

Thursday, October 6, 2016

## **Pipeline Safety Update, October 2016: PHMSA Releases Interim Final Rule Implementing New Emergency Order Authority; PHMSA awards \$900,000 to universities for corrosion research**

**PHMSA Releases Interim Final Rule Implementing New Emergency Order Authority.**

On October 4, the Pipeline and Hazardous Materials Safety Administration (PHMSA) released an advance copy of an interim final rule establishing temporary regulations to implement the new emergency order authority granted under the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act). The PIPES Act expanded PHMSA's enforcement authority to issue written emergency orders to address "imminent hazards" caused by unsafe conditions or practices. Unlike PHMSA's existing authorities to issue pipeline-specific corrective action orders or safety orders, an emergency order may be issued to multiple pipeline owners or operators.

An emergency order may prohibit an unsafe condition or practice or impose an affirmative requirement when an unsafe condition, practice, or other activity poses a threat to life or significant harm to property or the environment. For example, an emergency order may address a natural disaster affecting many pipelines in a particular geographic region; a serious flaw discovered in pipe, equipment manufacturing, or supplier materials; or a specific unsafe industry practice revealed by a pipeline accident.

Several provisions in the interim final rule are intended to implement PIPES Act directives. Before issuing an emergency order, PHMSA must consider the impacts on public health and safety, the national or regional economy or national security, and impacts on service reliability and continuity. PHMSA also will consult, as it deems appropriate, with federal and state agencies and entities knowledgeable in pipeline safety or operations, although the rule does not elaborate on the consultation process.

In addition, as required by the PIPES Act, an entity that is subject to and aggrieved by an emergency order may petition PHMSA's Associate Administrator for review of the order by requesting a formal hearing and describing material facts in dispute. Hearings will be conducted by an Administrative Law Judge (ALJ) in the Department of Transportation's Office of Hearings who must issue a report and recommendation containing factual findings and conclusions. Hearing procedures are modeled after existing review procedures contained in PHMSA's regulations for hazardous materials transportation. Petitions that do not request a formal hearing or identify disputed material facts will be handled informally within the Office of Pipeline Safety, but the rule does not describe the applicable procedures.

The interim final rule will become effective on the date it is published in the Federal Register. PHMSA is providing 60 days from the date of publication for the public to file comments on the interim final rule. PHMSA is issuing the rule without prior notice and opportunity to comment because the PIPES Act requires the agency to issue temporary

regulations within 60 days of the statute's enactment. The agency must issue a final regulation by March 2017, at which time the temporary regulations will expire.

<http://www.natlawreview.com/article/pipeline-safety-update-october-2016-phmsa-releases-interim-final-rule-implementing>