PHMSA Proposes to Expand the Requirements for Pipelines Carrying Hazardous Liquids

Tuesday, October 20, 2015

The rules would add gathering lines and pipelines in non-HCA areas.

On October 13, the US Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a Proposed Rule that would significantly increase the number of miles of pipelines that would be subject to integrity management (IM) requirements. The Proposed Rule would also increase the responsibilities and obligations for hazardous liquid pipeline operators that are already subject to IM requirements. “Hazardous liquids” subject to PHMSA requirements include petroleum (crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas); petroleum products (products from distilling and processing of crude oil and natural gas liquids); anhydrous ammonia; and ethanol.

PHMSA had previously published an Advanced Notice of Proposed Rulemaking (ANPR) almost exactly five years ago, on October 18, 2010, following the 843,000-gallon crude oil spill that resulted from a ruptured pipeline and flowed into the Kalamazoo River in Michigan in July 2010. In proposing the rule at this time, PHMSA explains that expanding the IM program is needed to address the lessons learned from the Michigan incident and other pipeline safety issues. PHMSA does not explain why it took five years to propose these regulations or why the proposed scope extends beyond the types of pipelines involved in that and other incidents. However, PHMSA devotes several pages of the preamble responding to the comments it received in response to the ANPR, many of which question the justification for further regulation. It may be foretelling that PHMSA is generally dismissive of these comments, despite the fact that it acknowledges that it has a limited amount of information to justify the costs of further regulation versus the modest benefit to be gained.

The Proposed Rule actually includes eight proposals:

1. Expand the reporting requirements to include liquid gravity lines. Gravity lines are currently exempt from PHMSA requirements. PHMSA would like additional information “to effectively evaluate safety performance and pipeline risk” and therefore proposes to require annual reporting of safety-related conditions and incident reports for gravity lines. PHMSA expects this expansion would affect five operators and include an additional 28 miles of pipe.

2. Expand the reporting requirements to include gathering lines. PHMSA regulates less than 4,000 miles of the 30,000 to 40,000 miles of onshore hazardous liquid gathering lines, and thus, 90% of onshore gathering line mileage is not subject to any minimum federal pipeline standards. As it proposes for liquid gravity lines, PHMSA would like additional information to evaluate safety performance and pipeline risk and therefore proposes to require annual reporting of safety-related conditions and incident reports for all gathering lines.

3. Require inspections of pipelines in areas affected by extreme events. PHMSA proposes to require that operators perform an inspection within 72 hours after cessation of an extreme event, such as a hurricane or flood, earthquake, natural disaster, or similar event. Operators would need to inspect all potentially affected pipeline facilities for any conditions that could adversely affect safe operations. If an adverse condition is found, the operator would be obliged to take remedial action, which could include reducing operating pressure or shutting down the pipeline, modifying or repairing the damaged area, preventing access, performing patrols, and notifying affected communities.
4. Require periodic inline integrity assessments of hazardous liquid pipelines that are located outside of High Consequence Areas (HCAs). Currently, the Hazardous Liquids Integrity Management Rule applies to operators of certain hazardous liquid pipeline facilities that could affect an HCA and requires periodic assessment and anomaly correction as well as implementation of risk-control measures, if needed, such as enhanced damage prevention programs, reduced inspection intervals, corrosion control program improvements, leak detection system enhancements and installation of emergency flow restricting devices (EFRDs). PHMSA proposes to require IM assessments for all areas, not just HCAs, using an inline inspection (ILI) tool (or another method, if the pipe cannot accommodate an ILI) at least once every 10 years.

5. Require the use of leak detection systems on hazardous liquid pipelines. Currently, the rules require leak detection systems for hazardous liquid pipelines that could affect an HCA. PHMSA is proposing to require leak detection systems for all new hazardous liquid pipelines, including gathering lines. Furthermore, PHMSA proposes to have operators perform evaluations to determine what kinds of systems must be installed to adequately protect the public, property, and the environment.

6. Modify the provisions for making pipeline repairs. PHMSA proposes to modify the IM pipeline repair criteria and to apply the criteria to non-IM pipeline repairs. The criteria would be modified to categorize bottom-side dents with stress risers as immediate repair conditions, require immediate repairs whenever the calculated burst pressure is less than 1.1 times maximum operating pressure, and replace the 60-day and 180-day repair categories with a new consolidated 270-day repair category. PHMSA also proposes to amend the requirements for performing non-IM repairs by applying the criteria in the immediate repair category as actions that an operator must take to address integrity issues and to establish a new 18-month repair category for hazardous liquid pipelines not subject to IM requirements. PHMSA is also proposing to require operators to consider the risk to people, property, and the environment in prioritizing remediation of any condition that could adversely affect the safe operation of a pipeline system.

7. Require that all pipelines subject to the IM requirements be capable of accommodating inline inspection tools within 20 years. PHMSA is proposing to require that all hazardous liquid pipelines in HCAs and in areas that could affect an HCA be made capable of accommodating ILI tools (smart pigs) unless the basic construction of a pipeline will not accommodate the passage of such a device. PHMSA is also proposing to accomplish the gradual elimination of pipelines that are not capable of accommodating smart pigs.

8. Miscellaneous other rule changes, including the following:

- Require operators to develop written IM programs before commissioning new pipelines rather than one year after commissioning.
- Add specific mandatory pipeline attributes for information analysis and require operators to identify any spatial relationships among anomalous information.
- Require operators to verify their segment identification annually instead of just once.
- Extend IM requirements to portions of pipelines (e.g., pump stations and breakout tanks) and not just the line pipe.

PHMSA’s proposed rules come on the heels of another proposed regulatory initiative affecting pipeline operators. On July 10, 2015, PHMSA issued a proposed rule that would require pipeline incident prevention and response measures. That rule, if finalized, would obligate pipeline operators to report an accident or incident within an hour of its discovery and to follow up with PHMSA within 48 hours of discovery. This proposal would require PHMSA to be notified at the earliest practicable moment after discovery, which PHMSA historically interpreted as one to two hours. The remaining proposals in the July 1 publication are intended to strengthen pipeline safety measures, according to PHMSA:

- Notification—PHMSA proposed to require 60-day advance notice of permanent flow reversal or change in the flow product in nonbidirectional flow lines.
- Cost recovery—PHMSA proposed a fee structure to recover costs for design reviews of new large and/or novel gas and hazardous liquid pipeline projects.
- Special permits—PHMSA proposed to establish a method for renewing special permits that have expiration dates. The procedure provides the agency with a second opportunity to add requirements or make modifications, introducing a layer of unpredictability for operators.
- Confidential business information—PHMSA proposed to create a means for requesting that the agency keep information confidential.
- Operator qualifications—PHMSA proposed to expand the breadth and depth of training, recordkeeping, and reporting. Such requirements would apply to a broader scope of activities and cover any maintenance, construction, or emergency response task that an operator identifies as affecting the safety or integrity of a pipeline facility.
- Drug and alcohol testing—PHMSA proposed to require postaccident drug and alcohol testing of all employees, except for those who can establish that they had no role in the accident. Operators would need to document specific reasons why such an employee was not tested and keep those records for three years.
- IM—PHMSA proposed to adopt consensus standards for transport of hazardous materials relating to in-line
inspection systems qualifications and personnel qualification/certification, as well as stress corrosion cracking direct assessment. Notably, it is also considering a similar change for gas pipelines.

- **In-service welding**—PHMSA proposed to allow in-service welding in accordance with American Petroleum Institute standards;
- **Farm taps**—PHMSA proposes to grant itself the power to inspect farm tap pressure regulating/limiting devices, relief devices, and automatic shutoff devices every three years.
- **Control room training**—PHMSA proposes to extend control room training requirements that would include supervisors and all others involved in control room operations.

(The comment period for July 10 proposed rules closed on September 8, 2015.)

The scope and breadth of PHMSA’s proposed rules, and its responses to comments on the ANPR, indicate that PHMSA has every intention of expanding the IM program considerably, even where the costs do not justify the benefits. Notwithstanding that these proposals would theoretically decrease the possibility of additional incidents, it will be a challenge to provide effective comments that will persuade PHMSA to scale back these proposals, despite PHMSA’s failure to justify the necessity for such far-reaching and specific requirements. As noted by PHMSA, operators of hazardous liquid pipelines continue to implement many prudent measures, and thus, the burden of an expanded program should be diminished. That notwithstanding, the federal government’s role in establishing such detailed measures appears to overreach without justification in many cases in the Proposed Rule.

The deadline to submit comments on the October 13, 2015 Proposed Rule is January 8, 2016.

Copyright © 2019 by Morgan, Lewis & Bockius LLP. All Rights Reserved.

**Source URL:** https://www.natlawreview.com/article/phmsa-proposes-to-expand-requirements-pipelines-carrying-hazardous-liquids