

PHMSA Issues Three New Rules to Promote Pipeline Safety

by Steven A. Weiler

On October 1, 2019, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued three new rules to promote pipeline safety. The first, the **MAOP Reconfirmation Rule**, is the result of Congressional mandates, National Transportation Safety Board (NTSB) recommendations, and public input. Nearly ten years in the making, the rule attempts to resolve issues that contributed to the San Bruno, California natural gas pipeline explosion in 2010. In the ensuing investigation, the NTSB found that the pipeline operator had an inadequate integrity management (IM) program that failed to detect a defective pipeline segment. In response, Congress enacted the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Pipeline Safety Act), which required gas pipelines to (1) perform periodic IM reassessments every seven years, (2) consider seismicity in evaluating potential threats, and (3) report instances where a pipeline's maximum allowable operating pressure (MAOP) is exceeded.

In 2012, a gas transmission line West Virginia ruptured, the escaping gas ignited, and the resulting fire damaged an interstate highway, closing the highway in both directions for nearly a day. In response, the NTSB recommended that PHMSA include interstate highways and freeways to the "identified sites" that establish a "high consequence area" (HCA) for an operator's IM program.

In 2016, PHMSA issued a Notice of Proposed Rulemaking (NPRM) to address the pipeline incidents discussed above, the Congressional mandate, and NTSB recommendations. The NPRM addressed 16 major topics, but PHMSA subsequently determined to address the issues in three different final rules. The MAOP Reconfirmation is the first. A second rule will address, among other things, repair criteria in HCAs and non-HCAs, as well as inspection of pipelines following extreme events. A third rule will address gas gathering lines. These rules will issue later.

Against this backdrop, the MAOP Reconfirmation Rule requires operators of onshore natural gas pipelines to *reconfirm* the MAOP of their pipeline segments and gather records to substantiate the MAOP, including previously "grandfathered" lines; use one of

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six different methods for the reconfirmation, if records are missing; *perform* integrity assessments on certain pipelines outside HCAs; and *utilize* in-line inspection facilities (*i.e.*, pig launchers and receivers) only when pressure is safely relieved in the barrel, thereby preventing operator injury. According to PHMSA, the estimated annual costs to comply with the rule is approximately \$32 million.

Second, the **Hazardous Liquid Pipeline Safety Rule** promulgates a number of new regulations for pipelines transporting, among other things, crude oil or refined petroleum products, including the following:

- Extending reporting requirements to certain hazardous liquid gravity and rural gathering lines;
- Requiring inspection of all pipelines (both onshore and offshore) affected by extreme weather and natural disasters;
- Requiring integrity assessments at least once every ten years of “piggable” onshore pipelines outside HCAs;
- Extending the use of leak detection systems beyond HCAs to all regulated, non-gathering pipelines;
- Requiring all pipelines in or affecting HCAs to be piggable within 20 years; and
- Clarifying other regulations to improve compliance and enforcement, as well as incorporating several self-implementing provisions from the Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act).

These new regulations are the result of lessons learned from pipeline accidents, such as the 2010 crude oil spill in the Kalamazoo River near Marshall, Michigan, recommendations from the NTSB and Government Accounting Office, and public comments on a NPRM issued on October 13, 2015. PHMSA estimates that, in the aggregate, the annual cost to comply with these new requirements will be approximately \$20 million.

Third, the PIPES Act required PHMSA to establish emergency order procedures to address unsafe conditions or practices posing an imminent hazard. As such, the **Enhanced Emergency Order Procedures Rule** augments PHMSA’s existing authority to protect life, property, and the environment. Pre-existing authority allows PHMSA to issue both a *corrective action order* to the owner or operator of a pipeline facility posing a hazard and *notice of proposed safety order* after finding a particular pipeline exhibits one or more conditions posing an integrity risk. Unlike the existing authority, the new procedures will allow PHMSA to address an imminent hazard by issuing an emergency order across a group of gas or hazardous liquid pipeline owners or operators and to do so without notice or hearing.

The MAOP Reconfirmation Rule and Hazardous Liquid Pipeline Safety Rule will be effective on July 1, 2020, while the Enhanced Emergency Order Procedures Rule will be effective on December 2, 2019. If you have any questions about these rules, please contact Steve Weiler or Fred Jauss.

