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November 12, 2008

The Honorable Daniel K. Inouye
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: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission 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: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines” (RIN: 2137-AE25). We received the rule on October 27, 2008. It was published in the *Federal Register* as a final rule on October 17, 2008. 73 Fed. Reg. 62,148.

The final rule amends the pipeline safety regulations to prescribe safety requirements for the operation of certain gas transmission pipelines at pressures based on higher operating stress levels. This results in an increase of maximum allowable operating pressure (MAOP) over that currently allowed in the regulations. PHMSA contends that improvements in pipeline technology assessment methodology, maintenance practices, and management processes have significantly reduced the risk of failure in pipelines and necessitate updating the standards that govern the MAOP. Currently, PHMSA has granted special permits on a case-by-case basis to allow the operation of particular pipeline segments at a higher MAOP than currently allowed under the existing design requirements. PHMSA is codifying the conditions and limitations of the special permits into standards of general applicability in this rule.

The final rule has an effective date of November 17, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). We did not receive the rule until October 27, 2008, which means that the final rule did not have the required 60-day delay in its effective date.

Enclosed is our assessment of the 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 indicates that, except for the delay in the 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Jenny Donohue
Alternate Liaison, *Federal
Register* Publications
Department of Transportation

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: STANDARDS FOR INCREASING THE
MAXIMUM ALLOWABLE OPERATING PRESSURE
FOR GAS TRANSMISSION PIPELINES"
(RIN: 2137-AE25)

(i) Cost-benefit analysis

PHMSA conducted a cost-benefit analysis and determined that this final rule has benefits that justify its costs. PHMSA stated that since the present value of the quantified benefits (\$1,541 million at 3 percent and \$1,098 million at 7 percent) exceeds the present value of the costs (\$328 million at 3 percent and \$164 million at 7 percent), the rule is expected to have net benefits.

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

PHMSA certified that this final rule will not have a significant economic impact on a substantial number of small entities.

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

PHMSA concluded that the final rule does not result in costs of \$132 million or more in any one year to either state, local, or tribal governments, in the aggregate, or to the private sector. PHMSA states that the final rule is the least burdensome alternative that achieves the objective of the rulemaking.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On March 12, 2008, PHMSA published a Notice of Proposed Rulemaking in the *Federal Register* for this rule. 73 Fed. Reg. 13,167. PHMSA received comments from 19 organizations in response to the proposed rule. PHMSA responded to those comments in the final rule.

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

The final rule contains new or modified information collection requirements subject to the Paperwork Reduction Act. PHMSA submitted a copy of these collection requirements to the Office of Management and Budget (OMB) for review.

Statutory authorization for the rule

The final rule is promulgated under the authority in 49 U.S.C. §§ 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118, and 49 C.F.R. § 1.53.

Executive Order No. 12,866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

PHMSA determined that this final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it will not have federalism implications.