.