

## PHMSA Proposes Regulatory Reforms for Hazardous Liquid Pipelines

On April 16, 2020, the Pipeline and Hazardous Materials Safety Administration (PHMSA or the Agency) released a [Notice of Proposed Rulemaking \(NPRM\)](#) to amend the facility response planning, reporting, and external corrosion control requirements for hazardous liquids pipelines in 49 C.F.R. Parts 194 and 195. PHMSA also proposes modifications to the inspection and investigation requirements in Part 190 which would impact all regulated operators (hazardous liquid, natural gas, underground natural gas storage, and LNG). PHMSA's proposal is intended to reduce regulatory burdens, as identified in internal agency reviews and stakeholder comments collected in 2017. Comments are due June 15, 2020.



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### Proposed Revisions to Inspection and Investigation Procedures

Under 49 C.F.R. § 190.203, operators are required to provide to PHMSA, upon request, all records and information during an inspection or that pertain to an accident or incident involving a pipeline facility. The NPRM would amend this regulation to formally allow operators to submit such records and information electronically as long as the records (1) can be downloaded and printed by PHMSA from any U.S. internet access point without watermarks, redaction or alteration, (2) have functionality which matches the original document, and (3) are associated with a contact person of the submitter who will be responsible for addressing any issues with the system or record displayed. In addition, if documents are made available through an access system provided by the submitter, the operator must disable activation or access codes, internet connectivity requirements, document tracking features, or any pre-access conditions such as log-in agreements. In addition, any time-out functionality must be set at a reasonable amount of time.

These proposals would prohibit common data security measures, such as access codes, “view only” document portals that restrict printing or downloading, watermarking, and access date and time stamping. While increased use of electronic submittals is generally welcome, and can improve efficiency, PHMSA's proposal raises important issues around document and data security and the Freedom of Information Act (FOIA). Many operator records are subject to FOIA and other protections because they contain confidential and other sensitive information.

In addition, PHMSA is proposing to amend 49 C.F.R. § 190.343 to remove the requirement to submit a second redacted copy of confidential information that is submitted to PHMSA for any purposes other than during a rulemaking proceeding or for a special permit. However, PHMSA also proposes to clarify that the mere label of “confidential” on information will not suffice to establish confidential commercial information, but rather, that operators must provide a specific explanation as to why the information is indeed confidential. PHMSA also proposes to remove the existing presumption that the Agency will treat information appropriately marked as confidential unless the operator is notified otherwise (§ 190.343(b)).

### Proposed Revisions to Oil Spill Response Plans

Under 49 C.F.R. Part 194, operators of onshore oil pipeline facilities are required to prepare a facility response plan (FRP) to establish procedures to address a worst-case discharge of oil. The NPRM proposes the following notable amendments to these requirements:

- The NPRM would move and amend the existing exception to FRP requirements for pipelines that are 6 5/8” or less in outer diameter, less than 10 miles long, and which meet certain historic release limitations. Under the proposal, the historic release limitations would be removed as an applicability trigger, and instead, pipelines that are 10 miles or less in length or 6 5/8” or less in outer diameter would not be subject to FRP requirements if they would not adversely affect navigable waters or adjoining shorelines, as well as public drinking water intakes or environmentally sensitive areas. This change would refocus the rule from historical spills to the present-day potential effects of a spill.
- Adding or revising definitions for various terms, including “onshore oil pipeline facilities”. The proposed definition would codify the current agency position that

pipelines that are landward of the coast line would be considered onshore facilities. PHMSA's proposal is likely informed by its experience in the recent *National Wildlife Federation v. DOT* Part 194 litigation in the Eastern District of Michigan and the U.S. Court of Appeals for the 6th Circuit.

- Deletion of § 194.103, which required operators to submit a statement with the FRP identifying which sections would be expected to cause “significant and substantial harm” to the environment in the event of a discharge of oil.
- Revision to the criteria for determining a worst-case discharge under § 194.105. The NPRM proposes to allow operators to use spill modeling programs in lieu of relying solely on historic discharge data to calculate the maximum release from a pipeline line section. This proposal may allow operators to use spill criteria that more accurately capture current system hydraulics and risks.
- Revisions to the general response plan requirements in § 194.107 by requiring consideration of adverse weather events in designing response procedures, and to limit the procedures that an FRP must contain to those allowed under an applicable area contingency plan (ACP). In addition, FRPs would need to contain procedures for providing safety data sheets (SDSs) to emergency responders and the Federal On-Scene Coordinator within 6 hours of a spill. The NPRM would also remove some requirements for listing response resources and procedures for maintaining equipment, where the operator contracts with a qualified oil spill removal organization (OSRO).
- Increasing flexibility for operators preparing FRPs by allowing for core plans to reference response zone appendices that can be separately amended, using National Pipeline Mapping System information to delineate response zones and pipeline facilities, and for operators to simply add a DOT-specific appendix to state response plans to address any additional federal requirements, rather than having to submit a distinct FRP.
- Requiring operators' FRPs to be consistent with the response resources and response tiers as defined in the US Coast Guard's Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans.

## Proposed Revisions to Safety and Reporting Requirements

PHMSA proposes to revise the Part 195 definition of a reportable “accident” in §§ 195.50 and 195.52 to increase the property damage threshold from \$50,000 to \$118,000, reflecting inflation. The \$50,000 threshold was set in 1984 for natural gas operators and later adopted in 1994 for hazardous liquid operators. It has not been adjusted since that time. PHMSA also proposes to revise § 195.573(c) to explicitly allow for remote monitoring of rectifier stations used for external corrosion control. Finally, the NPRM would slightly amend the guidance for implementing integrity management programs in Appendix C to Part 195, by relaxing some provisions relating to identifying pipeline segments that could affect high consequence areas, including those relating to crossing farm tile fields, and operating conditions. In addition, the NPRM clarifies that Appendix C is non-binding guidance.

Comments are due June 15, 2020.



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*Led by three former Pipeline and Hazardous Materials Safety Administration (PHMSA) attorneys, our Pipeline and Hazardous Materials Safety practice group counsels pipeline and midstream companies, gas utilities, terminal operators, investors, trade associations, and other stakeholders, throughout the United States. James Curry, Keith Coyle and Brianne Kurdock together have more than 25 years of experience with a multitude of pipeline safety issues. They partner with client engineering and legal personnel to address day-to-day compliance questions and develop business and regulatory strategies.*