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PHMSA Issues Long-Awaited Proposed Hazardous Liquid Pipeline Rule

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[Susan Olenchuk](#), [Jim Curry](#), [Keith Coyle](#), and [Frances Bishop](#)

On October 1, the Pipeline and Hazardous Materials Safety Administration (PHMSA) posted a [Notice of Proposed Rulemaking](#) (NPRM) proposing changes to the Part 195 regulations for hazardous liquid pipelines. In this alert, we review what PHMSA is proposing, what it is not proposing, and identify some initial questions raised by the NPRM. **Comments are due January 8, 2016.**

Why did PHMSA issue this proposal?

PHMSA is responding to issues raised by recent accidents, mandates from the 2011 amendments to the pipeline safety laws¹, recommendations from the National Transportation Safety Board (NTSB) and the Government Accountability Office (GAO), and comments received in response to its October 2010 [Advanced Notice of Proposed Rulemaking](#).

What has PHMSA proposed to change?

Assessments for Non-HCA Pipeline Segments. PHMSA is proposing to require operators to perform in-line inspection (ILI) assessments of pipeline segments (including regulated rural gathering) located outside of high consequence areas (HCA) every ten years. Alternative assessments, such as hydrostatic testing and direct assessment, would be allowed on prior notice to PHMSA if the operator can show why the pipeline is not capable of accommodating ILI tools, and why the alternative technology is equivalent. Discovery of conditions must occur within 180 days.

New Repair Criteria for All Pipelines. PHMSA would apply new, more conservative repair criteria and response timeframes to both HCA and non-HCA pipe. PHMSA expects many more anomalies to qualify as immediate repair conditions under the new criteria.

Non-HCA Segments. New immediate repair conditions for: metal loss greater than 80%, burst pressures below 1.1x MOP, any dent with metal loss, topside dents greater than 6%, indications of significant stress corrosion cracking (SSC), and selective seam weld corrosion (SSWC). New 18-month repair conditions for other dents, corrosion, cracks and other anomalies.

HCA Segments. Immediate repair conditions would be more conservative and identical to the new, non-HCA immediate conditions (discussed above). 60 and 180-day conditions would be eliminated and replaced with a new category of 270-day conditions.

Expand Leak Detection Requirements. PHMSA is proposing to require all hazardous liquid pipelines, including regulated rural gathering lines, to have leak detection systems. This expands current leak detection requirements beyond pipes subject to IM. Expect more detailed leak detection requirements in a follow-on NPRM expected in 2016.

IM Data Integration and Other Changes. PHMSA would impose more detailed requirements for the information analysis operators must perform under IM, including new requirements to assess spatial relationships among risk information. PHMSA would also require IM program development for new pipelines before the pipeline begins operation instead of one year after operations commence, and make other clarifying changes that tend to increase the stringency of the IM requirements.

More Pipe Must be Piggable. PHMSA would require that all existing pipeline segments subject to IM be modified to accommodate ILI tools within 20 years, unless the pipeline's basic construction will not accommodate passage of an ILI device. The new assessment requirements for non-HCA pipe (discussed above) would also include a preference for ILI tools.

¹ Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (P.L. 112-90) Jan. 3, 2012.

Extend Reporting Requirements to Gravity Pipelines and All Gathering Lines. PHMSA is proposing to require operators of gravity pipelines, which are currently exempt from Part 195, to submit annual, safety-related condition, and incident reports. PHMSA also is proposing to extend these reporting requirements to all hazardous liquid gathering lines, including unregulated gathering lines.

Inspections of Pipelines Affected by Extreme Weather. The proposal would require operators to perform an inspection of pipeline facilities potentially affected by an extreme weather event, including a hurricane, flood, earthquake, or natural disaster, within 72 hours of the end of the event to ensure that no conditions exist that could adversely affect the safe operation of the pipeline. If an adverse condition is determined to exist, the operator would be required to take remedial action, including, reducing operating pressure or shutting down the pipeline; modifying, repairing, or replacing damaged facilities; and implementing emergency response activities.

What is (notably) not changing?

Regulatory Exemptions. PHMSA has not proposed to eliminate any of the current regulatory exemptions, but has left the door open for changes pending further study. In the 2010 ANPRM, PHMSA sought comments regarding the exemptions for certain gravity pipelines, rural gathering pipelines, carbon dioxide pipelines, offshore pipelines in state waters, producer-operated pipelines on the Outer Continental Shelf, and breakout tanks. All of these exemptions remain in place.

Underground Storage. No ANPRM commenters supported regulations for underground liquid storage and PHMSA has not proposed to issue any new regulations here.

Definition of HCA. While PHMSA has proposed new assessment, leak detection and repair requirements outside of HCAs, it has not proposed to change the definition of HCA. PHMSA noted that it has not yet submitted a required report to Congress on this topic, and may consider expanding HCAs and extending IM requirements later.

Leak Detection & Valves. Beyond an expansion of leak detection requirements to non-HCA pipe, PHMSA has proposed none of the performance standards or specific leak detection system requirements contemplated in the ANPRM. PHMSA also has not proposed any new rules for valve spacing, locations or actuation (automatic or remote) or emergency flow restricting devices (EFRD). Expect to see these topics addressed in PHMSA's separate NPRM on rupture detection and valves, currently expected in February 2016.

Stress Corrosion Cracking. PHMSA proposed to define a new term "significant stress corrosion cracking," but did not propose any requirements for SCC. PHMSA plans to assemble a team of experts and hold a public forum to discuss the development of SCC standards.

What are some initial questions raised by PHMSA's proposal?

1. **More Immediate Repairs:** What are the implications of the proposals to strengthen repair criteria for certain dents, and make more conservative the predicted burst pressure repair threshold? PHMSA predicts many more anomalies will qualify for immediate repair. Will there be a time and resource crunch if these rules change?
2. **Impacts on Gathering:** The new assessment and repair criteria would apply to all pipelines, including regulated rural gathering lines. Is this supported by the risk?
3. **Nearly Everything Gets Piggaged:** With some exceptions, all regulated pipelines would need to be modified to accept ILI tools. What are the benefits and risk management implications of this proposal?
4. **What's Next:** Is this Phase 1 of a broader effort? Will the [Integrity Verification Process \(IVP\)](#), leak detection and valves be the next big policy push for liquids? Watch what PHMSA proposes later this year for gas pipelines to get a flavor of the future for liquids lines, and look out for another NPRM on valves and rupture detection in February 2016.

For more information

Van Ness Feldman counsels clients on pipeline safety compliance, enforcement, and litigation under the Pipeline Safety Laws and Regulations and related statutes. If you are interested in additional information regarding pipeline safety matters or any PHMSA or pipeline related matter, please contact [Susan Olenchuk](mailto:Susan.Olenchuk@vnf.com) at (202) 298-1896 or sam@vnf.com, [Jim Curry](mailto:Jim.Curry@vnf.com) at (202) 298-1831 or jbc@vnf.com, [Keith Coyle](mailto:Keith.Coyle@vnf.com), at (202) 298-1811 or kjc@vnf.com, or any member of the firm's Pipeline & LNG practice group.

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